No. 24-6257

IN THE
Supreme Court of the United States

WILLIE CORY GODBOLT,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Petitioner murdered eight people during an hours-long killing spree. A jury convicted him of capital murder (among other crimes) and sentenced him to death. The Mississippi Supreme Court affirmed, rejecting (among other claims) petitioner's challenges to four evidentiary rulings, to a ruling on a psychiatric evaluation of petitioner, and to trial counsel's performance. The petition for certiorari presses those six challenges.

The question presented is whether this Court should review the Mississippi Supreme Court's fact-bound rejection of petitioner's claims when that decision correctly applies settled legal standards, does not raise any lower-court conflict, and does not present any recurring question of federal law warranting this Court's intervention?

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The Mississippi Supreme Court's opinion affirming petitioner Willie Cory Godbolt's convictions and sentences (Petition Appendix (App.) 1-84) is not yet reported but is available at 2024 WL 976588.

JURISDICTION

The Mississippi Supreme Court entered judgment on March 7, 2024, and denied rehearing on May 23, 2024. App.1, 85. A petition for certiorari was filed on August 21, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT

Petitioner murdered eight people. A jury convicted him of four counts of capital murder, four counts of first-degree murder, two counts of kidnapping, one count of attempted murder, and one count of armed robbery. He was sentenced to death for each capital-murder conviction and to six life sentences and two 20-year terms for his other convictions. On direct appeal, the Mississippi Supreme Court affirmed the convictions and sentences. The petition for certiorari arises from that decision.

1. On May 27, 2017, petitioner dropped off his two children at a Memorial Day barbeque at the home of his in-laws, Vincent and Barbara Mitchell, in Bogue Chitto, Mississippi. App.2. Petitioner's estranged wife Sheena, who was living at the Mitchell home, attended the barbeque with her parents Vincent and Barbara, sister Tocarra May, aunt Brenda May, niece Tamarya May, and others. App.2-3. That evening, petitioner texted Sheena that he was coming back for their children and that he loved his family and wanted it to remain intact. App.3. Sheena replied that she "no longer

wanted to be with [him] because he had hurt her" and that she would call the police if he returned. *Ibid.* Petitioner came back anyway and Sheena called 911. *Ibid.*

Sheriff's Deputy William Durr responded to the 911 call at the Mitchell home after 11 pm. App.3. He told petitioner to leave the house. *Ibid.* Petitioner pulled out a concealed pistol and shot Deputy Durr in the face. App.3-4. As the deputy lay dying, petitioner began shooting at other people in the house. App.4. Petitioner then went back to his car, retrieved two assault rifles, and reentered the house to continue shooting. App.4, 6. He shot and killed Tocarra May and Brenda May near the kitchen and Barbara Mitchell in the living room. App.4, 14. Sheena went into a bedroom, broke a window, and ran with her children into the surrounding woods to hide. App.4. Vincent Mitchell hid in a bathroom and called 911. *Ibid.* Tamarya May, who hid in a parked car in the driveway, also called 911. App.4-5.

A second deputy, Timothy Kees, soon arrived at the Mitchell home and heard gunshots. App.5. As Deputy Kees got out of his car, petitioner exited the house and began shooting at him. *Ibid.* After trading fire with petitioner, Deputy Kees returned to his car to retrieve his own rifle but lost sight of petitioner. *Ibid.* More officers then arrived. *Ibid.* They believed that petitioner had barricaded himself inside the house. *Ibid.* In fact, petitioner had escaped into the woods on foot. App.5-6.

Around midnight, petitioner arrived at the home of the Mitchells' neighbor, Lapeatra Stafford. App.6. He was still armed with the pistol and assault rifles. App.6, 8. After forcing his way into Lapeatra's home, petitioner told her, "I done fucked up. I done shot the police." App.6. He then made Lapeatra get into her van and drive him to the home of his friend, Marvin Brumfield, at gunpoint. App.6-7. During the drive,

petitioner called his sister and told her that he had shot a police officer and Sheena's family members. App.6. Petitioner's sister added a cousin—who was chief deputy of the sheriff's department—to a three-way call. *Ibid.* Petitioner told the chief deputy that he "wasn't coming out of the house." *Ibid.* After the call, petitioner told Lapeatra that he "had time" because police "think that I'm [still] in the [Mitchells'] house." *Ibid.*

