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I. Facts

On August 28-29, 1994, Earl Conrad Bramblett ("Bramblett") killed Blaine and Theresa Hodges and their daughters, Winter and Anah ("Hodgeses").[1] In the early morning of August 29, firefighters responded to a call that smoke was rising from the Hodgeses' home, entered the home, and found the bodies of the Hodgeses.[2] Blaine, Winter, and Anah had been shot in the head at point-blank range.[3] Theresa had been strangled, her body covered in gasoline and ignited.[4]

During the afternoon of August 28, a neighbor saw Bramblett with Theresa and her children.[5] At approximately 4:30 a.m. on August 29, a witness traveling in the area of the Hodgeses' house saw a "pinkish red" pickup truck with a "dark" tailgate.[6] At the time of the murders, Bramblett drove a white truck with a black rear fender.[7] Later in the morning of August 29, a neighbor saw Bramblett drive past the Hodgeses' house while it was still surrounded by firefighters; he looked over at the house and kept driving.[8]

Law enforcement officials searched the dumpster outside of Bramblett's place of employment several days after the murders. They found bills addressed to Bramblett, a t-shirt identical to one given to Winter not long before her murder, a document written by Bramblett "detailing his belief that Winter was sexually attracted to him," and audiotape recordings made by Bramblett that discussed his obsession with Winter. The officers also found a sketch depicting the murders accompanied by Bramblett's handwriting.[9]

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1. Bramblett v. True, No. 02-3, 2003 WL 58283, at *1 (4th Cir. Jan. 8, 2003) (opinion not selected for publication).

2. *Id.*

3. Bramblett v. Commonwealth, 513 S.E.2d 400, 403 (Va. 1999).

4. *Id.*

5. *Id.* at 404.

6. *Id.* at 404-05. Law enforcement officers showed the witness a white truck and a red truck under lighting similar to the lighting at the time of the murders. She stated that the white truck looked pink to her. *Id.* at 405.

7. *Id.* at 405.

8. *Bramblett*, 2003 WL 58283, at *2.

9. *Id.* The drawing consisted of four stick figures. The male stick figure and the children had lines drawn to their heads and the female and children had circles drawn around them. *Id.*

In addition, a pubic hair that matched Bramblett's DNA was recovered from the bed where the children were found.[10] At Bramblett's place of employment, a pair of jeans containing traces of fuel oil were found soaking in a bucket filled with water and silk-screening solvent.[11] Cans of fuel oil found at the Hodgeses' home matched cans owned by Bramblett's former employer and it was determined that fuel oil was an accelerant used on the Hodgeses' home.[12] Finally, a .22 magnum revolver missing its barrel was found in the bedroom with Blaine's body.[13] Magnum revolver bullets, shell casings, and unfired cartridges were found in Bramblett's rented storage warehouse and in his truck.[14] Analysis showed that these shell casings had markings like those made by the revolver found at the crime scene.[15] An expert for the prosecution stated that a shell casing recovered from Bramblett's truck was fired from the revolver found at the scene.[16]

At Bramblett's competency hearing prior to trial, three psychologists testified about Bramblett's competency to stand trial.[17] One psychologist, Dr. Nelson, testified that Bramblett suffered from a delusional disorder, a type of psychosis, that led him not to have a rational understanding of defense counsel's role in his case.[18] The remaining psychologists testified that Bramblett had not incorporated defense counsel into his delusions, and opined that he was competent to stand trial.[19] The trial court concluded that Bramblett was competent to stand trial.[20]

At trial, Tracy Turner ("Turner"), a jailhouse snitch, testified for the prosecution.[21] Turner testified regarding conversations he claimed he had with Bramblett while they were incarcerated together.[22] Turner claimed that Bramblett told him that he was " 'addicted to young girls' " and had choked Theresa when she caught him with Winter.[23] Turner also testified that Bramblett told him that he " 'took care of his business' " with the remaining members of the Hodges family and set the fire to destroy the evidence.[24] However, in a post-trial affida-

10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*, at *3.
14. *Bramblett*, 2003 WL 58283, at *3.
15. *Id.*
16. *Id.*
17. *Id.*, at *4.
18. *Id.*
19. *Id.*, at *5.
20. *Bramblett*, 2003 WL 58283, at *5.
21. *Id.*, at *3.
22. *Id.*
23. *Id.*, at *3-*4.
24. *Id.*, at *4.

vit, Turner confessed to fabricating completely Bramblett's confession with the assistance of a Special Agent of the Virginia State Police.[25]

