No.

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF NORTH CAROLINA,

PETITIONER,

v.

NORFOLK JUNIOR BEST,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

In *Brady v. Maryland*, 373 U.S. 83 (1963), this Court held that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The question presented is:

Does an appellate court violate the core principals of *Brady* in post-conviction review where in its materiality analysis it disregards both evidence clearly available at the time of trial and also its own prior opinion on direct appeal where it held that defendant's identity as the perpetrator of the crime was established by his bloody fingerprint on the knife found under one of the victim's bodies?

RELATED CASES

State v. Best, 93 CRS 2621-22 (26 April 2016), Superior Court of Columbus County, North Carolina. Judgment entered April 26, 2016.

State v. Best, No. 300A93-3, Supreme Court of North Carolina. Judgment entered December 18, 2020.

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INTRODUCTION

In *Strickler v. Greene*, 527 U.S. 263 (1999), this Court held that there are three components of a *Brady* violation: (1) the evidence at issue must be favorable to the accused, (2) the evidence must have been suppressed by the State, and (3) there must be prejudice. Unless all three are present, there is no violation of *Brady*. *Id*. at 281-82. Regarding the third component, this Court stressed that "there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." *Id*. at 281.

Nearly thirty years ago, Norfolk Junior Best beat, stabbed, and murdered eighty-two-year-old Leslie Baldwin and beat, stabbed, raped, and murdered his seventy-nine-year-old wife, Gertrude Baldwin. Mr. Baldwin's body was found lying on top of a paring knife smeared with his blood. Undisputed evidence showed that Best's fingerprint, in blood, was also on the knife. The State's DNA expert at trial testified that the semen taken from Mrs. Baldwin's body was not from Mr. Baldwin. DNA testing also eliminated 94% of the North Carolina African American population but did not exclude Best.

The state trial court denied Best post-conviction relief. On review of that denial, the Supreme Court of North Carolina reversed and ordered a new trial. The state supreme court set aside the conviction in spite of overwhelming evidence of guilt produced by the State at trial. This evidence was only strengthened during post-conviction proceedings, when further DNA testing, taking advantage of the advances

in technology over the intervening years, showed an exact match between Best's profile and the profile from the rape kit.

In reversing the trial court's decision, the state supreme court misapplied *Brady*'s core principles in two outcome-determinative ways. First, in measuring the weight of the undisclosed information, the court declined to consider other evidence that was available to the State at trial. It did so by ignoring statements from witnesses who did not testify at trial, but were available to do so, as shown by their interview statements to law enforcement prior to trial.

Second, the court misapplied *Brady* by ignoring the effect of the evidence admitted at trial. Specifically, on post-conviction review, the court declined to consider Best's bloody fingerprint on the knife found under one of the victim's body as part of the overwhelming evidence of Best's guilt. This failure to acknowledge this overwhelming proof of guilt was in direct conflict with the court's own previous decision on direct review of Best's conviction. On direct review, the state supreme court concluded that "defendant's identity as the perpetrator of the crime is established by his fingerprint on the knife." App. 25a. The court's reversal as to the impact of this same evidence amounted to a misapplication of *Brady*.

It bears noting that the state supreme court made these errors in a case where there is no doubt as to Best's guilt. The overwhelming evidence of guilt presented at Best's trial was only confirmed again in post-conviction proceedings. Best requested DNA testing in post-conviction, a request that was unopposed by the State. At the

2016 hearing on the results of post-conviction DNA testing, the testimony of *both the state and defense experts* was that the sperm fraction, removed from the body of Mrs. Baldwin, who had been raped and murdered, was an exact match to Best's DNA profile.

This Court should grant certiorari to maintain compliance with the Court's decisions on an important issue of law.

OPINIONS BELOW

The reported opinion of the Supreme Court of North Carolina, App. 1a, reversing the order of the Superior Court of North Carolina is reproduced in Appendix A. The unreported order of the Superior Court of North Carolina, App. 13a, denying Best's motion for appropriate relief is reproduced in Appendix B. The reported opinion of the Supreme Court of North Carolina, App. 22a, affirming his conviction on direct appeal, is reproduced in Appendix C.

JURISDICTION

The opinion below was issued on 18 December 2020. Pursuant to Supreme Court Rule 13(1), this petition for a writ of certiorari is timely if filed within 90 days after entry of the judgment. However, pursuant to this Court's Order on 19 March 2020, the time to file "is extended to 150 days from the date of the lower court judgment." One hundred fifty days from 18 December 2020 is 17 May 2021. As this petition is filed by 17 May 2021, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV of the United States Constitution and as applied in this Court's opinions in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Strickler v. Greene,* 527 U.S. 263 (1999).