Petitioner and Lapeatra arrived at Marvin Brumfield's home later that night. App.7. Petitioner told Marvin that "he had shot four people" and that "he was tired of people interfering in his marriage." *Ibid.* Marvin tried to convince petitioner to turn himself in. *Ibid.* Marvin, Lapeatra, and petitioner then got into Lapeatra's van. *Ibid.* Petitioner confirmed to Marvin that he had killed Deputy Durr, Brenda May, Tocarra May, and Barbara Mitchell. *Ibid.* Petitioner then forced Lapeatra to drive to the home of Shon (petitioner's cousin) and Tiffany Blackwell (a friend of Sheena's). *Ibid.*

When they arrived at the Blackwells' home, petitioner approached the house armed with the pistol and assault rifles. App.8. Shon and Tiffany were not home: they had learned about the shooting at the Mitchell house and left to pick up Sheena. App.7-8. But several children remained at their house, including the Blackwells' son J.B., Tiffany's nephews A.E. and C.E., and family friends X.L. and K.P. App.8. After Marvin unsuccessfully tried to restrain him, petitioner shot through the door and went inside. *Ibid.* As the children ran for cover, petitioner asked 18-year-old J.B. where his parents were. *Ibid.* After J.B. said that they had gone to the Mitchells' home, petitioner shot and killed J.B. and 11-year-old A.E. App.8-9. Petitioner then forced X.L. at gunpoint to drive him away in a different car. App.9. During the drive, petitioner logged into his wife Sheena's Facebook account and messaged Tiffany, "Pay

back bitch fuck up my family now it's yours hoe." *Ibid.* The children who survived the shooting at the Blackwells' house called 911. *Ibid.*

Petitioner next forced X.L. to make several stops and to change cars. App.9-10. During one stop, petitioner held his neighbors Henry and Alfred Bracey at gunpoint and demanded keys to a car, which they handed over. App.10. During a stop at petitioner's aunt's house, petitioner threatened to shoot X.L. unless he was given keys to yet another car, which he also received. *Ibid.* Petitioner then forced X.L. to drive him to the home of Shelia (at times incorrectly called "Sheila" in the record and opinion below) and Ferral Burage, friends of petitioner and Sheena. App.10-11.

Petitioner and X.L. arrived at the Burages' home early in the morning, and petitioner let X.L. leave. App.10-11. When petitioner was not immediately let inside the house, he began shooting through the door. App.11. Shelia, Ferral, and another person in the house, O.M., ran for cover. *Ibid.* Once petitioner broke in, he fatally shot both Shelia and Ferral while O.M. hid. *Ibid.* Before petitioner killed him, Ferral managed to retrieve his gun and shoot petitioner in the arm. App.11, 12-13. Shelia had been on the phone when petitioner arrived. App.11. The person Shelia was talking to heard gunshots and called 911. *Ibid.*

Before leaving the Burages' home, petitioner called his older brother. App.11. He told his brother that "he had shot and killed [Shelia] and Ferral" and that Ferral "had shot him." *Ibid.* Petitioner also told his brother "to take care of his kids." *Ibid.*

Around 6 am, police were dispatched to the Burage residence. App.11-12. When they arrived, they saw petitioner standing just off the road. App.12. The officers

ordered him to lie on his stomach and arrested him. *Ibid.* Two officers pressed on petitioner's back while a third put pressure on his legs to keep him from kicking. *Ibid.*

As petitioner was arrested, a reporter with the *Clarion-Ledger* newspaper, Therese Apel, arrived at the scene and began filming. App.12. Apel's videos, which were played at petitioner's trial, depicted exchanges petitioner had with Apel and with police. *Ibid.*; *see* App.42-45. While petitioner was held on the ground, an officer asked him "exactly where the scene was located." App.12. Petitioner's "response in the video [was] unintelligible," but "officers repeated the number of the home belonging to the Burages" and "rushed to the scene." *Ibid.* Petitioner then told police exactly where Shelia's and Ferral's bodies were in the house. *Ibid.* An officer next asked petitioner if he had been shot; petitioner said yes. *Ibid.* The officer directed a medic to attend to him. *Ibid.* Another officer then asked petitioner, "who shot you?" App.13. He responded, "the guy in the house." *Ibid.* Petitioner also told officers that "he could tell [them] where more victims were located" if they stopped holding his legs. *Ibid.* A sergeant then read petitioner his *Miranda* rights. *Ibid.* Petitioner "responded that he understood his rights" and he "continued to speak to law enforcement." *Ibid.* The officers moved petitioner into a seated position, and the medic attended to his gunshot wound. *Ibid.* Petitioner then stated that "there were no more victims" and that he said there were only because he "wanted to sit up." *Ibid.* Petitioner soon noticed Apel filming and asked her, "you the police, ma'am?" *Ibid.* Apel responded, "I'm the media." *Ibid.* Petitioner told Apel, "I fucked my eardrum up, man, shooting that gun." *Ibid.* Apel asked petitioner, "Do you want to say why you did all this?" *Ibid.* Petitioner replied, "Because I love my wife and I love my children."

