

CASE NO. _____
IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2023

Sheldon Hannibal
Petitioner,

v.

Secretary, Pennsylvania Department of Corrections, et al.,
Respondents.

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Brady v. Maryland*, 373 U.S. 83 (1963), this Court held that the prosecution violates due process when it withholds favorable evidence and the evidence is material to the defendant's conviction or sentence. In *Kyles v. Whitley*, this Court elaborated on the materiality standard, explaining that materiality is demonstrated when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." 514 U.S. 419, 433–34 (1995). This standard, the Court explained, "is not a sufficiency of the evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence there would not have been enough left to convict." *Id.* at 434–35. Rather, the question is "whether we can be confident that the jury's verdict would have been the same." *Id.* at 453.

In this case, the Commonwealth suppressed evidence undermining its linchpin witness's testimony. But in reviewing Petitioner Sheldon Hannibal's *Brady* claim, the Third Circuit inverted the *Kyles* materiality standard, holding that the suppressed evidence was immaterial *because* it contradicted other evidence presented by the Commonwealth at trial. The question presented is:

Whether the Third Circuit's *Brady* materiality test—under which suppressed evidence is immaterial if it contradicts the prosecution's trial evidence—conflicts with this Court's decision in *Kyles*?

PARTIES TO THE PROCEEDING

Sheldon Hannibal was the petitioner in the proceedings below. The Secretary of the Pennsylvania Department of Corrections; the Superintendent of SCI Greene; the Superintendent of SCI Rockview; and the District Attorney of Philadelphia were the respondents in those proceedings.

STATEMENT OF RELATED PROCEEDINGS

United States Court of Appeals for the Third Circuit:

Hannibal v. Secretary, PA Dep't of Corr., et al., No. 21-3075 (Apr. 2, 2024)

United States District Court for the Eastern District of Pennsylvania:

Hannibal v. Gilmore, et al., No. 13-cv-619 (Oct. 6, 2021)

Pennsylvania Supreme Court:

Commonwealth v. Hannibal, No. 705, Capital Appeal Docket (Nov. 22, 2016)

Commonwealth v. Hannibal, No. 81, Capital Appeal Docket (June 20, 2000)

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<i>Hannibal v. Pennsylvania</i> , 536 U.S. 907 (2001)	4
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<i>Smith v. Cain</i> , 565 U.S. 73 (2012)	9, 10
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State Statutes

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Other

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OPINIONS BELOW

The opinion of the court of appeals is unreported and appears at A1–A18. The order of the district court adopting the magistrate’s report and recommendation is unreported and appears at A19. The magistrate’s report and recommendation is unreported and appears at A20–A62.

JURISDICTION

The court of appeals issued its amended opinion and denied a petition for rehearing and rehearing en banc on April 2, 2024. The jurisdiction of this Court is invoked under 18 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall ... deprive any person of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

Peter LaCourt was shot and killed with a single gun in October 1992. Witnesses identified Sheldon Hannibal and Larry Gregory—each armed with a gun—as being in an altercation with LaCourt immediately before he was shot, but no one witnessed the shooting itself. The Commonwealth charged both Hannibal and Gregory with first-degree murder and tried them jointly. Under Pennsylvania law, a first-degree murder conviction requires a finding of specific intent to kill. 18 Pa.C.S. § 2502(a). Thus, the central question at trial was which of the two defendants shot LaCourt. Despite no physical or eyewitness evidence establishing who shot LaCourt, the Commonwealth proceeded on the theory that Hannibal was the killer.

In the absence of any physical or eyewitness evidence to support its theory that Hannibal shot LaCourt, the Commonwealth presented the testimony of a jailhouse informant, James Buigi, who at the time of trial had two open felony charges and was awaiting formal charges on a third. Buigi testified that he and Hannibal shared Cell 50 at Philadelphia Industrial Correctional Center (PICC). Buigi testified that, because they were cellmates, Hannibal was “comfortable” enough to share the “illegal stuff [he] did.” *Commonwealth v. Hannibal*, Nos. 93-04-2835 to 93-04-2839 (Pa. Ct. Common Pleas), Trans. 3/1/94, 21–22. Buigi claimed Hannibal confessed to shooting LaCourt.

Buigi initially maintained that he did not receive any benefit in his open felony cases in exchange for his testimony against Hannibal. After Buigi’s testimony

concluded, the prosecutor disclosed that, in fact, he had agreed to attest to Buigi's cooperation against Hannibal if and when Buigi came up for sentencing.

Hannibal then took the stand and insisted that he and Buigi were never cellmates. He denied knowing Buigi or having ever discussed any aspect of his case with him. On cross-examination, Hannibal agreed when asked if he was housed in Cell 50 during his time at PICC but maintained that his "cell mate was a Spanish guy named June," not Buigi. *Id.* at Trans. 3/7/94, 32. The Commonwealth then called two correctional officers from PICC, who testified in rebuttal that Buigi and Hannibal were cellmates for several weeks in late October to early November 1993. Neither correctional officer was able to provide the exact dates that the two were cellmates or to supply any records in support of their testimony—nor did the Commonwealth provide a single witness who managed jail records to corroborate the testimony of the officers.

