NO. 20-1608

In The
Supreme Court of the United States

STATE OF NORTH CAROLINA,

Petitioner,

v.

NORFOLK JUNIOR BEST,

Respondent.

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

BRIEF IN OPPOSITION

Ivy A. Johnson
Counsel of Record
CENTER FOR DEATH PENALTY LITIGATION
123 West Main Street, Suite 700
Durham, North Carolina 27701
(919) 956-9545
ijohnson@cdpl.org

Counsel for Respondent

Jay H. Ferguson
THOMAS, FERGUSON & BESKIND, LLP
119 East Main Street
Durham, North Carolina 27701
(919) 682-5648
ferguson@tfblawyers.com

Counsel for Respondent

Dated: July 19, 2021

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

- CAPITAL CASE -

QUESTION PRESENTED

Whether the Supreme Court of North Carolina correctly applied settled law to the particular facts of this case in concluding the State's failure to disclose exculpatory evidence prejudiced Respondent's ability to present a defense at trial?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTRODUCTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 3

REASONS WHY THE PETITION SHOULD BE DENIED 5

I. The Petition does not implicate a split of authority warranting this Court's review. Indeed, the Petition does not even claim a split exists 5

II. The decision below is correct 6

a. The reviewing court appropriately confined its materiality assessment to the evidence presented at trial 7

b. The materiality of the undisclosed evidence is highlighted by the fact that the state supreme court acknowledged the fingerprint evidence was undisturbed yet still felt the undisclosed evidence could have produced a different result 9

III. The decision below rests on independent and adequate state grounds: Article 1, Sections 19 and 23 of the Constitution of North Carolina 10

CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

CASES

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

Browning v. Trammell,
717 F.3d 1092 (10th Cir. 2013) 8

Coleman v. Thompson,
501 U.S. 722 (1991) 10, 11

Forsyth v. Hammond,
166 U.S. 506 (1897) 5

Giglio v. United States,
405 U.S. 150 (1972) 7

Henry v. Edmisten,
340 S.E.2d 720 (N.C. 1986) 10

Kyles v. Whitney,
514 U.S. 419 (1995) 8

Lambrix v. Singletary,
520 U.S. 518 (1997) 11

Magnum Co. v. Coty,
262 U.S. 159 (1923) 6

Michigan v. Long,
463 U.S. 1032 (1983) 10

Miller v. Angliker,
848 F.2d 1312 (2d Cir. 1988) 8

Murdock v. City of Memphis,
87 U.S. 590 (1874) 11

Newell v. Norton,
70 U.S. 257 (1865) 6

Oregon v. Guzek,
546 U.S. 517 (2005) 10

State v. Bates,
492 S.E.2d 276 (N.C. 1998) 3

State v. Best,
467 S.E.2d 45 (N.C. 1996) 3

State v. Best,
525 S.E.2d 179 (1998) 3

State v. Canady,
559 S.E.2d 762 (N.C. 2002) 8

State v. Goode,
497 S.E.2d 282 (N.C. 1998) 3

State v. McHone,
499 S.E.2d 761 (1998) 3

State v. Taylor,
669 S.E.2d 239 (N.C. 2008) 3, 10

State v. Tirado,
599 S.E.2d 515 (N.C. 2004) 7

Strickler v. Greene,
527 U.S. 263 (1999) 2, 8

United States v. Agurs,
427 U.S. 97 (1976) 8

United States v. Bagley,
473 U.S. 667 (1985) 5, 7

United States v. Mitchell,
365 F.3d 215 (3d Cir. 2004) 8

Wilkerson v. McCarthy,
336 U.S. 53 (1949) 6

CONSTITUTIONAL PROVISIONS

N.C. CONST. art. I, § 19 .... 3, 5, 10, 11

N.C. CONST. art. I, § 23 .... 3, 5, 10, 11

U.S. CONST. amend. XIV 10

STATUTES

28 U.S.C. § 1257 11

N.C. Gen. Stat. § 15A–1415(f) 3

RULE

S. Ct. R. 10 6

INTRODUCTION

The law governing this fact-bound case has been settled since this Court's decision in *Brady v. Maryland.* The application of this established doctrine to the particular facts presented here does not warrant review. First, the Petition does not allege any split of authority on the question presented. Second, the Supreme Court of North Carolina's decision in this case was correct. Third, this case would be a poor vehicle for review because the decision below is based upon independent and adequate state grounds, and because the circumstances underlying this case are highly fact specific.