Ibid. Apel asked, "So what about Deputy Durr's wife and children?" *Ibid.* Petitioner responded, "I'm sorry ... . My pain wasn't designed for him. He was just there." *Ibid.*

Petitioner killed eight people. App.13-14. He shot all of them multiple times: Deputy Durr three times; Brenda May five; Tocarra May nine; Barbara Mitchell eight; J.B. four; A.E. four; Ferral Burage twelve; and Shelia Burage two. App.14.

2. Petitioner was indicted on twelve counts: four counts of capital murder (Deputy Durr, J.B., A.E., and Shelia Burage); four counts of first-degree murder (Tocarra May, Brenda May, Barbara Mitchell, and Ferral Burage); two counts of kidnapping (Lapeatra Stafford and X.L.); one count of attempted murder (Deputy Kees); and one count of armed robbery (the Braceys). App.17.

Before trial, petitioner's counsel moved to suppress statements he made during his arrest to reporter Therese Apel and to police (App.42-43, 44-45) as well as evidence recovered from searches of petitioner's home, car, and electronic devices (App.45-46). The State decided not to use at trial any evidence from petitioner's phones (App.45), and the trial court otherwise denied petitioner's motions to suppress (App.42, 44, 45). For its part, the State moved for petitioner to undergo a mental evaluation, but petitioner's counsel objected to that request. App.52. Counsel also declined to ask the trial court to enforce an initial order for petitioner's psychiatric evaluation entered by the justice-court judge who handled petitioner's preliminary hearing. *Ibid.*

Petitioner's case proceeded to trial. At the guilt phase, the State introduced evidence (described above) that petitioner committed four capital and four first-degree murders, two kidnappings, attempted murder, and armed robbery. App.13-18.

Besides eyewitness testimony from survivors of petitioner's attacks, several witnesses connected petitioner to the weapons and killings. A weapons expert confirmed that projectiles found at all three murder scenes were fired from a handgun and two rifles that police recovered from the Burage residence. App.14-15. A pawn-shop owner testified that he sold two of those guns to petitioner and one to petitioner's wife Sheena. App.15. And a crime-scene investigator testified that DNA evidence recovered from a blood trail at the Burage residence matched petitioner's DNA. *Ibid.*

The State also introduced evidence of petitioner's past acts "to show motive." App.15-17. Sheena testified that petitioner "physically abused her throughout their marriage, resulting in at least one trip to the hospital." App.16. That testimony was corroborated by Sheena and petitioner's daughter, M.G., who testified that she saw petitioner "hit her mother numerous times." *Ibid.* M.G. testified that she too was "physical[ly] abuse[d]" by petitioner, who "always used to beat [her] with a bat." *Ibid.* M.G. also told the jury that petitioner had placed a gun in his car and several guns on his bed on the day of the murders—which was "unusual"—and that she saw petitioner watching instructional videos about his guns hours before the murders. *Ibid.* She testified that, just before dropping her and her brother off at the Mitchells' house on the day of the murders, petitioner said that "he would die or kill before he let [his children] stay with anybody else." *Ibid.*

Last, Sheena, M.G., and Vincent Mitchell testified about a prior assault on M.G. at the Mitchells' house, which "provide[d] some context" for petitioner's crimes. App.16-17. A year before the murders, M.G.'s male cousin "touched her inappropriately." App.16. Vincent saw the assault and removed the cousin. *Ibid.*

Petitioner wanted to press charges against the cousin for assault and against Barbara and Vincent Mitchell for failing to prevent it, but Sheena refused. App.16-17.

Defense counsel argued to the jury that petitioner lost control due to pressure on his marriage and family life. *E.g.*, Pet. 3; App.3, 7, 16-17, 25-26. Counsel tried to convince the jury to convict petitioner of manslaughter rather than capital and first-degree murder. *See* Pet. 17, 26.

The jury found petitioner guilty on all counts. App.17.

At the penalty phase, the State reintroduced "all" the guilt-phase evidence and "presented two victim impact witnesses for each capital[-]murder victim." App.17. Defense counsel introduced mitigation testimony from a clinical psychologist and from petitioner's siblings, aunt, pastor, former teacher, and friend. App.17-18. Those witnesses "developed themes of three traumatic events" in petitioner's life: "the separation of his parents prior to his birth and his father's subsequent remarriage"; "his father's murder perpetrated by [petitioner's] step-mother"; and "an occurrence of sexual abuse" of petitioner "when he was a young man." App.18.

Petitioner was sentenced to death for each capital-murder conviction and to six life sentences and two 20-year terms for his other convictions. App.2, 18.