In closing, the prosecutor explicitly stated that the Commonwealth's case against Hannibal hinged entirely on Buigi's testimony, stating:

We knew it was one gun. How would we know who was shooting this gun? We *only know* because of Mr. Buigi, and Mr. Buigi told us Sheldon Hannibal said he was the only one shooting.

Id. at Trans. 3/9/94, 99 (emphasis added). The jury convicted Hannibal of first-degree murder.

On direct appeal, Hannibal alleged that trial counsel was ineffective for failing to obtain jail records to show that he and Buigi were never cellmates. Appellate counsel similarly failed to obtain such records. A111. In response, the

Commonwealth falsely represented to the court that there was no reason to believe that the records would support defendant's position that he and Buigi never shared a cell. The Pennsylvania Supreme Court affirmed Hannibal's conviction after finding Buigi's testimony to be sufficient evidence to sustain the first-degree murder conviction, stating:

James Buigi, a cellmate of [Hannibal], testified that [he]...admitted to Buigi that he killed LaCourt....This evidence is sufficient to prove that [Hannibal] intentionally and unlawfully killed LaCourt.

A107–A108. This Court subsequently denied certiorari. *Hannibal v. Pennsylvania*, 536 U.S. 907 (2001).

Hannibal then filed a timely state habeas petition pursuant to Pennsylvania's Post-Conviction Relief Act (PCRA). During PCRA proceedings, postconviction counsel obtained PICC housing records which confirmed that Hannibal and Buigi were never housed in the same cell. A123–A125. Postconviction counsel also discovered a letter written by Assistant District Attorney Mary Porto, who handled Hannibal's case on direct appeal, to Robert Durison, the director of the Classification, Movement, and Registration Office of the Pennsylvania Prison System, while the direct appeal was pending. In the letter, Porto asked whether Hannibal and Buigi had "shared a cell." A126. In response, Durison reviewed the records of "Mr. Hannibal's incarceration between 2/17/93 and 2/14/95 and Mr. Buigi's incarceration between 8/14/93 and 12/27/93" and determined that, while they had been housed on the same cell block at Holmesburg prison at certain times, ***Hannibal and Buigi never shared a cell.*** A127. Durison's letter enclosed copies of the housing records.

The prosecution never disclosed this evidence to the defense. In postconviction, Durison executed an affidavit “confirm[ing his] initial finding that Mr. Buigi and Mr. Hannibal were not ever in [the] same cell.” A128.

Upon discovery of the previously undisclosed material, Hannibal raised a *Brady* claim premised on the Commonwealth’s suppression of the housing records and correspondence with Durison. He also raised a related ineffective assistance of counsel claim premised on counsel’s failure to obtain and introduce the housing records. The PCRA court denied Hannibal’s request for an evidentiary hearing on his *Brady* claim, and ultimately denied relief on all of his claims following a hearing limited to his claims of ineffective assistance of counsel. The Pennsylvania Supreme Court affirmed, ruling that Hannibal’s *Brady* claim was waived because it was not raised on direct appeal, notwithstanding that the Commonwealth had continued to suppress the relevant evidence through the duration of the appellate proceedings. A77. Addressing the related ineffectiveness claim, the state court found no prejudice by pointing to purported “inaccuracies” in the records and to other evidence at trial supporting the guilty verdict. *Id.* This Court again denied certiorari. *Hannibal v. Pennsylvania*, 138 S. Ct. 59 (2017).

Hannibal subsequently filed a federal habeas petition including the *Brady* claim regarding the Commonwealth’s failure to turn over the Durison correspondence and PICC housing records. The magistrate concluded that the state court’s waiver ruling did not rest on an independent and adequate state law ground and that Hannibal was entitled to review of his claim on the merits. A32. As to the merits,

the magistrate found that, although the Commonwealth suppressed the evidence, Hannibal was not entitled to relief because the evidence was not material. A33. The district court adopted the magistrate’s report and recommendation in its entirety and denied relief but issued a certificate of appealability on the *Brady* claim. A19. Hannibal filed timely notice of appeal.

In its opinion affirming the district court, the Third Circuit held that the Pennsylvania Supreme Court reasonably ruled the suppressed evidence immaterial based on “the contrary testimony of the guards, who both remembered Hannibal and Buigi sharing Cell 50 during the relevant timeframe,” as well as “Hannibal’s testimony—in contradiction to the prison housing records—that he was housed in Cell 50 (although he disputed sharing it with Buigi).” A12. The Court acknowledged that this conclusion “assumes that Hannibal would still have testified if he had the Cell 50 records.” *Id.* at n.4. The Third Circuit further held that the state court reasonably concluded that neither the prison records showing that Hannibal and Buigi did not share a cell, nor the correspondence between the prosecutor and Durison confirming the same, were material under *Brady*. *Id.* A petition for rehearing was denied on April 2, 2024. A117.

REASONS FOR GRANTING THE WRIT

In this case, the Third Circuit created a new materiality test that inverts the *Kyles* standard by holding that suppressed evidence is immaterial when it contradicts evidence presented by the prosecution at trial. This Court should grant certiorari to

bring the Third Circuit's materiality test in line with this Court's clearly stated authority.

