No. 22-5900

In the Supreme Court of the United States

ROBERT BETHEL,

Petitioner,

v.

STATE OF OHIO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Did the Ohio Supreme Court err in rejecting Petitioner's claim under *Brady v. Maryland*, 373 U.S. 83 (1963), on the grounds that the allegedly undisclosed evidence was not material?

LIST OF DIRECTLY RELATED PROCEEDINGS

Supreme Court of Ohio

State v. Bethel, No. 2003-1766 (10-4-06) (reopening denied 8-29-07)

State v. Bethel, No. 2008-1401 (8-26-09)

State v. Bethel, No. 2010-1706 (9-5-12)

State v. Bethel, No. 2011-1267 (11-16-11)

State v. Bethel, No. 2020-0648 (3-22-22) (reconsideration denied 5-24-22)

Ohio Tenth District Court of Appeals

State v. Bethel, 07AP-810 (6-5-08) (reconsideration denied 7-10-08)

State v. Bethel, 09AP-924 (8-17-10)

State v. Bethel, 19AP-324 (4-7-20)

Ohio Court of Common Pleas, Franklin County

State v. Bethel, 00CR-6600 (8-26-03)

United States District Court of Ohio, Southern District

Bethel v. Bobby, No. 2:10-cv-391 (pending)

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INTRODUCTION

In *United States v. Ruiz*, 536 U.S. 622 (2002), this Court held that "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Id.* at 633. Petitioner Robert Bethel asks this Court to determine whether *Ruiz* applies to non-impeachment exculpatory evidence.

But this case is not the proper vehicle to address this issue. Bethel gave a proffer statement to prosecutors admitting that he and co-defendant Jeremy Chavis committed a double homicide. Based on the proffer, the parties agreed that Bethel would testify against Chavis and plead guilty to the two counts of aggravated-murder in exchange for the State dismissing the death-penalty specifications included in the indictment. Bethel, however, breached the agreement by refusing to testify at Chavis's trial. As was permitted under the agreement, the State vacated the plea, reinstated the death-penalty specifications, and admitted Bethel's proffer statement into evidence when his case went to trial. Bethel was found guilty and sentenced to death. Years later, Bethel sought relief under *Brady v. Maryland*, 373 U.S. 83 (1963), based on two interview summaries that he claimed were not disclosed prior to trial and show that he was the driver and that Chavis and Donald Langbein (Chavis's cousin) were the shooters.

In finding that Bethel was not entitled to relief, the Ohio Supreme Court did not hold that *Ruiz* prohibited Bethel from challenging his proffer statement or guilty plea under *Brady*. Indeed, the majority opinion does not cite *Ruiz* at all. Instead, the court held that Bethel's argument that "his ignorance of the information induced him

to lie about committing the murders" is a "tenuous theory that does not support Bethel's claim that he did not receive a fair trial." Pet. App. 13-14. In other words, the court did not make a *legal* determination that there is no "fundamental difference between exculpatory and impeachment evidence when a guilty plea is involved," Pet. i, but rather it made a *factual* determination that the summaries were not material under *Brady* given the "tenuous" nature of Bethel's argument. See also Pet. App. 21 (noting that the "information is immaterial for *Brady* purposes"). Bethel himself recognizes that the court below denied relief because "Bethel did not establish the suppressed evidence was material." Pet. 9. The materiality requirement under *Brady* exists regardless of whether the evidence qualifies as impeachment or exculpatory. This case, therefore, does not implicate the question presented in Bethel's petition.

Moreover, there are ample reasons to affirm the lower court's judgment without addressing whether *Ruiz* applies to non-impeachment exculpatory evidence. Even assuming the interview summaries are referring to the double-homicide at issue in this case (which is unclear), they both contain at least one layer of hearsay. Thus, the information in the summaries would have been admissible (if at all) only for impeachment, which places them firmly within *Ruiz*'s holding. Bethel has never shown that the summaries would have resulted in any admissible non-impeachment exculpatory evidence. As a result, Bethel failed to show with any specificity how the summaries would have affected his plea-bargaining stance, especially considering that the summaries are vague as to whether they actually inculpate Langbein in the

murders, and considering that the State's evidence included two other confessions by Bethel—one to Langbein and the other to Bethel's former girlfriend.

Further, the interview summaries do not reveal any information that would have been unknown to Bethel himself. Bethel testified at trial and could have told the jury that he was the driver and that Chavis and Langbein were the shooters. Instead, he testified to a bogus alibi for him and Chavis that directly contradicts the summaries on which he now relies. Regardless, identifying Bethel as the driver would inculpate him as a complicitor to the aggravated murders and puts him in no better position than he was after he pleaded guilty.

This Court recently denied certiorari in a case presenting a question similar to that presented by Bethel's petition. *Mansfield v. Williams County, Texas*, Sup. Ct. No. 22-186 (certiorari denied December 5, 2022). The vehicle problems with Bethel's petition equal—if not exceed—those in *Mansfield*. Even if this Court were inclined to address the effect of *Ruiz* on non-impeachment exculpatory evidence, it should do so in a case where that legal question is cleanly presented and dispositive. This is not such a case. In any event, extending *Brady* to require prosecutors to disclose non-impeachment exculpatory evidence before a defendant pleads guilty would be inconsistent with *Brady* being a *trial* right. Such an extension is neither necessary nor warranted. The State respectfully requests that this Court deny certiorari.