Bramblett was charged with the following offenses: (1) "[c]apital murder of Winter as part of the same transaction as the murder of Anah;"[26] (2) "the murders of Anah, Blaine, and Theresa;"[27] and (3) "three counts of using a firearm in the commission of the murders."[28] A jury found Bramblett guilty of all charges and fixed his punishment at death based on the vileness and future dangerousness aggravators.[29] The court imposed the recommended death sentence on Bramblett for the capital murder charge.[30]

On direct appeal, the Supreme Court of Virginia rejected Bramblett's claim that the trial court erred by finding him competent and affirmed Bramblett's conviction and sentences.[31] The Supreme Court of Virginia also denied Bramblett's subsequent application for state habeas relief.[32] Bramblett filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Virginia claiming that his trial counsel provided ineffective assistance and that the trial court should have found him incompetent to stand trial.[33] The district court dismissed the petition after finding that Bramblett's claims did not meet the standards for granting habeas relief found in § 2254.[34] The district court more specifically found that "Bramblett had failed to establish cause and prejudice or a miscarriage of justice to excuse the default of his remaining claims," and denied his request for an evidentiary hearing.[35] The district court apparently denied certificates of appealability for all of Bramblett's claims. Bramblett appealed the district court's rulings to the United States Court of Appeals for the Fourth Circuit and specifically raised six claims: (1) the district court erred by denying his claim that he was incompetent to stand trial;[36]

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25. *Id.*, at *11.

26. *Bramblett*, 513 S.E.2d at 403; *see* VA. CODE ANN. § 18.2-31 (Michie Supp. 2002) (defining capital murder in Virginia).

27. *Bramblett*, 513 S.E.2d at 403; *see* VA. CODE ANN. § 18.2-32 (Michie 2000) (defining first- and second-degree murder).

28. *Bramblett*, 513 S.E.2d at 403; *see* VA. CODE ANN. § 18.2-53.1 (Michie 2000) (stating that it shall be unlawful to use a firearm during the commission of certain felonies).

29. *Bramblett*, 513 S.E.2d at 403; *see* VA. CODE ANN. § 19.2-264.4 (Michie 2000) (setting forth the procedure for a capital sentencing hearing).

30. *Bramblett*, 513 S.E.2d at 403.

31. *Id.* at 406, 410.

32. *Bramblett*, 2003 WL 58283, at *4. The Supreme Court of Virginia rejected Bramblett's ineffective assistance of counsel claim on its merits and found that the remainder of his claims were procedurally defaulted because of his failure to raise them on direct appeal. *Id.*

33. *Id.*

34. *Id.*; *see* 28 U.S.C. § 2254 (2000) (setting forth evidentiary requirements for writ of habeas corpus; part of AEDPA).

35. *Bramblett*, 2003 WL 58283, at *4.

36. *Id.*

(2) his trial counsel provided him with ineffective assistance;[37] (3) the Commonwealth suppressed evidence material to his defense;[38] (4) the Commonwealth violated his due process rights by knowingly using perjured testimony against him;[39] (5) the Commonwealth violated the Sixth Amendment by eliciting incriminating statements from him and using these statements at trial;[40] and (6) the district court erred by rejecting his request for an evidentiary hearing.[41]

II. Holdings

The Fourth Circuit affirmed the district court's denial of Bramblett's petition for a writ of habeas corpus.[42] The court granted a certificate of appealability for Bramblett's claim under *Napue v. Illinois*[43] and denied certificates of appealability for Bramblett's remaining claims.[44] The court held that Bramblett failed to meet § 2254's evidentiary requirements for his competency and ineffective assistance of counsel claims.[45] The court also held that the district court correctly found that Bramblett failed to demonstrate the necessary cause and prejudice to excuse the default of his claims under *Brady v. Maryland*,[46]

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37. *Id.*, at *6.

38. *Id.*, at *9.

39. *Id.*, at *11.

40. *Id.*, at *12.

41. *Bramblett*, 2003 WL 58283, at *12.

42. *Id.*, at *1.

43. 360 U.S. 264 (1959).