Norfolk Junior Best is on North Carolina's death row for the 1991 murders of Leslie and Gertrude Baldwin in the small community of Whiteville. Prior to his original trial, Mr. Best's attorneys filed no fewer than four discovery motions specifically asking for any exculpatory evidence in the state's possession. The state failed to disclose, for almost twenty years, significant exculpatory evidence – namely: 70 unidentified Caucasian hairs found under the fingernails and on the arm of Mr. Baldwin and in the pubic combings of Mrs. Baldwin pointing to a white perpetrator (Mr. Best is Black); a prior statement made by one of the state's key witnesses that significantly undermined the reliability of her trial testimony on the money in Mr. Best's possession; and that forensic testing, including tests performed on Mr. Best's shoes and clothing for blood and glass particles that yielded negative results, failed to tie Mr. Best to the crime.

The state's case at trial primarily relied on evidence that: (1) the Baldwins had been robbed of $1800, and according to testimony from Carolyn Troy, Mr. Best spent several hundred dollars the weekend of the murders; (2) a DNA test showing the sperm found on Mrs. Baldwin did not match Mr. Baldwin, was a partial match to Mr. Best and the probability of another unrelated match was around 1 in 18 for the Black population in North Carolina; and (3) a latent fingerprint in blood from an undetermined source,[1] matching Mr. Best, was on the blade of a paring knife found near Mr. Baldwin's body. The undisclosed evidence pointing away from Mr. Best and towards a white perpetrator, the undisclosed prior statement of the state's key witness, and the undisclosed results of forensic testing performed on Mr. Best's clothing and possessions undermine the strength of the evidence presented at trial such that there is a reasonable probability the result would have been different. *Strickler v. Greene*, 527 U.S. 263, 281 (1999).

The state supreme court, after weighing the cumulative effect of the withheld evidence against the evidence presented at trial, properly held Mr. Best's state and federal constitutional rights to due process had been violated and ordered a new trial. Because the Petition neither alleges a split of authority nor does one exist, because the lower court correctly stated and applied the law, and because the judgment is

[1] The state supreme court's dissenting opinion relies heavily on this latent fingerprint, stating it was made in Mr. Baldwin's blood. This is incorrect. At trial, State Bureau of Investigation agent Lucy Milks testified that while she was able to determine the substance on the knife was indeed blood, she was unable to determine what type or even if it was actually human blood, nor was she able to determine whether the fingerprint or the blood had been placed on the knife first. Further, if the blood is indeed human, its presence on the knife can be explained by Mr. Best's testimony at trial that he had used a knife similar in size while cleaning the Baldwins' gutters earlier that day and had cut himself.

based on independent and adequate state law grounds, the state's Petition for Writ of Certiorari should be summarily denied.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Sections 19 and 23 of the Constitution of North Carolina as applied by the Supreme Court of North Carolina in *State v. Taylor*, 669 S.E.2d 239, 259 (N.C. 2008).

STATEMENT OF THE CASE

In 1993, Norfolk Junior Best was tried, convicted of, and sentenced to death for the 1991 burglary and murders of Leslie and Gertrude Baldwin in Columbus County, North Carolina. In 1996, the Supreme Court of North Carolina upheld Mr. Best's convictions and sentences of death. *State v. Best*, 467 S.E.2d 45 (N.C. 1996). In 1997, Mr. Best filed his first post-conviction Motion for Appropriate Relief (MAR) in Bladen County, North Carolina.[2] Mr. Best's MAR was denied in its entirety in April, 1998 and later that year the state supreme court denied certiorari review. *State v. Best*, 525 S.E.2d 179 (1998).

It was not until 2011, sixteen years after the North Carolina legislature enacted a law mandating complete post-conviction discovery in capital cases, that the state voluntarily produced what it contended was its entire file. However, still

[2] When Mr. Best filed his first Motion for Appropriate relief in 1998, he also filed a motion for discovery pursuant to N.C. Gen. Stat. § 15A–1415(f). At that time, the Supreme Court of North Carolina was considering the scope of the state's discovery obligations in capital post-conviction cases and held a defendant has a right to full discovery in capital post-conviction. *See e.g. State v. Bates*, 492 S.E.2d 276 (N.C. 1998) (rejecting the state's effort to limit the scope of discovery in post-conviction); *State v. Goode*, 497 S.E.2d 282 (N.C. 1998) (affirming the lower court's order for full discovery); and *State v. McHone*, 499 S.E.2d 761 (1998) (remanding for consideration of the defendant's motion for discovery asking for the entirety of the prosecution's file). Nonetheless, Mr. Best still did not receive the discovery to which he was entitled.

excluded from this file were draft reports from the State Bureau of Investigation, laboratory bench notes, procedures, protocols, and other background information related to the case. Only after a lengthy search did Mr. Best's post-conviction counsel find additional evidence stored in cardboard boxes in a closet in the attic of the Whiteville City Hall, including all of the biological evidence in the case, none of which had been properly preserved in a refrigerated condition as required by statute, and some of which was contained in unsealed envelopes.