3. Petitioner appealed, raising 19 issues—some pro se and some through counsel. App.18-20. The Mississippi Supreme Court affirmed across the board. App.2, 66; *see* App.20-66. Six of the court's rulings matter here.

First, the supreme court rejected petitioner's claim that the trial court should have excluded from trial the statements he made to reporter Therese Apel. App.42-43. Petitioner claimed that Apel acted as an agent of law enforcement and improperly

questioned him on the State's behalf without a knowing waiver of his rights. App.42. The supreme court rejected that claim. At a pre-trial hearing, Apel testified that she went to the scene of petitioner's arrest after "receiv[ing] a phone call" during the night "informing her that a deputy had been killed." App.42. She said that she had "friends [in] law enforcement," that "officers were often her sources," and that she "previously worked for the department of public safety." App.42-43. Apel refused to disclose her source but testified that "she was not directed by any member of law enforcement to go to the scene" of petitioner's arrest "or to ask [him] any questions." App.42. (emphasis omitted). Upholding the trial court's admission of petitioner's statements, the supreme court emphasized that Apel testified that "no law enforcement [official] directed her to ... ask [petitioner] any questions" and that she "went to the scene looking for a news story, not as an agent of the state"; that Apel "explicitly told [petitioner] that she was a member of the media before he answered her questions"; and that petitioner "was able to connect Apel to law enforcement through cross-examination" without knowing her source's identity. App.42-43.

Second, the supreme court rejected petitioner's claim that the trial court erred in admitting statements he made to police during his arrest. App.44-45. Petitioner claimed that those statements resulted from an improper custodial interrogation without a waiver of rights, were coerced using physical pain, and were obtained in violation of his right to counsel. App.44. The supreme court held that petitioner's pre-*Miranda* responses to questions about the location of the shootings at the Burages' home and his gunshot wound fell "under the public safety exception" to *Miranda v. Arizona*, 384 U.S. 436 (1966). App.44. Officers asked those questions, the court said,

to determine "where potential victims were located," "if [petitioner] required medical attention," and "if there were other active shooters." *Ibid.* The court also rejected petitioner's claims that "he continuously requested an attorney while he was [being] detained" and was "coerced into making self-incriminating statements" because officers "were causing him pain." App.44-45. The court observed that "the video record" of petitioner's arrest did not show "a single instance" of petitioner requesting an attorney; that officers "shifted themselves and eventually transitioned [petitioner] into a seated position" when he "complained of pain"; and that "other than the questions about where the scene was located and if [petitioner] had been shot, the officers never made any inquiry of [petitioner] during the arrest." *Ibid.*

Third, the supreme court held that the trial court properly rejected petitioner's motion to suppress evidence obtained from his vehicle, home, electronic devices, and person. App.45-46. Petitioner claimed that the State lacked valid warrants for those searches and that no exigencies applied. App.45. The supreme court explained, however, that the State obtained valid warrants to search petitioner's home and devices (and did not use data from petitioner's phones at trial anyway), and that petitioner himself "was lawfully searched pursuant to his arrest." App.45. The State also obtained evidence—"a duffle bag containing multiple boxes of ammunition"—from a search of petitioner's car, which he left at the scene of the first shootings. App.45-46. A crime-scene investigator saw a "bag full of live rounds ... through the open hatchback of [petitioner's] car" and "removed the bag from the vehicle when it began to rain" due to concern that "the evidence might become damaged." *Ibid.* The supreme court held that the evidence was properly admitted under the "automobile,

plain view, exigent circumstances[,] and abandonment exceptions" to the Fourth Amendment's warrant requirement. App.46; *see* App.45-46.

Fourth, the supreme court rejected petitioner's claim that the State violated its duty to disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), when it allegedly "destroyed" his cell phone "during ... data extraction." App.51; *see* App.51-52. Petitioner speculated that the phone contained exculpatory evidence that could have impeached state witnesses. App.51. The supreme court observed, however, that petitioner "received the data and information extracted from [his] cell phone prior to trial" and that he otherwise "fail[ed] to demonstrate that the State" actually "possessed [undisclosed] evidence that was favorable to him." App.52.