44. *Bramblett*, 2003 WL 58283, at *1; Napue v. Illinois, 360 U.S. 264, 269 (1959) (holding that the prosecution violates a defendant's due process rights by knowingly using perjured testimony to obtain a conviction); *see* § 2254 (setting forth the evidentiary requirements that a petitioner must meet in order for a court to grant a writ of habeas corpus). Section 2253 states that an appeal may not be taken "[u]nless *a* circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1) (2000) (emphasis added). The Fourth Circuit granted a certificate of appealability as to Bramblett's *Napue* claim because at least one judge on the panel found that Bramblett made a showing of the denial of a constitutional right. *Bramblett*, 2003 WL 58283, at *1. Because the Fourth Circuit denied certificates of appealability as to five of Bramblett's other claims, the court should have reviewed these claims using the standard of review set forth in § 2253. Section 2253 states that a certificate of appealability may issue if the applicant has "made a substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2) (2000). The Fourth Circuit, however, appears to decide each of these claims on its merits. The proper procedure is set out in *Miller-El v. Cockrell*. *See* Miller-El v. Cockrell, 123 S. Ct. 1029, 1029 (2003); Priya Nath, Case Note, 15 CAP. DEF. J. 407 (2003) (analyzing Miller-El v. Cockrell, 123 S. Ct. 1029 (2003)).

45. *Bramblett*, 2003 WL 58283, at *6-*8. The ineffective assistance of counsel issue will not be further discussed in this case note.

46. 373 U.S. 83 (1963).

Napue, and *Massiah v. United States*.[47] Finally, the court concluded that Bramblett did not meet § 2254's requirements for an evidentiary hearing.[48]

III. Analysis

A. Bramblett's Competency to Stand Trial

Bramblett argued that the district court erred when it rejected his claim of incompetency.[49] The Fourth Circuit considered this claim in light of the "well settled" proposition that the prosecution of an incompetent defendant violates the due process clause of the Fourteenth Amendment.[50] In order to determine whether a defendant is competent to stand trial, the trial court inquires into whether the defendant " 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding–and whether he has a rational as well as factual understanding of the proceedings against him.' "[51] The court noted that not every manifestation of mental illness demonstrates incompetence.[52]

The Fourth Circuit stated that § 2254 contains two provisions applicable to federal habeas evaluation of state court factual determinations.[53] First, § 2254(d)(2) states that a district court may grant habeas relief if the state court's adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."[54] Second, § 2254(e)(1) allows a grant of habeas if the petitioner can rebut the presumption of correctness given to state court factual findings by "clear and convincing evidence."[55]

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47. *Bramblett*, 2003 WL 58283, at *9-*12; *see* Brady v. Maryland, 373 U.S. 83, 87 (1963) (holding that a State violates due process by suppressing material evidence); *Napue*, 360 U.S. at 269 (stating that a defendant's due process is violated when the prosecution knowingly uses perjured testimony to obtain a conviction); Massiah v. United States, 377 U.S. 201, 206 (1964) (concluding that a State violates the Sixth Amendment when it elicits from a defendant incriminating statements after his right to counsel has attached and then introduces those statements against him at trial). Bramblett's claim under *Massiah* will not be further discussed in this case note.

48. *Bramblett*, 2003 WL 58283, at *12; *see* § 2254(e)(2) (stating that a petitioner seeking an evidentiary hearing after failing to develop the factual issue at trial must establish that his claim relies on a new rule of constitutional law, facts that could not have been previously discovered, or facts that would be sufficient to demonstrate that, but for the constitutional error, the petitioner would not have been found guilty).

49. *Bramblett*, 2003 WL 58283, at *4.

50. *Id.* (citing Medina v. California, 505 U.S. 437, 439 (1992)).

51. *Id.* (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

52. *Id.* (quoting Burket v. Angelone, 208 F.3d 172, 192 (4th Cir. 2000) (applying *Dusky* standard of incompetency to federal habeas proceedings)).

53. *Id.*, at *5.

54. *Id.*; *see* § 2254(d)(2) (setting forth a standard for granting a writ of habeas corpus in federal court).