The undisclosed evidence revealed: (1) that over 70 Caucasian hairs[3] were found under the fingernails and on the arms of Mr. Baldwin, and in the pubic combings of Mrs. Baldwin; (2) that at the time of trial police were aware of two white men who had bragged about killing an elderly couple in Whiteville; (3) that tests comparing fibers and glass particles from the crime scene to Mr. Best's belongings were of no match; (4) that luminol testing revealed bloody shoeprints throughout the Baldwins' home but no blood on Mr. Best's shoes; (5) that the state's principle witness who testified Mr. Best spent several hundred dollars the weekend of the murders had originally told law enforcement Mr. Best spent only $30 or $40; and (6) that several hundred dollar bills were found in Mrs. Baldwin's wallet and purse at the crime scene.

Upon discovering this significant undisclosed exculpatory evidence, Mr. Best's post-conviction counsel filed his second MAR in Bladen County in 2014, claiming the

---

[3] These hairs could not have come from Mr. Best, who is Black, and were not tested against either Ricky Winford or Destene Harris, both of whom are white. Therefore, the state's contention that both Ricky Winford and Destene Harris had been conclusively eliminated as suspects is false. Importantly, Ricky Winford may have been excluded as the donor of the sperm, but he was seized in Louisiana where officers found both broken glass and blood in his belongings, neither of which were tested against the blood and glass at the scene of the Baldwins' murder prior to trial.

state violated Mr. Best's right to due process by failing to disclose exculpatory evidence prior to trial pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and Art. I, §§19 and 23 of the North Carolina constitution. After a hearing in 2016 determined the results of post-conviction DNA testing were unfavorable to Mr. Best,[4] the MAR court denied his second MAR in its entirety in 2018. The Supreme Court of North Carolina granted certiorari review and, after weighing the undisclosed evidence against the evidence presented at trial, held Mr. Best's state and federal constitutional rights to due process had been violated and ordered a new trial.

REASONS WHY THE PETITION SHOULD BE DENIED

I. The Petition does not implicate a split of authority warranting this Court's review. Indeed, the Petition does not even claim a split exists.

The majority of this Court's docket is devoted to ensuring uniformity in the application of laws and correcting splits of authority. *See Forsyth v. Hammond*, 166 U.S. 506, 514–15 (1897) (stating that certiorari review is only appropriate when "the necessity of avoiding conflict between two or more Courts of Appeal, or between Courts of Appeal and the courts of a State . . . demands such exercise."). The Petition does not implicate a split of authority on the question presented because none exists – there is neither a circuit split nor is the lower court's opinion inconsistent with opinions of this Court. The state is effectively asking this Court to engage in error

[4] As the state supreme court correctly noted, though the results of this post-conviction DNA test may be relevant to subsequent proceedings in this case, they were not relevant to the court's materiality assessment under *Brady*. The question before the state supreme court, and before this Court now, is whether Mr. Best's *original trial* in 1993 was constitutionally sound. *See United States v. Bagley*, 473 U.S. 667, 678 (1985) ("[E]rror occurs, and the conviction must be reversed, only if the evidence is material in the sense that its suppression undermines confidence in the outcome *of the trial*." (emphasis added)).

correction and re-weigh the evidence in this case, requiring an incredibly fact intensive inquiry to "correct" the lower court's ruling, the likes of which is disfavored by this Court. S. Ct. R. 10 ("A petition for a writ of certiorari will be granted only for compelling reasons…[and] is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); *Newell v. Norton*, 70 U.S. 257, 267–68 (1865) ("Parties ought not to expect this court to revise [lower courts'] decrees merely on a doubt raised in our minds as to the correctness of their judgment, on the credibility of witnesses, or the weight of conflicting testimony."); *Wilkerson v. McCarthy*, 336 U.S. 53, 65-68 (1949) (Frankfurter, J., concurring) ("I don't think . . . [this Court] should take cases merely to review facts already canvassed by two and sometimes three courts."); *see also Magnum Co. v. Coty*, 262 U.S. 159, 163 (1923) (insisting the Supreme Court's role is not "merely to give the defeated party in the [lower court] another hearing."). As such, the question presented in this case does not warrant this Court's review and the Petition should be summarily denied.