STATEMENT

I. Proffer, guilty plea, and breach.

In November 2000, Bethel was indicted on two counts of aggravated murder in the 1996 shooting deaths of James Reynolds and Shannon Hawk (also referred to in

the record as "Hawks"). R. 2. Attached to both counts were two death-penalty specifications and a firearm specification. *Id.*

At the advice of two appointed counsel—and after also consulting with a third lawyer hired by Bethel's mother—Bethel agreed to give a proffer statement to prosecutors. Tr. Vol. II, 2-5; Tr. Vol. III, 5. After giving the proffer statement, Bethel agreed to testify against Chavis and plead guilty to the two aggravated-murder counts and the firearm specifications, and in return the State agreed to dismiss the death-penalty specifications. Tr. Vol. II, 2-5. The agreement provided the consequences if Bethel did not testify: The plea would be vacated, the State would reinstate the death-penalty specifications, and Bethel's proffer statement would be admissible at trial. *Id.*

Bethel states that he entered into the agreement only because his attorneys were unprepared for trial. Pet. 3, 4-5, 19. But the Ohio Supreme Court in Bethel's direct appeal rejected this argument as lacking evidentiary support. Pet. App. 87-89. "All indications are that [Bethel's attorneys] sought and recommended a plea agreement because they were working in Bethel's best interest." *Id.* 88-89. Bethel also states that "[t]o ensure that Bethel's statement was consistent with their theory of the crime, prosecutors provided Bethel with several videotapes of State witnesses." Pet. 5. In fact, the prosecutors had previously provided these videotapes to the defense as part of discovery, and Bethel agreed to the proffer only *after* viewing them. Pet. App. 58. According to one of his attorneys, the videotapes were "very, very devastating in the case." Tr. Vol. III, 178. Bethel further claims that the agreement

was "poorly written." Pet. 1. But the trial court held that the consequences of a breach were "specifically set forth in the agreement." Tr. Vol. V, 8-9. And the Ohio Supreme Court held that the agreement "*clearly* provided that the state could use Bethel's proffer at trial if Bethel breached the agreement." Pet. App. 63 (emphasis added). "Bethel was represented by counsel, who advised him of the consequences of breaching the agreement, and he understood those consequences." Pet. App. 66.

In Bethel's proffer statement, he admitted that he and Chavis killed Reynolds and Hawk. Tr. Vol. I, 2-8. Bethel stated that he and Chavis discussed the murders beforehand and lured Reynolds and Hawk to a remote field owned by Chavis's grandfather. Tr. Vol. I, 3-4. They all arrived at the field in a car driven by Bethel. Tr. Vol. I, 4. After arriving at the field, all four got out of the car, and Reynolds had his arm around Hawk when Bethel and Chavis began firing. Tr. Vol. I, 5-6. Bethel used a nine millimeter and Chavis used a shotgun that Bethel himself had purchased. Tr. Vol. I, 3, 9. After Bethel ran out of bullets, he reloaded with a clip provided by Chavis and continued firing at close range to "make sure" Reynolds and Hawk were dead. Tr. Vol. I, 6-8.

After giving the proffer, Bethel pleaded guilty pursuant to the parties' agreement, and sentencing was deferred until after Chavis's trial. R. 87; Tr. Vol. II, 8-14. But when the time came for Bethel to testify against Chavis, he refused to do so. Tr. Vol. III, 4. Chavis was nonetheless found guilty on two counts of aggravated murder and sentenced to 63 years to life in prison (Chavis was under 18 at the time of the murders and thus ineligible for the death penalty). *State v. Chavis*, 10th Dist.

Nos. 01AP-1456, 01AP-1466, 2003-Ohio-512, 2003 WL 231265. As provided in the parties' agreement, the trial court vacated Bethel's plea and reinstated the death-penalty specifications. R. 114; Tr. Vol. III, 8-9.

II. Trial and direct appeal.

Represented by a new pair of appointed counsel, Bethel moved to suppress his proffer statement. R. 158. The trial court denied the motion, finding that Bethel understood that a refusal to testify could result in the proffer statement being admissible at trial. Tr. Vol. V, 9.

The case then proceeded to trial, with Bethel now represented by a third set of appointed counsel. The State presented evidence that Tyrone Green—who was a gang associate of Bethel, Chavis, and Langbein—was charged with capital murder arising out of a burglary. Tr. Vol. X, 37-38; Tr. Vol. XI, 15. During the discovery process in Green's case, the prosecutor provided Green's counsel a copy of a search warrant and supporting affidavit stating that Reynolds had implicated Green in the killing. Tr. Vol. X, 42-45. These materials were sent to Green's counsel about four weeks before Reynolds and Hawk were killed. Tr. Vol. X, 43. As a result of Reynolds's death, Green pleaded guilty to a reduced charge of involuntary manslaughter. Tr. Vol. X, 41.

In 2000, Langbein was facing federal firearm charges and told authorities that he had information regarding Reynolds's and Hawk's deaths. Tr. Vol. XI, 43-43. Langbein testified that he and Bethel were concerned about witnesses testifying against Green and had discussed "tak[ing] steps to get rid of them." Tr. Vol. XI, 21.

About two weeks before Reynolds and Hawk were killed, Bethel and Cheveldes Chavis (Jeremy's brother) bought identical 12-gauge shotguns. Tr. Vol. XI, 25. The day before Reynolds's and Hawk's bodies were discovered, Langbein saw them in a vehicle with Bethel and Jeremy Chavis. Tr. Vol. XI, 28. Langbein was on probation wearing an ankle monitor at the time and had to be home by 6:00 p.m. Tr. Vol. XI, 29.

About two weeks after Reynolds and Hawk were murdered, Bethel told Langbein that he (Bethel) and Jeremy Chavis killed Reynolds and Hawk in the field owned by Langbein's grandfather. Tr. Vol. XI, 34-36. Bethel told Langbein that he used a nine millimeter and had to reload during the shooting, and that Jeremy used a shotgun. Tr. Vol. XI, 36. Bethel was concerned about being caught because police searched his trailer after the shooting and found Cheveldes's shotgun. Tr. Vol. XI, 38. Also found during that search was a gun box containing an instruction manual for a nine millimeter handgun. Tr. Vol. X, 141-142. Langbein agreed to wear a wire while speaking with Bethel. Tr. Vol. XI, 43-46.

Bethel's former girlfriend Theresa Campbell testified that Bethel told her that he shot Reynolds and Hawk "because he felt like it." Tr. Vol. XI, 150. Bethel stated that, upon seeing what Bethel had done, Jeremy started crying and went back to the car. Tr. Vol. XI, 150. Bethel said he then reloaded and continued firing. Tr. Vol. XI, 150. According to the autopsies, Reynolds had ten gunshot wounds and Hawk had four. Tr. Vol. XII, 12-77.

As per the parties' agreement, the State introduced into evidence Bethel's proffer statement admitting that he and Jeremy Chavis killed Reynolds and Hawk. Tr. Vol. XI, 179-197. Bethel, however, testified that he took no part in the killings and that he gave the proffer statement only in order to "buy * * * time." Tr. Vol. XIII, 48. Bethel and his mother both testified that he and Jeremy were at Bethel's mother's house when the killings occurred. Tr. Vol. XIII, 17-19, 94-95; Tr. Vol. XII, 130-131.