55. *Bramblett*, 2003 WL 58283, at *5; *see* § 2254(e)(1) (stating that the state court's adjudication of a factual issue "shall be presumed to be correct" unless rebutted by "clear and convincing

Bramblett's argument relied on the testimony of the psychologist who found him incompetent.[56] Dr. Nelson determined that Bramblett believed his defense counsel were part of a plot to kill him, thus preventing Bramblett from having a rational understanding of their role.[57] The other psychologists did not agree with Dr. Nelson, and they explained at length the reasons that Bramblett's delusions did not prevent him from understanding the role of his defense attorneys.[58] The Fourth Circuit found that Bramblett had not established that the trial court's determination of his competency was "unreasonable in light of the evidence presented at the competency hearing."[59]

The court also found that Bramblett failed to rebut the presumption of the state court's correctness by clear and convincing evidence.[60] Bramblett put forth evidence consisting of a letter from Dr. Nelson and an affidavit from the defense counsel's investigator.[61] The court rejected this evidence and stated that Dr. Nelson's letter simply repeated what he said at the competency hearing and the investigator's affidavit only showed that it was difficult to represent Bramblett, not that he was incompetent by clear and convincing evidence.[62]

B. Defaulted Claims

Bramblett's petition for habeas relief in the district court included several issues he had not raised in state court.[63] "Absent cause and prejudice, a federal habeas court may not review constitutional claims when a state court has declined to consider their merits on the basis of an adequate and independent state procedural rule."[64] The court then considered whether Bramblett successfully

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evidence").

56. *Bramblett*, 2003 WL 58283, at *5.

57. *Id.*, at *4.

58. *Id.*, at *5.

59. *Id.*

60. *Id.*, at *6.

61. *Id.* The defense investigator's affidavit stated that his preparation of Bramblett's defense was "significantly impaired" by Bramblett's mental illness. *Id.* (quoting Joint Appendix at 28).

62. *Bramblett*, 2003 WL 58283, at *6.

63. *Id.*, at *9. Bramblett first raised issues under *Brady*, *Napue*, and *Massiah* in his federal habeas petition. *Id.*, at *9, *11-*12.

64. *Id.*, at *9 (citing Harris v. Reed, 489 U.S. 255, 262 (1989)). The court further defined the circumstances under which procedural default will be excused. If the constitutional violation that petitioner sets forth would result in a "fundamental miscarriage of justice," then default may be excused. *Id.*, at *9 n.12 (quoting Coleman v. Thompson, 501 U.S. 722, 750 (1991)). A miscarriage is further defined as having possibly resulted in "the conviction of one who is actually innocent." *Id.* (quoting Murray v. Carrier, 477 U.S. 478, 496 (1986)). In order to make this showing, the court stated that the petitioner must show "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *Id.* (quoting Schlup v. Delo, 513 U.S. 298, 316 (1995)) (alteration in *Bramblett*).

demonstrated cause for his default and actual prejudice caused by any of the issues he raised.[65]

1. Brady v. Maryland *Claims*

Tracy Turner testified at trial as to statements that Bramblett allegedly made while they were incarcerated together.[66] Bramblett claimed that the notes taken by a state police officer in his interviews with Turner were "materially exculpatory and should have been disclosed prior to trial."[67] These notes did not come to the attention of Bramblett until the Commonwealth revealed them during state habeas proceedings.[68] In addition, in a post-trial affidavit, Turner stated that he had an agreement with the Commonwealth to gain benefits in exchange for testifying against Bramblett.[69]

The court assumed for the sake of argument that Bramblett could show cause to excuse his default of this claim.[70] However, it found no reasonable probability that the trial would have concluded differently if Bramblett had these documents at trial.[71] Bramblett claimed that these documents were critical for impeachment purposes, but the court noted that Bramblett failed to describe how they were inconsistent with other statements by Turner.[72]

In addition, Bramblett claimed that the Commonwealth withheld materially exculpatory evidence that supported his allegation that the Hodges family was killed in retaliation for information that Theresa's half-brother, Michael Fulcher, supplied to the government while he was an informant for the Drug Enforcement Agency.[73] The court rejected this argument as mere speculation.[74] Bramblett also claimed that the Commonwealth withheld information suggesting Benjamin Carr's involvement in the Hodgeses' murders.[75] The court rejected this

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65. *Id.*, at *9-*12.

66. *Id.*, at *3.

67. *Id.*, at *9.

68. *Bramblett*, 2003 WL 58283, at *9.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* The dissent thoroughly contrasted Turner's testimony and subsequent affidavit. *Id.*, at *14-*16.

73. *Id.*, at *10. The defense investigator found that Fulcher was placed in protective custody around the time of the murders. He also found that the police were investigating Fulcher for money laundering and drug dealing at the same time that they investigated the Hodgeses' murders. *Id.*

74. *Bramblett*, 2003 WL 58283, at *10.