II. The decision below is correct.

The Supreme Court of North Carolina conducted a proper *Brady* analysis, finding the cumulative effect of the withheld evidence in this case, when weighed against the evidence presented at trial, has a reasonable likelihood of changing the result. Pet. App. 1a–2a. This Court held in *Brady v. Maryland* the withholding of evidence favorable to an accused person by the prosecution violates that person's right to due process if the evidence is material to guilt or punishment. 373 U.S. 83,

87 (1963). The remedy for such a violation is a new trial at which both the prosecution and the defense have the opportunity to present their best case with the benefit of the knowledge of all the evidence. *Giglio v. United States*, 405 U.S. 150, 154 (1972) ("A new trial is required if the [undisclosed evidence] could in any reasonable likelihood have affected the judgment of the jury."). Withheld evidence is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Tirado*, 599 S.E.2d 515, 540 (N.C. 2004) (quoting *U.S. v. Bagley*, 473 U.S. 667, 682 (1985)). The Supreme Court of North Carolina has not departed from *Brady* and its progeny in any sense; instead, the state believes the court weighed the evidence incorrectly. This Court is not well-positioned to reweigh the evidence, even if it had reason to doubt the lower court's judgment, which it does not.

a. The reviewing court appropriately confined its materiality assessment to the evidence presented at trial.

Without mentioning the significant other exculpatory evidence in this case, such as the over 70 Caucasian hairs found under the fingernails and on the arms of Mr. Baldwin and in the pubic combings of Mrs. Baldwin, the state contends the Supreme Court of North Carolina committed reversible error by not considering the potential effect other witness statements available to the state but not presented at trial could have had in mitigating the impeachment of Carolyn Troy's testimony. However, in evaluating the materiality of undisclosed evidence, it is inappropriate for an appellate court to consider evidence not in the record before the trial court. "To do so otherwise would contradict Supreme Court cases applying *Brady* by analyzing

how withheld evidence might have affected the jury in light of all other evidence it *heard*." *Browning v. Trammell*, 717 F.3d 1092, 1104 (10th Cir. 2013) (emphasis added) (citing *Strickler v. Greene*, 527 U.S. 290-96 (1999); *Kyles v. Whitney*, 514 U.S. 419, 441–53 (1995); and *United States v. Agurs*, 427 U.S. 97, 103 (1976) (discussing materiality in the context of how *Brady* evidence "could have affected the judgment of the jury")). Any analysis of favorability and materiality must be confined "to the record before the trial court." *Browning*, 717 F.3d at 1105.

Additionally, the statements the state contends the lower court erred in not considering were not under oath and were not subjected to the scrutiny of cross-examination. "In deference to the possible Confrontation Clause implications, absent an opportunity for cross-examination of prosecution rebuttal evidence . . . [courts] will undertake the *Brady* materiality inquiry with reference only to the evidence withheld, and [do] not consider the prosecution's rebuttal." *United States v. Mitchell*, 365 F.3d 215, 255–56 (3d Cir. 2004); *cf. State v. Canady,* 559 S.E.2d 762, 768 (N.C. 2002) ("A defendant in a criminal proceeding has the constitutional right to confront his accusers and the witnesses against him."). After withholding crucial exculpatory evidence from the defense for almost twenty years in this case, "the state is not entitled to seek to minimize the materiality of the withheld information by arguing it could have produced additional evidence." *Miller v. Angliker*, 848 F.2d 1312, 1323 (2d Cir. 1988). Furthermore, "the State should not be allowed to cloud the court's already hypothetical analysis to the likely effect of the withheld information by adverting to other evidence it *might* have adduced[.]" *Id.* The state has already been

awarded a second opportunity to try and convict Mr. Best and will not only be able to introduce all the rebuttal evidence it wishes, but also benefit from twenty-first century forensic and DNA technology that was not available in 1993.

b. The materiality of the undisclosed evidence is highlighted by the fact that the state supreme court acknowledged the fingerprint evidence was undisturbed yet still felt the undisclosed evidence could have produced a different result.

Petitioner makes a great deal of the fact that on direct appeal in 1996 the state supreme court held the fingerprint evidence was sufficient to establish Mr. Best as the perpetrator of this crime. This decision, however, was fifteen years before the undisclosed evidence was first turned over to the defense. That the state supreme court held the undisclosed evidence does not undercut the reliability of the fingerprint but still felt "sufficiently disturbed by the extent of the undisclosed evidence in this case, and by the materiality of that evidence, that it undermine[d] [its] confidence in the jury's verdict," Pet. App. 9a, only reinforces the strength and probative value of the withheld evidence and the resulting prejudice Mr. Best suffered at his original trial.