The defense's theory at trial was that Bethel's proffer statement was false and that Langbein was the other shooter with Chavis. The jury disagreed and found Bethel guilty on all counts and specifications and recommended he be sentenced to death. R. 475-478. The trial court accepted the recommendation and imposed death on both counts. R. 487. The Ohio Supreme Court affirmed. Pet. App. 53-101.

III. Post-judgment *Brady* claims.

In 2005, Bethel filed a postconviction petition under Ohio Rev. Code § 2953.21 alleging ineffective assistance of counsel and other claims. R. 572. The trial court denied the petition, and the Ohio Court of Appeals affirmed. Pet. App. 105-112. The Ohio Supreme Court declined review. Thereafter, Bethel challenged his convictions under *Brady* on two separate occasions.

A. The ATF report.

In April 2009, Bethel filed a motion for new trial under Ohio R. Crim. P. 33 and a motion for leave to file a delayed motion for new trial under Ohio R. Crim. P. 33(B). R. 623-624. These filings claimed that the defense had received from a 2008 public-records request an ATF report indicating that in November 2000, an ATF

agent received a telephone call from Shannon Williams, an inmate in the Franklin County, Ohio, jail. R. 623, p. 4. Williams told the agent that Langbein admitted to being "involved in a homicide" with an individual who at the time was incarcerated in a federal prison in Ashland, Kentucky; that the victim of this homicide was purportedly shot 17 times; and that the other individual who had been arrested was the driver. R. 623, Exh. 2. Although the ATF report did not say so, Bethel argued that the person incarcerated in Kentucky was Jeremy Chavis. R. 623, p. 4. Williams refused to cooperate with the defense. R. 623, p. 5. Bethel thus did not submit any affidavit from Williams. Bethel's trial attorneys submitted affidavits stating that they did not remember seeing the ATF report. R. 623, Exhs. 3, 4. The motions did not specifically challenge the proffer statement or guilty plea.

The trial court denied Bethel's motions, and the Ohio Court of Appeals affirmed. Pet. App. 39-49. The appellate court stated that it was not clear that the ATF report was suppressed, but even assuming it was, there was no reasonable probability that the outcome of the trial would have been different had the defense received the report. Pet. App. 47. The court also found that "it is wholly speculative as to whether Langbein's statements are referring to the homicides at issue here." Pet. App. 48. The court held that the ATF report would not have added to the defense's cross-examination of Langbein, and that even if the report was referring to the Reynolds-Hawk murders, Langbein's statement of being "involved" does not amount to a confession to the murders. Pet. App. 48-49. The Ohio Supreme Court declined review.

B. Summary 86.

In September 2018, Bethel again filed a motion for new trial under Ohio R. Crim. P. 33 and a motion for leave to file a delayed motion for new trial under Ohio R. Crim. P. 33(B). R. 641-642. The motion for new trial also purported to be an untimely and successive postconviction petition under Ohio Rev. Code § 2953.21. R. 642. These filings relied on Summary 86, which summarizes a May 2001 interview with Ronald Withers, an inmate in the Franklin County jail. R. 642, Exh. A. Bethel states that he discovered the ATF report and Summary 86 on "different instances," Pet. 3, but the Ohio Supreme Court noted that Bethel's current counsel "leaves open the possibility" that Summary 86 was produced as part of the 2008 public-records request that yielded the ATF report, Pet. App. 6.

Summary 86 states that Withers told investigators that fellow inmate Jeremy Chavis asked him how much time he would get on a homicide if he "takes a deal." *Id.* Chavis told Withers that "when he shot the individual he was already dead, and that ballistics will show that his bullet was not the fatal shot." *Id.* Chavis also stated that "his cousin was the other shooter, and his cousin is also incarcerated." *Id.* Also attached to the filings was an affidavit from Withers reiterating the information in Summary 86. R. 642, Exh. B. One of Bethel's original attorneys submitted an affidavit stating that he did not receive either Summary 86 or the ATF report. R. 642, Exh. E. One of Bethel's trial attorneys submitted an affidavit stating he had no recollection of seeing Summary 86. R. 642, Exh. F. Bethel argued that the ATF report

and Summary 86 together were material in that they would have impeached the State's "primary witness," *i.e.*, Langbein. R. 642, p. 15.

Bethel later moved to supplement the 2018 motions to specifically argue that, had the defense known of the summaries, there is reasonable probability that Bethel would not have given his proffer statement. R. 646. The trial court denied the motion to supplement as improper "[p]iecemeal litigation." R. 647-648. The trial court later denied Bethel's new-trial motion and postconviction petition. R. 659-660.

The Ohio Court of Appeals affirmed. Pet. App. 28-38. The court first found that Bethel did not file the motions within a reasonable time after discovering Summary 86. Pet. App. 36-37. The court further found that Bethel was not unavoidably prevented from discovering Chavis's statements. Pet. App. 37. Even if Bethel had established unavoidable prevention, Summary 86 would have contradicted Bethel's alibi. Pet. App. 37-38. Bethel had already testified that he lied during his proffer, and he "admitted on cross-examination he would have no trouble lying if it would [] allow him to avoid a death sentence." Pet. App. 38. "All Summary 86 would have established is that he was lying yet again, about the most important evidence he had left to save his own life." *Id*.

C. The Ohio Supreme Court's decision.

The Ohio Supreme Court accepted review and affirmed. But along the way to affirming the judgment, the court ruled in Bethel's favor on several state-law issues regarding Ohio R. Crim. P. 33 and Ohio Rev. Code § 2953.21. See *e.g.*, Pet. App. 6 (rejecting the State's res judicata argument); Pet. App. 14-15 (finding that the trial

court erred in addressing Bethel's new-trial motion without first addressing the motion for leave); Pet. App. 15-18 (finding that a motion for new trial is not barred by Ohio Rev. Code § 2953.21(K) as an improper "collateral challenge"); Pet. App. 19-21 (finding that a motion for leave under Ohio R. Crim. P. 33(B) need not be filed within a "reasonable time" after the defendant discovers the evidence).