Fifth, the supreme court held that the trial court did not err by failing to enforce the pre-trial justice-court order for a psychiatric evaluation of petitioner. App.52-53. As noted, before petitioner was indicted, a justice-court judge granted a motion for a psychiatric evaluation filed by petitioner's initial defense counsel. App.52. Petitioner claimed that the trial court was required to enforce that order. App.52-53. Rejecting that argument, the supreme court explained that petitioner was later appointed new counsel who "did not move to renew the order for a psychiatric evaluation" in trial court (though counsel did move to renew other justice-court orders); "opposed" the State's own motion to conduct a "mental evaluation" of petitioner; and "never raised [petitioner's] competency as an issue." App.52-53. The supreme court also rejected petitioner's claim that the trial court should have ordered him "to submit to a mental examination" sua sponte under state law and declined to resolve his claim that defense counsel erred by not "request[ing] a competency

evaluation" or "plac[ing] [petitioner's] competency in issue." *Ibid.* The court noted that the record was "devoid of evidence indicating whether a mental examination was necessary" for petitioner "to stand trial." App.53. And the question whether defense counsel "should have raised the issue of competency" was "best reserved" for post-conviction review. *Ibid.*

Sixth, the supreme court declined to resolve petitioner's claims that he received ineffective assistance of trial counsel. App.59-60. Petitioner argued that his counsel unreasonably failed to: "investigate potentially exculpatory evidence contained in his sent text messages"; "sufficiently cross-examine State witnesses"; "review and utilize police and lab reports"; and "obtain a psychiatric evaluation [of petitioner]." App.60. The supreme court explained that "the record [does not] affirmatively show[ ] ineffectiveness of constitutional dimensions" and that there was no indication that "findings of fact" were "not needed" to resolve petitioner's claims. App.59. So there was no reason to depart from the general rule that "ineffective-assistance-of-counsel claims are more appropriately brought during post-conviction proceedings" "with the benefit of a more complete record." App.53, 59.

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to grant review on six questions. Pet. i. None of those questions warrants further review. And the Mississippi Supreme Court correctly resolved every issue that petitioner presses. The petition should be denied.

1. This case does not satisfy any of the traditional certiorari criteria. Petitioner does not claim any lower-court conflict. He does not claim that this case presents a recurring question of federal law. This case is not a sound vehicle for deciding any

legal question. The petition seeks only fact-bound, case-specific error correction. The Court should deny review on these grounds alone.

2. The decision below is correct. Indeed, the evidence is overwhelming that petitioner wantonly murdered eight innocent people, including a police officer and an 11-year-old child. Petitioner does not seriously argue otherwise. None of his arguments has merit. Nor does he show that success on any of his claims would be sufficient to undermine his convictions or sentences given the overwhelming evidence against him. There is no basis for further review.

First, petitioner asks this Court to decide whether "a news reporter's First Amendment privilege to shield her source trumps a criminal defendant's Sixth Amendment right to confrontation and Fourteenth Amendment due[-]process right[s]." Pet. i; *see* Pet. 6-10. This case does not present that question. And the Mississippi Supreme Court correctly rejected petitioner's claim that the trial court erred in admitting the statements he made to reporter Therese Apel. App.42-43.

Petitioner argues that Apel's "refusal" to disclose the source who told her of petitioner's crimes "doomed" the defense's theory that Apel was acting on the State's behalf when she questioned him during his arrest and so violated his Sixth and Fourteenth Amendment trial rights. Pet. 9. But it was not Apel's "refusal" to disclose her source that doomed that theory. It was Apel's valid testimony that doomed that theory. Apel testified that she "was not directed by any member of law enforcement to go to the scene" of petitioner's arrest "or to ask [him] any questions." App.42 (emphasis omitted). So, as the state supreme court ruled, it was "irrelevant" if Apel's source were in law enforcement: she was acting as a reporter "looking for a news

story, not as an agent of the state." App.43. The court thus did not need to consider whether Apel's First Amendment rights "trump[ed]" petitioner's confrontation or due-process rights. Pet. i. Indeed, petitioner's counsel was able to cross-examine Apel and "connect" her "to law enforcement" without knowing her source's identity, since Apel testified that she had "friends [in] law enforcement," often used "officers" as "sources," and "previously worked for the department of public safety." App.42-43. So petitioner was not denied his "rights to confront and cross-examine witnesses." Pet. 6; *cf. Kentucky v. Stincer*, 482 U.S. 730, 739 (1987) (Sixth Amendment "guarantees only 'an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish'").