75. *Id.* Two friends of Carr submitted affidavits that noted that Carr and Blaine Hodges had a fight while they worked together at the post office. They also claimed that Carr offered to " 'ice' " someone just like the Hodges. *Id.* (quoting Joint Appendix at 36, 37).

claim and noted that, at best, the evidence supporting it was inferentially inculpatory of Carr and exculpatory of Bramblett.[76]

Bramblett also argued that the evidence he presented, even if individually not enough for reversal, when viewed cumulatively under *Kyles v. Whitley*,[77] met the standard for materiality.[78] The court considered Bramblett's *Brady* evidence as a whole.[79] After noting that none of the suppressed items related to one another, the court rejected Bramblett's claim.[80] The court stated that none of the evidence undermined confidence in the jury's verdict.[81]

2. *Claim Under* Napue v. Illinois

Napue stands for the proposition that a conviction acquired "through the knowing use of perjured testimony by the prosecution violates due process."[82] If there exists any reasonable likelihood that the perjured testimony affected the jury's judgment, then the testimony constitutes a due process violation.[83] Bramblett claimed that an affidavit from Turner supported his claim that the Commonwealth knowingly put Turner's perjured testimony on at trial.[84]

The court rejected Bramblett's argument and concluded that Bramblett suffered no prejudice as a result of Turner's testimony, even assuming that it was wholly fabricated.[85] The court presented three reasons for finding that Bramblett was not prejudiced.[86] First, Turner's testimony at trial brought little to light that was not already in evidence.[87] Second, Turner's credibility was questionable.[88] Finally, in his closing argument, the prosecutor set out all of the circumstantial evidence against Bramblett and noted that, even without Turner's testimony, there was enough evidence to convict Bramblett.[89] After discussing this evi-

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76. *Id.*

77. 514 U.S. 419 (1995).

78. *Bramblett*, 2003 WL 58283, at *11; *see* Kyles v. Whitley, 514 U.S. 419, 436-37 (1995) (stating that the standard for materiality of suppressed evidence includes collective consideration).

79. *Bramblett*, 2003 WL 58283, at *11.

80. *Id.*

81. *Id.*

82. *Id.* (citing *Napue*, 360 U.S. at 269).

83. *Id.*, at *11 (quoting *Kyles*, 514 U.S. at 433 n.7).

84. *Id.* In his affidavit, Turner alleged that the prosecutors who met with him to prepare his testimony instructed him to write down the substance of his conversations with Bramblett so that he could testify that he had taken notes at the time the conversations occurred. *Id.*, at *15 (Michael, J., dissenting).

85. *Bramblett*, 2003 WL 58283, at *11.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

dence, the court concluded that there was not a reasonable likelihood that Bramblett would have received an acquittal if Turner had not testified at trial.[90]

C. *Evidentiary Hearing*

Bramblett also appealed the district court's denial of his request for an evidentiary hearing.[91] The Fourth Circuit assumed that Bramblett met the first requirement of § 2254(e)(2).[92] However, the court rejected Bramblett's claim and stated that he failed to satisfy § 2254's requirement that the petitioner demonstrate that "the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the [petitioner] guilty of the underlying offense."[93]

IV. Application in Virginia

In determining Bramblett's competency, the general question was answered through three more specific questions. These questions were as follows: (1)Was the defendant delusional?; (2) Did the delusion include his defense attorneys?; and (3) Could the defendant still assist his counsel with his defense? Breaking the competency issue down to its most basic parts is essential when any competency issue is raised. This is because, in effect, under § 2254(d)(2), the court can never find that the state court unreasonably interpreted the facts unless the facts are made unmistakably clear in the record. If the facts surrounding the defendant's competence are presented loosely, a reviewing court will have a difficult time determining from the record whether the trial court interpreted them unreasonably. Therefore, counsel should ensure that the evidence supporting the defendant's claim of incompetence, and the issues surrounding the specific version of incompetence alleged, are clear on the record.

Bramblett did not obtain a ballistics expert for his case.[94] If counsel seeks the appointment of an expert, counsel should make the best possible showing of the defendant's need for such an expert. *Husske v. Commonwealth*[95] held that an indigent defendant bears the burden of showing that such an expert would "materially assist him in the preparation of his defense and that the denial of such services would result in a fundamentally unfair trial."[96] Mere suspicion and hope are not enough to move successfully for the appointment of an expert.[97] Bramblett's defense counsel were found to be effective despite failing to seek

90. *Id.*, at *12.

91. *Bramblett*, 2003 WL 58283, at *12.

92. *Id.*; *see* § 2254(e)(2) (stating that a federal court may grant an evidentiary hearing if the petitioner can show a factual predicate that could not have been discovered previously).