The Supreme Court of North Carolina properly held that "[t]he undisclosed witness interview of Carolyn Troy and the undisclosed forensic evidence, particularly the unidentified Caucasian hairs and luminol test notes indicating the presence of bloody shoe tracks are sufficiently material . . . [that] there is a reasonable probability that the jury would have rendered a different verdict if presented with the undisclosed evidence." Pet. App. 9a.

III. The decision below rests on independent and adequate state grounds: Article 1, Sections 19 and 23 of the Constitution of North Carolina.

The state supreme court's decision in this case rests on independent and adequate state grounds and should therefore not be reviewed by this Court. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). The Supreme Court of North Carolina held that "[t]he *state* and federal constitutional guarantees of due process require that the State turn over favorable evidence that is material to the defendant's guilt or punishment prior to trial." Pet. App. 9a (emphasis added). The state supreme court followed this Court's direction in *Michigan v. Long,* 463 U.S. 1032 (1983) by "indicat[ing] clearly and expressly that [the decision] is alternatively based on bona fide separate, adequate, and independent grounds[.]" 463 U.S. at 1041. The decision goes beyond a "*possible* adequate and independent state ground" by explicitly stating it relies on state constitutional due process requirements. *Oregon v. Guzek*, 546 U.S. 517, 523 (2005). Indeed, in its analysis, the state supreme court relied on federal and North Carolina appellate cases [5] and in North Carolina, "[w]e . . . employ a different method for deciding what procedural safeguards are due under the Law of the Land Clause to a person deprived of a protected interest than the United States Supreme Court has proposed for deciding similar questions under the Due Process Clause." *Henry v. Edmisten*, 340 S.E.2d 720, 725 (N.C. 1986).

---

[5] In North Carolina, a defendant's right to disclosure of exculpatory evidence prior to trial is grounded in both the federal constitution and state constitution's guarantees of due process. *State v. Taylor*, 669 S.E.2d 239, 259 (N.C. 2008) (discussing whether the state's failure to disclose evidence to a defendant prior to trial "violate[d] the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Sections 19 and 23 of the North Carolina Constitution").

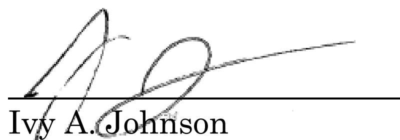
If this Court were to "correct" the state supreme court's materiality assessment under the federal constitution, it would not affect the ultimate judgment in this case as it rests on both Mr. Best's federal constitutional right to due process and his state constitutional right to due process. *See Coleman*, 501 U.S. at 730 ("When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the *judgment*; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do."); *see also Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) ("Since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory."); *Murdock v. City of Memphis*, 87 U.S. 590, 636 (1874) ("If there is any other matter or issue adjudged by the State court, which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question . . . the judgment must be affirmed."). Therefore, because this Court defers to the decisions of state courts on issues of state law, *Murdock*, 87 U.S. at 638, it should summarily deny the state's Petition for Writ of Certiorari in this case.

CONCLUSION

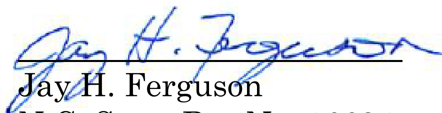
The Petition fails to allege a split of authority on the question presented and the *Brady* analysis conducted by the Supreme Court of North Carolina in this case is consistent with decisions of this Court. Additionally, the Supreme Court of North Carolina's decision in this case rests on independent and adequate state grounds, namely that Mr. Best's right to due process under Article I, Sections 19 and 23 of the North Carolina Constitution was denied when the state, for twenty years, withheld

significant exculpatory evidence in his case. For these reasons, the state's Petition for Writ of Certiorari should be summarily denied in this case.

Respectfully submitted, this the 19th day of July, 2021.



Ivy A. Johnson
N.C. State Bar No. 52228
Center for Death Penalty Litigation
123 West Main Street, Ste 700
Durham, NC 27701
919-956-9545
ijohnson@cdpl.org
Attorney for Respondent



Jay H. Ferguson
N.C. State Bar No. 16624
Thomas, Ferguson & Beskind, LLP
119 East Main Street
Durham, NC 27701
919-682-5648
ferguson@tfblawyers.com
Attorney for Respondent