On Bethel's *Brady* claim, the court found that the lower courts erred in finding that Bethel failed to meet the "unavoidably prevented" requirement for untimely or successive postconviction petitions under Ohio Rev. Code § 2953.23(A)(1)(a). Pet. App. 8-9. The court held (and the State agreed) that "when a defendant seeks to assert a *Brady* claim in an untimely or successive petition for postconviction relief, the defendant satisfies the 'unavoidably prevented' requirement contained in R.C. 2953.23(A)(1)(a) by establishing that the prosecution suppressed the evidence on which the defendant relies." Pet. App. 9. This holding applies equally to the "unavoidably prevented" requirement in Ohio R. Crim. P. 33(B). Pet. App. 21.

The court also rejected the State's argument that Bethel failed to produce sufficient evidence that he was actually unaware of the information contained in Summary 86. Pet. App. 10-11. The court held that "Bethel's knowledge of Langbein's involvement is not the question; the question is whether Bethel knew about Withers's statement concerning what Chavis allegedly had said while in jail." Pet. App. 10. The court therefore held that Bethel established a prima facie case that the prosecution suppressed Summary 86. Pet. App. 11.

Despite these defense-friendly rulings, the court held that Bethel was not entitled to *Brady* relief. To obtain relief under his untimely and successive postconviction petition, Bethel was required to show by "clear and convincing evidence" that "no reasonable factfinder" would have found him guilty or eligible for the death sentence but for constitutional error at trial or at the sentencing hearing. Ohio Rev. Code § 2953.23(A)(1)(b). "This question goes to the heart of *Brady*'s third prong, which requires Bethel to show that there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Pet. App. 11, quoting *Kyles v. Whitley*, 514 U.S. 419, 433 (1995), quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985) (internal quotation marks omitted).

After discussing the materiality standard under *Brady*, the court found that the defense could not have used Summary 86 as direct evidence that Langbein was the other shooter. Pet. App. 12. This is because Summary 86 consists of double hearsay, and even if Withers were able to testify at trial, "the statements are still hearsay because Withers merely repeated what Chavis had allegedly told him." *Id*. Bethel failed to "identify any hearsay exception that would have allowed Chavis's purported statements to Withers to be introduced for the truth of the matter asserted." *Id*. Summary 86 could not be used to impeach Langbein because it does not involve any prior statement by Langbein. *Id*. The court further found that Summary 86 would not have "seriously undermine[d]" any investigator's credibility. Pet. App. 13 (quoting federal cases).

As for the ATF report, the court found that "[i]t was not clear in the report relaying Williams's statement that Langbein was talking to Williams about the murders of Reynolds and Hawk." *Id.* "Bethel's confession, in contrast, included details about the types of firearms that were used, which were consistent with the autopsies of Reynolds and Hawk. And Bethel did not talk only to Langbein and investigators about the fact that he had killed Reynolds and Hawk; he also confessed to Campbell." *Id.*

The court rejected Bethel's argument that "if he had possessed the information from Withers and Williams before his trial, he would not have proffered the confession," finding that "[t]his argument invites us to stray from the main question of *Brady*'s third prong—i.e., whether Bethel received a fair trial." *Id.*, citing *United States v. Agurs*, 427 U.S. 97, 108 (1976). The court noted that Bethel was not arguing "that the Withers and Williams information would have been useful to his defense," but that "his ignorance of the information induced him to lie about committing the murders." Pet. App. 13-14. The court held that "[t]his tenuous theory does not support Bethel's claim that he did not receive a fair trial." Pet. App. 14. Bethel also failed to show how he could have used the Withers and Williams information at the sentencing phase of the trial. *Id.*

Thus, the court rejected Bethel's *Brady* claim on materiality grounds. "At bottom, the Withers and Williams information has limited probative value in the context of the entire record, and Bethel's opportunities to use that information would have been limited." *Id.*; see also Pet. App. 21 ("[T]he Withers information is

immaterial for *Brady* purposes."). Bethel's failure to show materiality also means that he failed to satisfy the "clear and convincing" standard under Ohio Rev. Code § 2953.23(A)(1)(b). Pet. App. 14. And a hearing on the new-trial motion under Ohio R. Crim. P. 33 "would be an exercise in futility, because we have concluded that Bethel's *Brady* claim, which is the basis of his motion, is without merit." Pet. App. 21.

Justices Donnelly and Stewart dissented. The dissenters disagreed with the majority's conclusion that Bethel failed to show prejudice under *Brady*, and in particular the dissent disputed the majority's "tenuous theory" characterization of Bethel's argument that he would not have given the proffer statement had he known of the summaries. Pet. App. 23-26. The court denied reconsideration with only Justice Donnelly dissenting.

REASONS FOR DENYING THE PETITION

"Under *Brady*, the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment." *Smith v. Cain*, 565 U.S. 73, 75 (2012). The duty to disclose favorable evidence encompasses both impeachment and exculpatory evidence. *Bagley*, 473 U.S. at 676. 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." *Id*. at 682; see also *Kyles*, 514 U.S. at 433-434.

In *Ruiz*, this Court held that "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Ruiz*, 536 U.S. at 633. Bethel asks this Court to address whether *Ruiz* applies to non-impeachment exculpatory evidence. But this

case is not the proper vehicle to review the question presented by Bethel's petition. The Ohio Supreme Court below did not rely on (or even cite) *Ruiz* in affirming the denial of *Brady* relief. Rather, the court denied relief on the grounds that the ATF report and Summary 86 were not material under *Brady*. Materiality—also referred to as "prejudice"—is required regardless of whether the evidence is classified as impeachment or exculpatory. *Strickler v. Greene*, 527 U.S. 263, 281-282 (1999) (describing the components of a "true *Brady* violation").

Moreover, Bethel was unentitled to *Brady* relief for reasons wholly apart from whether *Ruiz* applies to non-impeachment exculpatory evidence. Even assuming the ATF report and Summary 86 are referring to the Reynolds-Hawk double homicide, the information in these summaries would be admissible (if at all) only for impeachment. Thus, *Ruiz* on its own terms bars Bethel from relying on the summaries to challenge his proffer statement and guilty plea. Even if Bethel's *Brady* claim was not foreclosed by *Ruiz*, the Ohio Supreme Court correctly characterized Bethel's argument that he would not have given the proffer statement and pleaded guilty had he known of the summaries as a "tenuous theory" that failed to show materiality. Accordingly, no matter how this Court would answer the question presented, it would have no effect on the Ohio Supreme Court's judgment.