Petitioner claims that establishing the identity of Apel's source could have shown that she had a sufficient "nexus" with law enforcement to be a state actor. Pet. 9. Private parties "may be" considered state actors if: (a) there was a sufficiently "close nexus between the State and ... seemingly private behavior" such that the behavior "may be fairly treated as that of the State itself"; (b) the State "exercise[d]" "coercive power" over the private parties or "provide[d]" them "significant encouragement"; (c) the private parties "operate[d] as ... willful participant[s] in joint activity with the State"; or (d) the private parties exercised a "public function" traditionally reserved to the State. *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 295-96 (2001) (cleaned up). Apel's testimony shows that no such factors were present here. Petitioner speculates that defense counsel "may have been able to establish that Apel and law enforcement had other communications or understandings (short of 'directing' her to do something)." Pet. 10. But even if that

were true, it falls far short of showing the "close nexus," "coerci[on]," "significant encouragement," "joint activity," or "public function" (*Brentwood Academy*, 531 U.S. at 295-96) necessary to show state action. *Compare Anderson v. Suiters*, 499 F.3d 1228, 1233 (10th Cir. 2007) (rejecting claim that journalists "became state actors because they agreed with" a police officer "to receive" and "air" "leaked portions of [a] videotape" depicting criminal activity), *with Berger v. Hanlon*, 129 F.3d 505, 515 (9th Cir. 1997), *vacated and remanded by* 526 U.S. 808 (1999), *judgment reinstated by* 188 F.3d 1155 (9th Cir. 1999) (journalists plausibly engaged in "joint action" with police when they were "'inextricabl[y]' involve[d]" with "planning and execut[ing]" a search and had "a written contractual commitment [with] the government ... to [act] jointly").

Petitioner invokes *Branzburg v. Hayes*, 408 U.S. 665 (1972), which he claims held that "the First Amendment does not relieve a reporter of the obligation to reveal her sources and testify relevant to a criminal investigation." Pet. 7. But "[t]he sole issue" in *Branzburg* was "the obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of crime." 408 U.S. at 682; *cf. In re Roche*, 448 U.S. 1312, 1314-15 (1980) (Brennan, J., in chambers) (*Branzburg* "held that the First Amendment does not provide newsmen with an absolute or qualified testimonial privilege to be free of relevant questioning about sources by a grand jury"). *Branzburg* does not say that a reporter must reveal a protected source where (as here) the source's identity would not meaningfully advance any claims or defenses at a criminal trial. Indeed, in providing the deciding vote in *Branzburg*, Justice Powell stressed "the limited nature of the Court's holding" and that "claim[s] to privilege should be judged" "on a

case-by-case basis" by striking "a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct." 408 U.S. at 709-10 (Powell, J., concurring). The "proper balance" here shows that the identity of Apel's source was not "relevant" to petitioner's defense. *Id.* at 710. Petitioner also invokes *United States v. Nixon*, 418 U.S. 683 (1974), in claiming that his constitutional "right to the production of all relevant evidence" outweighed Apel's "general privilege of confidentiality." Pet. 7, 8; *see also* Pet. 10. *Nixon* held that a "generalized assertion of privilege must yield to [a] demonstrated, specific need for evidence in a pending criminal trial." 418 U.S. at 713. But again, petitioner did not show a "specific need" to know the source's identity given the rest of Apel's testimony.

Second, petitioner asks this Court to decide whether his "confession was obtained in violation of the Fifth, Sixth[,] and Fourteenth Amendment[s]." Pet. i; *see* Pet. 27-29. He claims that statements he made to police while he was arrested but before he was Mirandized—which he calls "confession[s]"—resulted from improper "custodial interrogation," were not "freely and voluntarily given," and were obtained in violation of his Sixth Amendment right to counsel. Pet. 27; *see* Pet. 27-29. These claims fail. The Mississippi Supreme Court correctly held that the trial court properly admitted the statements that petitioner made to police during his arrest. App.44-45.

To start, the state supreme court correctly held that petitioner's pre-Mirandized statements to arresting officers were properly admitted. App.44. Under *Miranda v. Arizona*, 384 U.S. 436 (1966), a suspect's "self-incriminating statements" made during "custodial interrogation" are generally inadmissible unless the suspect was given prior "full warnings of [the] constitutional rights" to silence and to counsel

and made an "effective waiver" of those rights. *Id.* at 445, 446, 477. But there is an "exception" to that rule where "overriding considerations of public safety justify" a delay in "provid[ing]" *Miranda* warnings. *New York v. Quarles*, 467 U.S. 649, 651, 655-56, 657 (1984). As the state supreme court ruled, that exception applies here. When officers found petitioner near the Burage residence, they detained him and asked him where the scene was located, whether he had been shot, and who had shot him. App.12-13. Petitioner responded by telling them the location of the Burages' house, where Shelia and Ferral Burage's bodies could be found, and that Ferral Burage had shot him. *Ibid.* The officers' evident purpose in questioning petitioner was to determine "where potential victims were located," whether petitioner "required medical attention," and "if there were other active shooters." App.44. The questions were "reasonably prompted by a concern for the public safety" and meant to "neutralize [a] volatile situation." *Quarles*, 467 U.S. at 656, 658. The officers' exchanges with petitioner thus fell within the public-safety exception to *Miranda*, and petitioner does not claim otherwise.