STATEMENT OF THE CASE

A. Best murdered an elderly couple in their home, raping the female victim.

Best murdered eighty-two-year-old Leslie Baldwin and murdered and raped seventy-nine-year-old Gertrude Baldwin in their home. Best "beat and stabbed the victims to facilitate a robbery." App. 29a. Best's "identity as the perpetrator of the crime [was] established by his fingerprint on the knife found next to the body of Mr. Baldwin." App. 25a. The State's DNA expert at trial testified that the semen taken from the vagina of Mrs. Baldwin was not from Mr. Baldwin. DNA testing also eliminated 94% of the North Carolina African American population but did not eliminate Best as a contributor. App. 25a.

B. Best was convicted of two counts of first-degree murder.

On 1 June 1993, the jury rendered verdicts of guilty on all charges, specifically finding Best guilty of both counts of first-degree murder based on both malice, premeditation and deliberation, and felony murder. After a full sentencing hearing, pursuant to N.C. Gen. Stat. § 15A-2000, the jury unanimously returned a verdict recommending that Best be sentenced to death for both of the capital offenses.

Accordingly, the trial court imposed judgments of death for each capital conviction and terms of imprisonment for the remainder of convictions on 4 June 1993.

C. The Supreme Court of North Carolina upheld Best's convictions and sentences on direct appeal.

On 9 February 1996, the Supreme Court of North Carolina issued its decision, finding no error and affirming the death sentences. App. 22a. On 7 October 1996, this Court entered its Order denying Best's petition for writ of certiorari. *Best v. North Carolina*, 519 U.S. 878 (1996).

D. The State trial court upheld Best's convictions and sentences in post-conviction.

On or about 29 August 1997, Best filed a post-conviction motion for relief from his convictions and sentences in a Motion for Appropriate Relief (MAR) in Bladen County Superior Court, and amended this motion on or about 16 October 1997. The MAR court conducted an evidentiary hearing on Best's claims for relief on 23 March 1998. The MAR court issued its written Order on 24 April 1998, which denied Best's MAR in its entirety. The Supreme Court of North Carolina denied review. *State v. Best*, 525 S.E.2d 179 (N.C. 1998).

Best twice filed motions under N.C. Gen. Stat. § 15A-269 for post-conviction DNA testing, neither of which were opposed by the State. Pursuant to N.C. Gen. Stat. § 15A-270(a), the post-conviction superior court conducted an evidentiary hearing on 11 April 2016 on the second set of DNA results. The superior court found the results of the DNA testing were unfavorable to Best and ordered the motion dismissed. At

the hearing on the results, both Best's expert and the expert for the State testified that the sperm fraction taken from Mrs. Baldwin's body was an exact match for Best's DNA profile. The State's expert testified that the Random Match Probability of the profile occurring again in the African American population was "1 in 490 trillion." App. 31a-32a.

Finally, Best filed a successive MAR, entitled "Motion for Appropriate Relief (Second)" on or about 16 January 2014. As relevant here, Best's successive MAR alleged that the State had violated *Brady*, including withholding a prior statement of testifying witness Carolyn Troy and information of alternate suspects. In an Order filed 23 January 2018, the superior court denied the Best's second MAR. App. 13a.

E. The Supreme Court of North Carolina reversed the Superior Court Order and overturned Best's convictions and sentences in post-conviction.

Over twenty-five years after Best was convicted and sentenced to death, the Supreme Court of North Carolina overturned Best's convictions by reversing the lower court's order which had denied Best's successive post-conviction motion. First, the state supreme court found that an undisclosed statement of Carolyn Troy was material under the *Brady*. Troy was a witness at trial who testified that Best possessed several hundred dollars on 2 December 1991, the day after the rape, robberies and murders occurred. Troy's testimony at trial was consistent with her typewritten statement to law enforcement on 10 December 1991. But her handwritten statement, which the State could not show was disclosed prior to trial,

states that Best had 30 or 40 dollars on 2 December 1991. This undisclosed handwritten statement, according to the majority of the state supreme court, "would have permitted Mr. Best to impeach Ms. Troy's testimony." App. 6a.

Despite overwhelming evidence of guilt presented at trial, and in contradiction of the court's own prior assessment of the State's evidence at trial, the Supreme Court of North Carolina overturned Best's convictions and sentences, finding "the evidence against Mr. Best is not as strong as the State claims it is." App. 7a. In addition to ignoring the reality of the evidence of guilt presented at trial, this 2020 finding directly contradicts the state supreme court's own direct appeal opinion finding overwhelming evidence establishing Best was the perpetrator of these crimes. App. 25a ("The defendant's identity as the perpetrator of the crime is established by his fingerprint on the knife.").