In any event, *Brady* is a trial right and thus does not require prosecutors to disclose non-impeachment exculpatory evidence before a defendant pleads guilty. A prosecutor's obligation to disclose evidence during plea bargaining should be governed by non-constitutional standards, which are often broader than *Brady*.

I. This case is not the proper vehicle to address the question presented in Bethel's petition.

A. The court below denied *Brady* relief on materiality grounds and did not address whether *Ruiz* applies to non-impeachment exculpatory evidence.

The Ohio Supreme Court's majority opinion does not cite *Ruiz* or contain any discussion on the distinction between impeachment and exculpatory evidence for purposes of challenging a guilty plea under *Brady*. Rather than denying Bethel's *Brady* claim by applying *Ruiz* to non-impeachment exculpatory evidence, the court was explicit in basing its holding on Bethel's failure to satisfy the "third prong" under *Brady*, *i.e.* materiality. Pet. App. 11, 13; see also Pet. App. 21 ("[T]he Withers information is immaterial for *Brady* purposes.").

In addressing Bethel's argument that he would not have given the proffer statement had he possessed the ATF report and Summary 86, the court below stated that "[t]his argument invites us to stray from the main question of *Brady*'s third prong—i.e., whether Bethel received a fair trial." Pet. App. 13, quoting *Agurs*, 427 U.S. at 108. But contrary to Bethel's argument, this single sentence is not a definitive holding that *Ruiz* prohibits any guilty-pleading defendant from raising a *Brady* claim based on non-impeachment exculpatory evidence. Rather, the court was simply acknowledging the unique procedural posture of this case. Although Bethel initially pleaded guilty, the plea was later vacated and his convictions were ultimately based on the trial. Given these circumstances, any *Brady* claim—even one challenging the proffer statement and guilty plea—would require that the materiality inquiry be directed toward the trial. And on the question of whether Bethel's "ignorance of the

information induced him to lie about committing the murders," the court rejected Bethel's argument as a "tenuous theory that does not support Bethel's claim that he did not receive a fair trial." Pet. App. 13-14.

Thus, Justice Donnelly's dissent, Pet. App. 23, is mistaken in claiming that the majority failed to consider Bethel's argument that he would not have given the proffer statement had he been aware of the ATF report and Summary 86. The majority specifically considered this argument and rejected it on materiality grounds.

Subsequent to the decision below, at least one Ohio court has addressed a *Brady* challenge to a plea. *State v. Artuso*, 11th Dist. No. 2022-A-0009, 2022-Ohio-3283, 2022 WL 4298181. In *Artuso*, the defendant sought to withdraw his no contest plea on the grounds that the prosecutor withheld various favorable information. *Id*. at ¶ 5. The court recognized that *Ruiz* does not require prosecutors to disclose impeachment evidence before a guilty or no contest plea, and the court specifically cited *Ruiz* in rejecting the defendant's *Brady* argument based on impeachment evidence relating to the detective's "financial problems." *Id*. at ¶¶ 27, 29.

The *Brady* claim in *Artuso* also involved non-impeachment exculpatory evidence. Specifically, the defense argued that the prosecution withheld information showing that investigators used false affidavits in securing the search warrant. *Id*. at ¶ 5. The defendant argued that, without the misrepresentations in the affidavit, there would not have been sufficient probable cause for the search that resulted in the charges at issue in the case. But the court rejected this argument, finding that the misrepresentations had "little relevance" to the warrant. *Id*. at ¶ 28. Ultimately,

the court found that the defendant failed to show that he would not have pleaded no contest had he been aware of the detective's malfeasance. *Id.* at ¶ 30.

Although some of the evidence at issue in *Artuso* was exculpatory (rather than impeachment), the court did not cite the Ohio Supreme Court's decision in Bethel's case, let alone indicate that Bethel's case required it to apply *Ruiz* to non-impeachment exculpatory evidence. Thus, the application of *Ruiz* to non-impeachment exculpatory evidence remains an open question in Ohio.

B. There are ample reasons to affirm the lower court's judgment without addressing the effect of *Ruiz* on non-impeachment exculpatory evidence.

Bethel's *Brady* claim fails for multiple reasons wholly apart from whether *Ruiz* applies to non-impeachment exculpatory information.

1. To start, it is not entirely clear that either the ATF report or Summary 86 is referring to the Reynolds-Hawk double homicide. Both summaries are vague and refer to a single homicide, not two. Moreover, the ATF report refers to the single homicide victim being shot 17 times, whereas Reynolds had ten gunshot wounds and Hawks had four. Both the Ohio Supreme Court and the Ohio Court of Appeals expressed doubt that the ATF report was referring the Reynolds-Hawks double homicide. Pet. App. 13, 48.

2. Even assuming that the ATF report and Summary 86 are referring to the Reynolds-Hawks double homicide, Bethel is wrong in describing the summaries as "evidence disproving his guilt." Pet. 20. Both summaries are hearsay and would be inadmissible for the truth asserted. For example, the ATF report recounts Williams's

statements describing what Langbein allegedly said. Bethel has never produced any affidavit from Williams. Without Williams's testimony, the ATF report is double hearsay and not admissible for *any* purpose. Even if Williams were to testify, his description of Langbein's statements would still be hearsay and thus inadmissible for the truth. Because Langbein testified at trial, his statements would not be admissible as statements against penal interest under Ohio Evid. R. 804(B)(3). Thus, at most, if Williams were to testify, his testimony would be admissible only to impeach Langbein.

As for Summary 86, it too is double hearsay in that it recounts Withers's statements describing what Jeremy Chavis allegedly said. Bethel did submit an affidavit from Withers, which eliminates the top hearsay layer. But as the court noted below, Withers's "statements are still hearsay because Withers merely repeated what Chavis had allegedly told him." Pet. App. 12. Bethel "does not identify any hearsay exception that would have allowed Chavis's purported statements to Withers to be introduced for the truth of the matter asserted." *Id.*; see also *Bethel v. Bobby*, No. 2:10-cv-391, 2018 WL 5924222 * 6 (S.D. Ohio Nov. 13, 2018) (magistrate's decision denying motions for discovery and to stay—"Petitioner does not identify any exclusion or exception that would have permitted the statements [in Summary 86] to be introduced at trial for the truth of the matter asserted.").