Next, the state supreme court correctly held that petitioner's statements to police were freely and voluntarily given. App.44-45. Petitioner claims that there is "evidence" of "coercion or threat[s]" because the arresting officers "appl[ied] pressure to an injured and already subdued suspect." Pet. 28. That claim is belied by the video of petitioner's arrest and detention. App.44. As the supreme court explained, "when [petitioner] complained of pain from the detention, the officers shifted themselves and eventually transitioned [him] into a seated position." *Ibid.* And after the brief initial questioning, police "never made any [further] inquiry of [petitioner] during the

arrest"; rather, petitioner chose to "continue[ ] ... speak[ing] to law enforcement" after he was read his rights. App.13, 44-45. Petitioner points to nothing to rebut these facts or to suggest that his "will was overborne" while speaking to police. *Haynes v. Washington*, 373 U.S. 503, 513 (1963). Invoking *Edwards v. Arizona*, 451 U.S. 477 (1981), petitioner also claims that officers ignored his "constant[ ]" "request[s]" for an attorney. Pet. 28; *see* Pet. 27-28. Even putting aside the public-safety exception discussed above, that claim fails on the facts: A "thorough review of the video record" by the court below failed to reveal "a single instance in which [petitioner] requested an attorney" while being detained. App.44; *compare Edwards*, 451 U.S. at 479-80, 485 (confession inadmissible where police "reinterrogate[d]" defendant in jail after he "clearly asserted his right to counsel").

Last, there is no merit to petitioner's claim that police violated his Sixth Amendment right to counsel by "knowing[ly] exploit[ing]" the opportunity to question him "without counsel being present." Pet. 29. That right did not attach until the "initiat[ion]" of "judicial proceedings" against petitioner (*Fellers v. United States*, 540 U.S. 519, 523 (2004))—which occurred long after he made the statements at issue. *Compare Maine v. Moulton*, 474 U.S. 159, 161-68 (1985) (discussing statements made to "secret government informant" "after indictment"). In any event, as explained above, video evidence belies petitioner's claim that he invoked any right to counsel.

Third, petitioner asks this Court to decide whether the trial court erred by "admitting into evidence" the contents of "searches" that violated the Fourth Amendment. Pet. i. He claims that the searches of his vehicle, home, electronic

devices, and person were made without proper warrants or exigent circumstances. *See* Pet. 30-36. The state supreme court correctly rejected these claims. App.45-46.

To start, the state supreme court correctly held that police lawfully searched petitioner's home, devices, and person. Petitioner appears to claim that his "residence" and "devices" "were searched" "without a warrant" or, alternatively, that they were searched under warrants that were "improperly obtained" without "probable cause." Pet. 30; *see* Pet. 30-33. But as the court below explained, police searched petitioner's home and devices under "valid warrants." App.45. (The State ultimately declined to use at trial any information from petitioner's phones. *Ibid.*). Petitioner does not identify any flaws in the warrants that the police relied on or in the facts supporting those warrants, so his claim fails. *Cf. Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). Petitioner also alludes to the search of his person. *See* Pet. 30. But petitioner was "lawfully searched pursuant to his arrest" (App.45), and he does not claim otherwise. *E.g.*, *Chimel v. California,* 395 U.S. 752, 762-63 (1969).

Next, the state supreme court correctly held that the police lawfully seized evidence from petitioner's car, which he left at the scene of the first murders. App.45-46. While searching the Mitchell residence under a valid warrant, a crime-scene investigator saw a partially opened "duffle bag containing multiple boxes of ammunition" through the open hatchback of petitioner's station wagon. App.45. The investigator removed the bag "when it began to rain" due to concern that "the evidence might become damaged." App.45-46. The state supreme court held that the ammunition was properly admitted under the "automobile, plain view, exigent circumstances[,] and abandonment exceptions" to the Fourth Amendment's warrant