The state supreme court's second error below was regarding the knife fingerprint evidence presented at trial. This evidence was accurately described by the dissenting Justice, who emphasized "the strength of the evidence from the DNA and fingerprint testing" that demonstrated Best's guilt, and that "the majority cannot point to any new evidence that would undermine the credibility of either the DNA test or the bloody fingerprint." App. 11a. The dissent also noted that Best's explanation for how his bloody fingerprint came to be on the murder weapon—that he "scraped the back of his hand" after cleaning the victims' gutters—was "already tried . . . at trial" but was rejected by the jury. App. 11a. The dissent went on to

explain "it would be implausible for the jury to believe [Best] because the knife (1) bore defendant's fingerprint in Mr. Baldwin's blood after the knife had just been washed; (2) was found underneath the body of Mr. Baldwin, whose neck was sliced open; and (3) rarely left the kitchen and was not used for yard work." App. 11a. Despite these glaring defects in Best's story, "the majority nonetheless consider[ed] [his] bare assertion significant as evidence that could undermine the State's case." App. 11a.

As the dissent pointed out, the majority even acknowledged that the "new evidence" does not refute the DNA or fingerprint evidence of defendant's guilt, instead claiming that it undermines its effect. In fact, the majority even acknowledged that the fingerprint evidence is undisturbed by Best's post-conviction arguments. Specifically, the majority stated, "[a]s to Mr. Best's fingerprint on the knife, then, the evidence highlighted by Mr. Best does not undercut the reliability of the fingerprint identification." App. 7a.

Nothing has disturbed the fingerprint, in blood, on the knife under Mr. Baldwin's body. The Supreme Court of North Carolina previously held in 1996 that the fingerprint identified defendant as "the perpetrator of the crime." App. 25a. Now in 2020, even in an opinion that grants Best relief, the majority agrees that nothing has undercut the reliability of that fingerprint identification. App. 7a. And the post-conviction DNA evidence does more than fail to "refute" the DNA evidence at trial, it also on its own conclusively shows Best's guilt.

REASONS FOR GRANTING THE PETITION

The Supreme Court of North Carolina's decision in this case is fundamentally inconsistent with the core principles of *Brady v. Maryland*, 373 U.S. 83 (1963). Although the majority opinion quoted this Court's opinions in *Brady* and its progeny, it did not follow this Court's directive in *Strickler* that "there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." *Strickler,* 527 U.S. at 281. In other words, a *Brady* violation requires a showing of such substantial prejudice that the verdict would have been different.

Here, the court below failed to properly apply this well-established standard by disregarding evidence available at the time of trial and minimizing the overwhelming evidence of guilt. The state supreme court's error is especially stark, given that post-conviction DNA evidence has conclusively identified Best as the perpetrator of these crimes.

In these unique circumstances, this Court's review is warranted to ensure the uniformity and consistency in an important area of federal constitutional law.

I. THE SUPREME COURT OF NORTH CAROLINA ERRED BY NOT CONSIDERING EVIDENCE AVAILABLE AT TRIAL IN ITS MATERIALITY ANALYSIS.

As the dissenting opinion observed, the majority "inflates the significance of vague undisclosed evidence and improperly minimizes the weight of the State's

strong evidence presented at trial" and "seems to find facts, weighing conflicting evidence in the light most favorable to defendant." App. 9a.

A. The Supreme Court of North Carolina expressly did not consider other witnesses available at the time of trial.

In considering the weight of the undisclosed written statement of Ms. Troy, a witness who testified at trial, the state supreme court minimized other evidence offered by defendant at trial which would have contradicted Troy's undisclosed written statement. The state supreme court recognized that at trial one of defendant's witnesses, Tammy Rose Smith, testified consistent with Troy's testimony that Best had several hundred dollars that night when Smith testified that Best "spent a couple hundred dollars or more just a couple hours after the crime likely occurred." App. 11a. Yet the majority court states Smith's testimony "that Mr. Best spent about two hundred dollars, and may have also paid for a hotel room" is a "far cry from the $1,800 that the State claims were stolen from the Baldwins." App. 7a. Even if the majority court's weight of Smith's testimony was accurate, it disregards other evidence that renders any inconsistency in Smith's testimony immaterial. Specifically, there were three other persons who, prior to trial, gave statements to investigating officers of the North Carolina State Bureau of Investigation that defendant possessed 100 dollar bills around that time and used that money to buy crack cocaine. Inconsistent with the state supreme court's analysis, and as the dissent points out, "if the evidence of defendant's possession and spending of cash

presented at trial had been at all questioned, these other three witnesses were available to support the State's case. App. 11a.

In response to the dissent, the majority cited to *Browning v. Trammell*, 717 F.3d 1092, 1105 (10th Cir. 2013) and stated in a footnote that it "cannot speculate as to what evidence the State could have, but did not, put on" and must "instead look to the record of the proceeding as it exists." App. 7a.