Assuming Chavis would have been unavailable to testify at Bethel's trial (a point that the record does not disclose), Chavis's statements would potentially be admissible only insofar as they were against his own penal interests—they would be

inadmissible to inculpate Langbein. Ohio Evid. R. 804(B)(3); *State v. Rafferty*, 5th Dist. No. 2012 CA 15, 2013-Ohio-1585, 2013 WL 1701907, ¶ 16; see also *Williamson v. United States*, 512 U.S. 594, 599-602 (1994). Nor would Chavis's statements be admissible to impeach Langbein's trial testimony. Pet. App. 12.

Thus, the only evidentiary use that Bethel has identified for Summary 86 is for the non-truth purpose of impeaching the "investigation." Pet. App. 13. But even if Bethel were to admit Chavis's statements for this purpose, the State would have been able to rehabilitate the investigation with evidence that Jeremy Chavis told Cheveldes that he (Jeremy) committed with murders *with Bethel*. *Chavis*, 2003 WL 231265, ¶ 27.

In the end, both the ATF report and Summary 86 would be admissible (if at all) only for impeachment. This places both summaries firmly with the holding of *Ruiz* that "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Ruiz*, 536 U.S. at 633.

3. Even if *Ruiz* does not apply to non-impeachment exculpatory evidence, Bethel still failed to show materiality. Bethel offered no evidence explaining with any specificity how the ATF report and Summary 86 would have affected his decision to give the proffer statement and plead guilty. Given the hearsay barriers described above, the summaries are not "evidence" at all for any non-impeachment exculpatory purpose. *Wood v. Bartholomew*, 516 U.S. 1, 5-6 (1995). Even if *Ruiz* does not apply to non-impeachment exculpatory evidence, such evidence must still be admissible in

order to satisfy the materiality requirement with respect to the guilty plea. *Smith v. Baldwin*, 510 F.3d 1127, 1148 (9th Cir. 2007) (no reasonable probability that inadmissible polygraph examination would have influenced the decision to plead no contest rather than go to trial).

Nor has Bethel offered any evidence that Summary 86 would have led to any admissible exculpatory evidence. *Bethel v. Bobby*, 2018 WL 5924222, * 6 ("Petitioner has failed to articulate how Summary 86 demonstrates that further discovery might reasonably be expected to lead to the discovery of admissible evidence such that a stay is warranted."). Bethel did submit an affidavit from one of his original set of appointed counsel, but the affidavit was conclusory in its assessment of the ATF report and Summary 86, and it did not take into account that neither summary had any evidentiary value for any non-impeachment exculpatory purpose. Bethel's counsel stated that he would have negotiated a better plea deal for Bethel, but that claim is entirely speculative. The summaries would not have "strengthened [Bethel's] hand in plea negotiations even if they had been available to him from the start." *United States v. Mathur*, 624 F.3d 498, 507 (1st Cir. 2010). And it hardly helps the defense's position that Bethel's attorney conceded in his affidavit that the prosecution potentially had a video statement of *another* witness, Melissa Davis, who implicated Bethel in the murders. R. 623, Exh. E.

Regardless of how Bethel's attorneys would have advised him, the ultimate decision of whether to give the proffer statement and plead guilty belonged to Bethel, not his attorneys. Yet conspicuously absent from either Bethel's 2009 motions or

2018 motions is any affidavit from Bethel himself. Without any affidavit from Bethel, there is no evidence that he would have refused to give the proffer statement or plead guilty had he been aware of the summaries. This evidentiary gap alone defeats his argument.

In short, as the Ohio Supreme Court noted, Bethel was not arguing that "the Withers and Williams information would have been useful to his defense." Pet. App. 13. Information that is not "useful to [the] defense" cannot be material, either in terms of a guilty plea or a trial. The court correctly held that Bethel's argument that he would not have given the proffer statement had he been aware of the summaries was a "tenuous theory" that did not establish materiality. Pet. App. 14.

Justice Donnelly's dissent relies heavily on the Ohio Supreme Court's decision in *State v. Brown*, 873 N.E.2d 858 (Ohio 2007). Pet. App. 24-25. But *Brown* involved a trial, not a plea. The court in *Brown* held that police reports implicating another individual in the crimes were material, despite being inadmissible, because the defense could have "called the original declarants at trial" and could have used the reports to cross-examine another witness. *Brown*, 873 N.E.2d at 867. In other words, the court found that even if the reports themselves were inadmissible, they could have led to admissible evidence. Bethel, on the other hand, has offered no evidence that the ATF report and Summary 86 would have led to any admissible non-impeachment exculpatory evidence. And insofar as the court in *Brown* relied on the impeachment value of the reports, *Ruiz* forecloses such an argument in Bethel's case.

Bethel criticizes the majority below for relying on "Bethel's confession" in finding that Summary 86 was not material. Pet. 3, 9, 20. The apparent purpose of this argument is to claim that the majority failed to consider Bethel's contention that he would not have given the proffer statement and pleaded guilty had he known of the ATF report and Summary 86. But just a few paragraphs later in the opinion, the majority explicitly acknowledged Bethel's argument in this regard and rejected it as "tenuous." Pet. App. 13-14. Moreover, the majority's reference to Bethel's confession was in the context of explaining how the *impeachment* value of Summary 86 was not material. Given *Ruiz*'s holding that prosecutors need not disclose impeachment evidence prior to a guilty plea, it was entirely appropriate for the majority to assess materiality in light of all the trial evidence, including Bethel's proffer statement. And the reference to "Bethel's confession" would naturally include not just the proffer statement, but also his confessions to Langbein and Campbell.

Even if Bethel could show that he would not have made the proffer statement and pleaded guilty had he been aware of the summaries, he would still fail to show materiality. Importantly, Bethel's confessions to Langbein and Campbell provided independent evidence that Bethel and Jeremy Chavis were the shooters. As the Ohio Court of Appeals noted, Langbein's alleged statement that he was "involved" in the homicide does not amount to a confession to the Reynolds-Hawk double homicide. Pet. App. 48-49. Such "involvement" could also refer to Langbein's role as police informant. Also, the defense's theory at trial was that Langbein was the other shooter. The defense thus had every incentive to investigate whether Langbein's

ankle monitor placed him at the scene of the murders and to present such evidence if it existed. C.f. *Strickland v Washington*, 466 U.S. 668, 688 (1984) (counsel is presumed competent).