93. *Bramblett*, 2003 WL 58283, at *12 (quoting § 2254(e)(2)) (alteration in *Bramblett*).

94. *Id.*, at *7.

95. 476 S.E.2d 920 (Va. 1996).

96. Husske v. Commonwealth, 476 S.E.2d 920, 925 (Va. 1996).

97. *Id.* (citing Caldwell v. Mississippi, 472 U.S. 320, 323-24 n.1 (1985)).

appointment of a ballistics expert because only "bare allegations and speculation" supported such a motion.[98] Counsel should seek evidence supporting the defendant's need for an expert and present the strongest possible case.

In *Bramblett*, the Fourth Circuit considered each item of Bramblett's *Brady* evidence individually, and then considered its effect cumulatively, as dictated by *Kyles*.[99] Trial counsel should be aware that the court reviews all *Brady* evidence cumulatively in order to determine whether a constitutional violation has occurred. Counsel should, therefore, always make both arguments. Notably, the court does not treat *Brady* claims and ineffective assistance of counsel claims in the same manner. In *Fisher v. Angelone*,[100] the Fourth Circuit considered the pieces of evidence supporting the petitioner's claim of ineffective assistance of counsel individually; the court specifically refused to look at Fisher's evidence cumulatively.[101] Thus, despite the similarity between these two constitutional issues, a habeas court will not use *Kyles*'s cumulative review for ineffective assistance of counsel claims.

Under *Brady*, counsel has available two types of claims. In a *Brady* type A claim, the prosecution has suppressed factually exculpatory evidence. For example, the Commonwealth withholds evidence supporting the defendant's alibi. This evidence is never presented. In a *Brady* type B claim, the prosecution has suppressed exculpatory impeachment evidence. For example, the Commonwealth withholds from the defense evidence that could be used to impeach one of its witnesses. The Commonwealth's witness testifies, but is not impeached.

To succeed on a claim under *Napue*, the prosecution knowingly must have presented perjured testimony.[102] The prosecution has thus withheld impeachment evidence, evidence showing that the witness is lying, from the defense. Thus, a *Napue* claim is similar to a *Brady* type B claim.

The court, when considering either a type A or B *Brady* claim, considers whether there is a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[103] In contrast, when the court reviews a *Napue* claim, the court only considers whether " 'there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.' "[104] Despite the similarity between *Brady* type B claims and claims under *Napue*, they are reviewed using different standards. The less

98. *Bramblett*, 2003 WL 58283, at *7.

99. *Id.*, at *9-*11.

100. 163 F.3d 835 (4th Cir. 1998).

101. Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998) (stating that ineffective assistance of counsel claims should be reviewed individually, as opposed to collectively).

102. *Napue*, 360 U.S. at 269 (stating that the prosecution violates a defendant's due process rights by knowingly using perjured testimony to obtain a conviction at trial).

103. *Kyles*, 514 U.S. at 433-34 (quoting United States v. Bagley, 473 U.S. 667, 682 (1985)).

104. *Bramblett*, 2003 WL 58283, at *11 (quoting *Kyles*, 514 U.S. at 433 n.7).

demanding standard of review for *Napue* claims illustrates the importance of making a *Napue* claim separate from any available *Brady* claims.

V. Conclusion

In summary, Bramblett illustrates four important lessons for defense counsel. First, counsel must present evidence of incompetence clearly and thoroughly in order to preserve a record from which a reviewing court can find that the trial court's determination of competency was unreasonable. Second, counsel should present its best case in support of the appointment of an expert. Third, counsel must keep in mind that *Brady* claims and claims of ineffective assistance of counsel are reviewed differently for purposes of determining whether constitutional error has occurred. Finally, counsel should recognize that *Napue* and *Brady* claims are distinctly different and require separate analysis.

VI. Epilogue

On April 9, 2003, Bramblett was executed in the electric chair at the Greensville Correctional Center.[105] Bramblett was the third inmate to choose the electric chair since January 1, 1995, when Virginia began granting inmates the choice between the electric chair and lethal injection.[106] When Bramblett was asked if he had a final statement, he stated, " 'I didn't murder the Hodges family, I never murdered anybody. I'm going to go to my death with a clear conscience.' "[107]

Kristen F. Grunewald

105. Frank Green, *Virginia Executes Bramblett*, RICH. TIMES DISPATCH, Apr. 10, 2003, at B1.
106. *Id.*
107. *Id.*