

No. 18-35

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IN THE SUPREME COURT OF  
THE UNITED STATES

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COMMONWEALTH OF PENNSYLVANIA  
*Petitioner*

v.

RODERICK JOHNSON  
*Respondent*

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ON PETITION FOR WRIT OF *CERTIORARI* TO THE  
SUPREME COURT OF PENNSYLVANIA

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**REPLY BRIEF FOR PETITIONER**

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JOSH SHAPIRO  
Attorney General  
Commonwealth of Pennsylvania

JAMES BARKER  
Chief Deputy Attorney General  
Appeals & Legal Services Section

WILLIAM R. STOYCOS\*  
Senior Deputy Attorney General  
Counsel of Record

Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-1401

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## CAPITAL CASE

### QUESTIONS PRESENTED

1. Whether the prosecution's nondisclosure of arguably impeaching information relating to a witness who linked the defendant with two murders can be material for purposes of a *Brady* analysis when the trial record establishes via the unrefuted testimony of other witnesses that the defendant twice knowingly and voluntarily confessed to police to being an accomplice to both murders with an intent to kill, which confessions were corroborated by other evidence?

2. Whether it is permissible for a court conducting a *Brady* analysis to find that undisclosed information is material based upon speculation regarding how the information might have been used by the defense at trial when a record was developed on the *Brady* claim on state collateral review that establishes how the reports would have been used at trial and compels the conclusion that no difference in the outcome is reasonably probable?

3. Whether this Court will countenance the transformation of *Brady* and its progeny by convicted criminals from a due process shield into a litigation sword that can be used to invalidate lawful judgments of sentence?

**TABLE OF CONTENTS**

	<b>Page</b>
QUESTIONS PRESENTED .....	i
TABLE OF CONTENTS.....	ii
TABLE OF CITED AUTHORITIES .....	iii
ARGUMENT IN REPLY TO .....	1
RESPONDENT'S BRIEF IN OPPOSITION.....	1
ARGUMENT IN REPLY TO .....	1
A. Johnson's Brief in Opposition Materially Misrepresents the Nature of the Commonwealth of Pennsylvania's Argument to this Court .....	1
CONCLUSION.....	4

**TABLE OF CITED AUTHORITIES**

**Page**

**Cases**

*Brady v. Maryland*, 373 U.S. 83 (1963) ..... 1

*Cone v. Bell*, 556 U.S. 449, 469-70 (2009)..... 2

*Turner, et al. v. United States*,

137 S.Ct. 1885, 1893 (2017) ..... 2

**ARGUMENT IN REPLY TO  
RESPONDENT'S BRIEF IN OPPOSITION**

**A. Johnson's Brief in Opposition Materially  
Misrepresents the Nature of the Commonwealth of  
Pennsylvania's Argument to this Court.**

Rather than meet the substance of the Commonwealth's arguments forthrightly and head-on, Johnson's brief in opposition is conspicuously silent on those arguments<sup>1</sup> and instead employs a strategy of misdirection, inaccurately stating that the petition for writ of certiorari: (1) advances an argument about accomplice liability not previously pursued; and (2) asks this Court to address the proper interpretation of state law. These assertions are erroneous.

The Commonwealth's petition addresses the Pennsylvania Supreme Court's construction and application of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. To the extent that the petition references accomplice liability under state law, it occurs *in the context of a discussion about the materiality of the police reports at issue under Brady*, not in a vacuum or as an argument of state law as suggested by Johnson.

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<sup>1</sup> Johnson's failure to substantively respond to the factual and legal arguments articulated in the petition for writ of certiorari speaks volumes and is a tacit admission that the Commonwealth's presentation to this Court is meritorious.

The governing materiality analysis established by the Court mandates a careful assessment of whether the withheld evidence, when viewed in the context of the entire record, establishes that there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *See, e.g., Turner, et al. v. United States*, 137 S.Ct. 1885, 1893 (2017). In turn, an assessment of the reasonable probability of a different result *compels the consideration of the criminal offenses with which the defendant was charged and convicted and the precise elements of those offenses*. Without such consideration, a determination of the materiality of suppressed evidence simply cannot be reached.

The Commonwealth has argued from day one in the state courts that the police reports at issue are not material under the *Brady* rule. For example, it stated in its brief filed with the Pennsylvania Supreme Court that:

As this Court is well-aware, evidence is “material” within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different and confidence in the verdict is undermined. *Cone v. Bell*, 556 U.S. 449, 469-70 (2009). Applying this standard, the trial court should have found that the police reports at issue are *not* material for purposes of *Brady* in light of the evidence of guilt presented by the Commonwealth, the defense actually mounted by Johnson,

and the truly insignificant nature of the information contained in the five reports.

(7/8/16 Brief of Appellant filed in Pennsylvania Supreme Court at 54-55). The fact that the Commonwealth also argued *in the alternative* that the police reports would not be admissible at trial under Pennsylvania law does not negate this fact.

The criminal charges for which Johnson stood trial – including first-degree murder with an intent to kill as an accomplice – have always been, of necessity in light of this Court’s precedent, a relevant factor in the materiality analysis advanced by the Commonwealth. This is the proper frame of reference for understanding the Commonwealth’s reference to accomplice liability in its petition. Johnson’s attempt to gull this Court into believing otherwise, and that the Commonwealth seeks a correction of the state Supreme Court’s construction of state law on accomplice liability, is a shameful exercise in artful duplicity.

**CONCLUSION**

The Court should grant the petition.

Respectfully submitted,

JOSH SHAPIRO  
Attorney General  
Commonwealth of Pennsylvania

JAMES BARKER  
Chief Deputy Attorney General  
Appeals & Legal Services Section

WILLIAM R. STOYCOS \*  
Senior Deputy Attorney General  
Counsel of Record

Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-1401

Counsel for Petitioner

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