Even accepting as true Bethel's argument that Langbein was the other shooter, Bethel asserted in his federal habeas case that he (Bethel) was "the other individual * * * arrested" referenced in the ATF report, thus placing him at the scene as the driver. R. 654, p. 14. Combined with evidence of Bethel's motive to assist Green and his purchasing the shotgun with Cheveldes Chavis, Bethel's alleged role as the driver (rather than shooter) would have made him guilty as a complictor to the aggravated murders. Ohio Rev. Code § 2923.03(A)(2); *State v. Steward*, 10th Dist. No. 19AP-35, 2019-Ohio-5258, 2019 WL 6974456, ¶ 24. Under Ohio law, a complicitor "shall be punished as if he were a principal offender." Ohio Rev. Code § 2923.03(F). Thus, presenting evidence that Bethel was the driver would have destroyed his alibi and put him in no better position than he was after he pleaded guilty. Bethel has only himself to blame for the fact that his refusal to testify against Jeremy Chavis caused the reinstatement of the death-penalty specifications.

In the final analysis, the Ohio Supreme Court correctly held that Bethel's argument that he would not have given the proffer statement and pleaded guilty had he known of the ATF report and Summary 86 was a "tenuous theory." Pet. App. 13-14. No matter how one classifies the summaries—*i.e.*, as impeachment or as exculpatory—Bethel failed to establish any reasonable probability that disclosure of the summaries would have affected the outcome of the trial. *Bagley*, 473 U.S. at 682;

Kyles, 514 U.S. at 433-434. Any review of the court's fact-specific materiality holding would have minimal—if any—impact on future cases.

4. The State raises one final point about Bethel's *Brady* claim. The Ohio Supreme Court found that Bethel established a prima facie case that the State suppressed both the ATF report and Summary 86. The State disagrees with this holding. The affidavit of Bethel's original attorney is phrased in terms of not receiving "the reports" or "written documents." R. 623, Exh. E. Even if the State did not disclose the actual pieces of paper, Bethel failed to show that the defense was unaware of the *information* contained in the summaries. *Agurs*, 427 U.S. at 103 ("known to the prosecution but unknown to the defense.").

Notably, Bethel himself would have known of his alleged involvement as the driver. *Felker v. Thomas*, 52 F.3d 907, 910 (11th Cir. 1995) (petitioner failed to show suppression under *Brady* because the evidence itself, if true, proves that he was aware of the existence of the evidence). This is not to say that a defendant's mere knowledge of his or her own alleged innocence is enough to defeat any *Brady* claim. But the summaries themselves prove that Bethel was necessarily aware of the specific information that he now claims is favorable.

The State agreed with the Ohio Supreme Court's holding that a defendant need not satisfy the "unavoidably prevented" requirement under Ohio Rev. Code § 2953.23(A)(1)(a) and Ohio R. Crim. P. 33(B) when the State suppresses evidence before trial. Pet. App. 8-10. But a defendant raising a *Brady* claim must still show suppression, which requires proof that neither the defendant nor defense counsel was

aware of the information before trial. *Felker*, 52 F.3d at 910. Bethel failed to meet this burden.

C. To the extent there is any split of authority on the effect of *Ruiz* on non-impeachment exculpatory evidence, Bethel's case does not implicate the split.

Bethel alleges that the federal circuits and state courts of last resort are split on whether *Ruiz* applies to non-impeachment exculpatory evidence. But because the Ohio Supreme Court below affirmed the denial of *Brady* relief based on materiality grounds, and because there are ample grounds to affirm the court's judgment without addressing the *Ruiz* question, this case does not implicate any such split of authority.

Besides, Bethel exaggerates the extent of the split. Bethel cites post-*Ruiz* federal and state cases that he claims require prosecutors to disclose all non-impeachment material evidence before a defendant pleads guilty. But in nearly all the cases cited by Bethel, the court ultimately based its holding on other grounds. *See e.g.*, *Smith*, 510 F.3d at 1148 (denying *Brady* relief on materiality grounds); *United States v. Dahl*, 597 Fed. Appx. 489, 490 (10th Cir. 2015) (finding "doubtful" that evidence was exculpatory as opposed to impeachment and denying *Brady* relief on materiality grounds); *McCann v. Mangialardi*, 337 F.3d 782, 788 (7th Cir. 2003) (declining to resolve whether *Ruiz* applies to non-impeachment exculpatory evidence, because there was no evidence that the officer knew of the evidence prior to the guilty plea); *Hyman v. State*, 723 S.E.2d 375, 380-381 (S.C. 2012) (defendant failed to establish either suppression or materiality); *Medel v. State*, 184 P.3d 1226, 1234-1237 (Utah 2008) (denying *Brady* relief because the undisclosed evidence was not

material); *In re Miranda*, 182 P.3d 513, 543 (Cal. 2008) (declining to decide whether or to what extent a prosecutor must disclose favorable evidence before a defendant pleads guilty because the prosecutor plainly had a duty to disclose the evidence before the penalty phase of the trial); *People v. Corson*, 379 P.3d 288, 295 (Colo. 2016) (declining to weigh in on whether *Ruiz* applies to exculpatory evidence during plea negotiations because the evidence at issue was non-exculpatory impeachment material).

Bethel cites *United States v. Ohiri*, 133 Fed. Appx. 555 (10th Cir. 2005), which held that the district court erred in refusing to allow a habeas petitioner to amend the petition to allege a *Brady* claim based on the non-disclosure of exculpatory evidence before the guilty plea. *Id*. at 562. In a subsequent appeal, the Tenth Circuit affirmed the denial of relief on materiality grounds and expressly declined to decide whether the Government was required to disclose the evidence or that the evidence was exculpatory. *United States v. Ohiri*, 287 Fed. Appx. 32, 35 (10th Cir. 2008).