To the extent that the majority relied on *Browning v. Trammell* to limit its review of the evidence available at the time of trial, this decision violated this Court's *Brady* jurisprudence.[1]

This Court has held that "[a] fair analysis of the holding in *Brady* indicates that implicit in the requirement of materiality is a concern that the suppressed evidence might have affected the outcome of the trial." *United States v. Agurs*, 427 U.S. 97, 104 (1976). For a defendant to show materiality under *Brady*, he or she must show that "in [the non-disclosed evidence's] absence" he did not receive "a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Also, the "suppressed evidence [is] considered collectively, not item by item" for materiality analysis. *Id.* at 436.

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[1] *Browning v. Tremmell* was a federal habeas case and was focused on the scope of evidence that may be considered in habeas review under 28 U.S.C. § 2254. The main thrust of *Browning* is that evidence developed after the trial is not to be considered. 717 F.3d at 1104. ("In the *Brady* context, however, it is inappropriate to consider evidence developed post-verdict.").

Here, on this record, the verdict is clearly one "worthy of confidence." *Id.* at 434. Just as all the "suppressed evidence [is] considered collectively, not item by item," so too should a reviewing court review all the evidence available at trial. *Id.* at 436. This Court's review is therefore warranted to make clear that, in determining prejudice under *Brady*, lower courts may consider evidence available to the government, even if it was not presented at trial.

The present case is a perfect example of why reviewing courts should not ignore evidence available at trial when assessing materiality and prejudice in the context of a *Brady* claim. If Troy's testimony at trial had been called into question by the handwritten note, there were multiple other witnesses the State could have called at trial to corroborate her testimony at trial. This evidence was readily available to both the State and the defense since, as the dissent noted, all of these witnesses gave pre-trial transcribed statements to law enforcement. App. 11a.

It would have been a simple matter for the State to have called any one or all three witnesses if Troy had been impeached in any way. The ease with which this could have been done by the State shows that the non-release of the handwritten Troy statement did not "put the whole case in such a different light" as to justify vacating a murder conviction twenty-five years later. *See Kyles,* 514 U.S. at 435 ("[T]hat the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."). For the majority to simply disregard this principle as well as the overwhelming evidence of guilt at trial

fundamentally misapplies this Court's *Brady* precedent. Just as this Court held in *Bozza v. United States*, 330 U.S. 160, 166-67 (1947) that the "Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner," neither should *Brady* analysis become a game where a reviewing court treats the State's case at trial as frozen in amber while exaggerating the effects of non-disclosed evidence.

B. The Supreme Court of North Carolina erred by disregarding the fact that the "alternate suspects" were already excluded at time of trial.

The majority court also incorrectly weighed the State's failure "to disclose evidence regarding two alternate suspects: Ricky Winford and Destene Harris." App. 4a. According to the majority court, this undisclosed evidence undermined the "persuasive effect" of the evidence of guilt presented by the State at trial. App. 7a. To illustrate how this undermined the State's evidence at trial, the court stated:

> [t]he State had discovered 70 Caucasian hairs on the bodies of the victims which were not yet matched to anyone in the case. Mr. Best could have easily pointed out at trial that, as a Black man, he could not have left those hairs on the victims' bodies and underneath the fingernails of Mr. Baldwin. It also does not appear from the lab notes that the hairs were tested to see if they matched Ricky Winford.

App. 7a.

Inconsistent to the court's analysis, however, expert testimony at trial excluded Winford as a possible donor of the DNA found on the vaginal swabs from

Gertrude Baldwin. App. 10a. Thus at trial Winford was properly excluded as the perpetrator.

The other alternate suspect, Destene Harris had an ironclad alibi. The evidence available at trial was that he was in jail in Alamance County at the time of the murders. Harris was incarcerated on the night of November 30th – December 1st (Saturday-Sunday) when the Baldwins were murdered and Mrs. Baldwin was raped. App. 10a. Thus evidence available at the time of trial also excluded Harris as the perpetrator.

In short there were no actual alternate suspects at the time of trial to undermine the State's overwhelming evidence of guilt.

The state supreme court misapplied *Brady*'s materiality analysis in this case, to such a large degree that it merits summary reversal by this Court. First, the court disregarded evidence available at the time of trial in the form of multiple witnesses whose testimony would easily overcome any impeachment of Troy's testimony from the handwritten statement. Second, as the dissent below explained, the court improperly reweighed evidence of guilt, in the form of the bloody fingerprint of defendant on the knife found under Mr. Baldwin's body, "in the light most favorable to defendant." App. 9a. This was the very same evidence, Best's bloody fingerprint, that the court previously held had established Best's "identity as the perpetrator of the crime." App. 25a.

CONCLUSION

For the above reasons, the Supreme Court of North Carolina erred in its application of this Court's *Brady* precedents. These errors were so unreasonable as to merit a summary reversal. Thus, this Court should grant certiorari and either set the case for plenary review or summarily reverse the decision below.

Respectfully submitted, this the 14th day of May, 2021.

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