

**UNITED STATES COURT OF APPEALS  
for the  
THIRD CIRCUIT**

**Docket No. 85-5735**

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**RUBIN CARTER,**

**Petitioner-Appellee,**

**vs.**

**JOHN J. RAFFERTY, Superintendent, Rahway State Prison, and IRWIN I.  
KIMMELMAN,  
The Attorney General of the State of New Jersey,**

**Respondents-Appellants.**

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**JOHN ARTIS,**

**Petitioner-Appellee,**

**vs.**

**CHRISTOPHER DIETZ, Chairman, Parole Board of the State of New Jersey and  
IRWIN I. KIMMELMAN, The Attorney General of the State of New Jersey,**

**Respondents-Appellants.**

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**BRIEF  
OF  
RESPONDENTS – APPELLANTS**

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### C. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

I. This is an appeal from orders of the United States District Court for the District of New Jersey granting writs of habeas corpus.

The United States District Court has jurisdiction where application for writ of habeas corpus is made by a prisoner in custody in violation of the Constitution. 28 U.S.C. §2241(c)(3). The “district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution....”

II. The grants of the respective writs of habeas corpus are final judgments of the United States District Court for the District of New Jersey.

The Court of Appeals for the Third Circuit has jurisdiction of appeals from all final decisions of the United States District Court for the District of New Jersey. 28 U.S.C. §1291.

In a habeas corpus proceeding before a district judge, the final order shall be subject to review, on appeal by the Court of Appeals for the circuit where the proceeding is had. 28 U.S.C. 2253.

### D. STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Failure of the United States District Court to accord the requisite deference to the judgments, findings and conclusions of the state trial court upon federal habeas corpus review.

II. Failure of the United States District Court to credit the full record, as well as the findings and rulings of the state trial court relative to admissibility of motive evidence, and erroneous application of pertinent legal precedents relative to an alleged due process violation occasioned by the introduction of motive evidence.

III. Incorrect application by the United States District Court of the standard of materiality for Brady v. Maryland evidence, as set forth in United States v. Bagley, \_\_\_\_\_ U.S. \_\_\_\_\_, 105 S. Ct. 3375, 53 U.S. 150 (1972), to the non-disclosure of an oral polygraph report.

IV. Failure of the United States District Court to adequately credit the record of the remand hearing on the alleged Brady violation, to apply the presumption of correctness due to findings of fact of the trial court at that hearing, and to accord the requisite deference due the trial court’s conclusions on the remand hearing.

V. Failure of the United States District Court to give due consideration to the entire record as being supportive of the conviction by jury of petitioners, and as being a factor in the district court’s determination that the state court convictions should be vacated on the basis of a due process violation arising from introduction of motive evidence and a Brady violation occasioned by non-disclosure of an oral polygraph report relating to an eyewitness.

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