The only case cited by Bethel that actually vacated a guilty plea under *Brady* based on the non-disclosure of non-impeachment exculpatory evidence is *Buffey v. Ballard*, 782 S.E.2d 204 (W.Va. 2015). Thus, any split of authority on whether *Ruiz* applies to non-impeachment exculpatory evidence is narrow and would benefit from further percolation in the lower courts.

Regardless of the extent to which there is a split of authority this issue, the fact remains that the decision below denied *Brady* relief on materiality grounds. This case therefore is not the proper vehicle to resolve any alleged split of authority on this

issue. If it is true that the question presented by Bethel's petition affects a "significant number of cases," Pet. 19, this Court should have ample opportunity to select another case that will be a more suitable vehicle to review this issue.

II. Extending *Brady* to require disclosure of non-impeachment exculpatory evidence before a defendant pleads guilty is neither necessary nor warranted.

It is of course true that the vast majority of criminal cases are resolved by plea rather than trial. But this reality does not justify expanding *Brady*'s due-process holding to require prosecutors to disclose non-impeachment exculpatory before a defendant pleads guilty.

A. *Brady* is a trial right and thus does not apply to plea bargaining.

"The *Brady* right * * * is a *trial* right." *United States v. Moussaoui*, 591 F.3d 263, 285 (4th Cir. 2010) (emphasis sic); see also *Ruiz*, 536 U.S. at 628 (*Brady* is part of the "'fair trial' guarantee"). So when a defendant chooses to plead guilty, "*Brady* concerns subside." *Mathur*, 624 F.3d at 507. "The *Brady* rule's focus on protecting the integrity of the trial suggests that where no trial is to occur, there may be no constitutional violation." *Matthew v. Johnson*, 201 F.3d 353, 361 (5th Cir. 2000); see also *Ruiz*, 536 U.S. at 634 ("The principle supporting *Brady* was 'avoidance of an unfair trial to the accused.' That concern is not implicated at the plea stage.") (Thomas, J., concurring) (citation omitted).

"[A] counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case." *Menna v. New York*, 423 U.S. 61, 62 n. 2 (1975). "And the law

ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would apply *in general* in the circumstances—even though the defendant may not know the *specific detailed* consequences of invoking it." *Ruiz*, 536 U.S. at 629 (emphasis sic). The Constitution does not require that a defendant have "complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." *Id.* (collecting cases).

"*Ruiz* never makes such a distinction [between impeachment and exculpatory evidence] nor can this proposition be implied from its discussion." *United States v. Conroy*, 567 F.3d 174, 179 (5th Cir. 2009). This Court "has consistently treated exculpatory and impeachment evidence in the same way for the purpose of defining the obligation of a prosecutor to provide *Brady* material prior to trial, and the reasoning underlying *Ruiz* could support a similar ruling for a prosecutor's obligations prior to a guilty plea." *Friedman v. Rehal*, 618 F.3d 142, 154 (2nd Cir. 2010) (internal citations omitted).

At the time of Bethel's proffer statement, no case from this Court had held that due process required prosecutors to disclose non-impeachment exculpatory evidence before a defendant pleads guilty. This is true even today. Extending *Brady* to allow a defendant to challenge a guilty plea based on non-disclosure of non-impeachment exculpatory evidence would be a new rule of criminal procedure, and applying such a new rule to an already-final conviction (like Bethel's) would run afoul of anti-

retroactivity principles, *Edwards v. Vannoy*, 141 S.Ct. 1547, 1554-1555 (2021), unfairly stigmatize prosecutors, and upset the legitimate expectations regarding the effect of the plea agreement held by the parties and society at large.

Such an extension of *Brady* would also would make plea bargaining *more* difficult going forward. *Alvarez v. City of Brownsville*, 904 F.3d 382, 400-401 (1st Cir. 2018) (en banc) (Ho J., concurring). If a defendant does not waive *Brady* rights by pleading guilty, prosecutors would either offer less favorable deals or be less likely to offer any deals at all—"[e]ither result is a materially worse outcome for the accused." *Id*. at 401 (Ho J., concurring).

B. No constitutional ruling is necessary.

"There is no general constitutional right to discovery in a criminal case, and Brady did not create one[.]" *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). Requiring prosecutors to disclose non-impeachment exculpatory evidence before a defendant pleads guilty would be "new ground," a "novel approach," and an "unprecedented expansion of *Brady*." *Alvarez*, 904 F.3d at 392, quoting *Mathur*, 624 F.3d at 507. Rather than adopting such an unprecedented constitutional rule, this Court should allow non-constitutional rules and practices to continue to govern the exchange of information during plea bargaining.

Indeed, this Court has already admonished prosecutors to "resolve doubtful questions in favor of disclosure." *Agurs*, 427 U.S. at 108. Just as the "prudent prosecutor," *id*., will favor disclosure when the question of materiality is close, so too will she disclose favorable evidence when there is any uncertainty as to whether the

defendant will plead guilty or go to trial. To this end, the United States trains its prosecutors to read the *Brady* requirements expansively, to err on the side of disclosure, and to disclose exculpatory information "reasonably promptly after it is discovered." United States Attorneys' Manual, § 9-5.001(B)(1), (D)(1).

State-law discovery rules also serve to promote the exchange of information during plea bargaining. *Wardius v. Oregon*, 412 U.S. 470, 474 (1973) (lauding state discovery rules that increase the evidence available to both parties and enhance the fairness of the adversary system); *Cone v. Bell*, 556 U.S. 449, 470 n. 15 (2009) ("[T]he obligation to disclose evidence favorable to the defense may arises more broadly under a prosecutor's ethical or statutory obligations."). While state discovery rules vary, "the popularity of open-file laws is growing." Jenna I. Turner, *Two Models of Pre-Plea Discovery in Criminal Cases: An Empirical Comparison*, 73 Wash. & Lee L. Rev. 285, 309 (2016). Ohio is listed as an "open file" state. *Id*. at 288 n. 5; see also Ohio R. Crim. P. 16. Lastly, the question presented by Bethel's petition will arise nearly always in the context of a defendant whose conviction is the direct result of a guilty plea (as opposed to a post-plea trial, as in Bethel's case), and states can develop different standards for seeking relief from a plea. *See e.g.*, Ohio R. Crim. P. 32.1 (requiring "manifest injustice" to withdraw a guilty plea after sentencing).

CONCLUSION

The State respectfully requests that certiorari be denied.

Respectfully submitted,

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