It is well established that a *Brady* violation occurs when: (1) the prosecution has information that is favorable to the defense; (2) the prosecution withholds the information; and (3) the withheld information is material, thus prejudicing the defendant. *E.g., Strickler v. Greene*, 527 U.S. 263, 281–82 (1999).

In *Kyles*, this Court explained that materiality is demonstrated when “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” 514 U.S. at 433–34 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). This Court further explained that the materiality standard

is not a sufficiency of the evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict.

Id. at 434–35 (emphasis added). Applying this standard, the *Kyles* Court held that suppressed impeachment evidence regarding a key government witness was material even where the murder weapon was found in Kyles's home, the victim's purse was found in his garbage, and Kyles's fingerprints were on a sales receipt found in the victim's car. *Id.* at 427–28. This Court explained that, while the jury may still have found the other evidence sufficient to convict, the “question is not whether the State would have had a case to go to the jury if it had disclosed the favorable evidence, but

whether we can be confident that the jury's verdict would have been the same." *Id.* at 453.

Here, the Third Circuit took the opposite approach, discounting the value of the suppressed evidence because it contradicted the Commonwealth's evidence of guilt. The central issue at trial was which of the two defendants shot LaCourt, and Buigi's testimony was the only evidence indicating Hannibal was the shooter. *See Commonwealth v. Hannibal*, Nos. 93-04-2835 to 93-04-2839 (Pa. Ct. Common Pleas), Trans. 3/9/94, 99 (prosecutor arguing in closing, "We *only know* [who shot the gun] because of Mr. Buigi ..." (emphasis added)). The central premise of Buigi's testimony was that he and Hannibal were cellmates and that Hannibal therefore felt "comfortable" enough to share the "illegal stuff [he] did." *Id.* at Trans. 3/1/94, 21–22. The Commonwealth suppressed documentary evidence establishing that Hannibal and Buigi were "not ever" cellmates, A128, and that thus would have undercut the heart of Buigi's testimony. Competent counsel could have used the prison records and Durison's testimony to undermine the credibility of Buigi and the corrections officers that Buigi and Hannibal had shared a cell, and to bolster his argument that Buigi had invented his testimony. Certainly under this Court's precedent, this evidence was material. *See, e.g., Bagley*, 473 U.S. at 690 ("Whenever the Government fails...to disclose impeachment evidence relating to the credibility of its key witnesses, the truth-finding process of trial is necessarily thrown askew."); *Banks v. Dretke*, 540 U.S. 668, 675 (2004) (prosecution's concealment of evidence discrediting "two essential prosecution witnesses" prejudiced defendant because their testimony

was the “centerpiece” of the prosecution’s case); *Kyles*, 514 U.S. at 445 (“the effective impeachment of one eyewitness can call for a new trial even though the attack does not extend directly to others”).

But instead, the Third Circuit found the suppressed evidence was immaterial based on “the contrary testimony of the guards, who both remembered Hannibal and Buigi sharing Cell 50 during the relevant timeframe,” and Hannibal’s testimony that he was in Cell 50 (just not with Buigi). A12. In other words, the Third Circuit effectively found that the jury would have discounted the suppressed evidence because it was contrary to the Commonwealth’s case. This turns the materiality analysis on its head. The fact that the suppressed evidence contradicts the Commonwealth’s evidence is precisely what makes it material. Put differently, the Third Circuit created a materiality standard that confuses the weight of the evidence for its value to the defense. *See Kyles*, 514 U.S. at 451 (counter-arguments about the value of suppressed evidence “confuse[] the weight of the evidence with its favorable tendency”).

This Court’s application of the *Kyles* standard in *Smith v. Cain*, 565 U.S. 73 (2012), illustrates the error of the Third Circuit’s approach. In *Smith*, an eyewitness, Boatner, identified Smith in court as the gunman. 565 U.S. at 74. The state had suppressed a detective’s notes containing statements by Boatner saying he could not identify or describe the perpetrators. *Id.* at 74–75. The state argued that the suppressed notes were not material because Boatner “made other remarks on the night of the murder indicating that he could identify the first gunman to enter the

house, but not the others.” *Id.* at 76. This Court rejected the state’s argument, explaining that it “merely leaves us to speculate about which of Boatner’s contradictory declarations the jury would have believed.” *Id.* The Court explained, “the State’s argument offers a reason that the jury could have disbelieved Boatner’s undisclosed statements, but gives us no confidence that it would have done so.” *Id.*

So too here. The jury “could have” disbelieved the prison records and the testimony of the prison classification official, but the Third Circuit improperly presumed that the jury “would have done so.” *Id.* The Third Circuit’s test presumes the accuracy of the prosecution’s evidence and discounts contradictory evidence as immaterial for the very reason that it contradicts the prosecution’s case. That approach is particularly perverse where the suppressed evidence was contained in contemporaneous documentation produced by the Commonwealth and in testimony proffered by an authoritative, disinterested Commonwealth official. Such a perversion of the *Kyles* standard cannot be allowed to stand.

CONCLUSION

For all the reasons set forth above, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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