requirement. App.46; *see* App.45-46. Even if petitioner's car were not covered by the warrant for the Mitchell residence, petitioner gives no reason for this Court to review the fact-bound application of these well-established exceptions, any one of which is sufficient to reject petitioner's claim. Petitioner argues, for example, that the plain-view doctrine does not apply because "no incriminating characteristic[s]" were "immediately apparent" from the seized evidence. Pet. 35. But a bag of ammunition at the scene of a mass shooting clearly has "incriminating characteristic[s]." *Cf. Texas v. Brown*, 460 U.S. 730, 738 (1983) (plurality opinion) (plain view requires only "that there is probable cause to associate the property with criminal activity"). And petitioner does not allege that the investigator observed the bag from a place she was not lawfully allowed to be. *See Horton v. California*, 496 U.S. 128, 136-37 (1990). So the plain-view exception applies. Petitioner also argues that the automobile exception does not apply because his "car was not searched incident to a lawful arrest." Pet. 35. But the automobile exception is distinct from searches incident to arrest, and it applies not only because cars are "immediately mobile" but "because the expectation of privacy" in cars "is significantly less than [in] one's home or office." *California v. Carney*, 471 U.S. 386, 391 (1985). Petitioner also disputes the application of the abandonment exception, arguing that his car was not abandoned because a witness to petitioner's crimes allegedly "t[ook] the keys out of the car without [his] instruction or knowledge." Pet. 36. But the fact that petitioner left his car open with the keys inside reinforces that he abandoned the car during his crime spree and thus lacked any expectation of privacy in its contents. *Cf. Abel v. United States*, 362 U.S. 217, 241 (1960); *Hester v. United States*, 265 U.S. 57, 58 (1924). Again, any of these exceptions

defeats petitioner's argument. And there is one more independent reason to reject petitioner's view: Petitioner admits that his car was impounded after his arrest and that an "inventory [search] of an impounded vehicle" is "lawful." Pet. 35. The ammunition in petitioner's car would have been found during a post-arrest inventory search. So even if the exceptions to the warrant requirement described above did not apply, the evidence still would have been admissible under the inevitable-discovery exception. *See Nix v. Williams*, 467 U.S. 431, 443-44 (1984).

Fourth, petitioner asks this Court to decide whether the "right of access [to] evidence of exculpatory value and the Fourteenth Amendment require preservation of [a defendant's] cell phone and [its] contents." Pet. i; *see* Pet. 21-26. The Mississippi Supreme Court correctly rejected petitioner's claim that the State violated its duties to turn over or preserve exculpatory or potentially useful evidence. App.51-52.

Under *Brady v. Maryland*, 373 U.S. 83 (1963), a State must disclose certain evidence that "is material either to guilt or to punishment." *Id.* at 87. A State violates that duty if it "suppresse[s]" evidence; the evidence is "favorable to the accused" "because it is exculpatory" or "impeaching"; and "prejudice ... ensue[s]" from the nondisclosure—*i.e.*, there is "a reasonable probability that the suppressed evidence would have produced a different verdict." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Petitioner claims that the State "prejudiced his defense" by "[n]ot disclosing contents from his cell phone." Pet. 22. But petitioner did "receive[ ] the data and information extracted from [his] cell phone prior to trial." App.52. And he does not identify any further evidence that the State failed to disclose. He speculates that a more "thorough investigative review" of his phone would have produced "[e]vidence

related to" his "personal relationships and biases" and his "only daughter" who "had been 'sexually assaulted.'" Pet. 22. This, he says, "would have revealed ... maybe a potential motive" for his crimes. *Ibid.* Such speculation does not meet petitioner's burden to *identify* favorable *evidence* that the State *in fact possessed* and failed to disclose. *Wood v. Bartholomew*, 516 U.S. 1, 6 (1995) (per curiam) ("mere speculation" that "additional evidence" may exist "that could have been utilized" by defense is insufficient); *United States v. Agurs*, 427 U.S. 97, 109-10 (1976) ("mere possibility that an item of undisclosed information might have helped the defense" "does not establish" a *Brady* violation); *United States v. Briscoe*, 101 F.4th 282, 297 (4th Cir.), *cert. denied,* 145 S. Ct. 382 (2024) ("rank speculation as to the nature of the allegedly suppressed materials ... cannot establish a *Brady* violation"); *United States v. Erickson*, 561 F.3d 1150, 1163 (10th Cir. 2009) ("A *Brady* claim fails if the existence of favorable evidence is merely suspected. That the evidence exists must be established by the defendant."); *United States v. Ramos*, 27 F.3d 65, 71 (3d Cir. 1994) ("mere speculation that *Brady* material might be present is insufficient").

Petitioner also cannot show prejudice. He speculates that "evidence" on his phone could have supported the "defense of 'Heat of Passion Manslaughter.'" Pet. 26. But given the "considerable" and "powerful" evidence against petitioner, the fact that the jury heard testimony about an alleged assault involving his daughter, and the speculative nature of his claims about alleged evidence on his phone, petitioner's allegations do not come close to "undermin[ing] confidence in the verdict." *Strickler*, 527 U.S. at 290, 293. At bottom, "[t]he record provides strong support for the conclusion that petitioner would have been convicted of capital murder and sentenced

to death" even if the claims about his phone had some basis. *Id.* at 294; *see* App.27 ("Each crime for which [petitioner] was indicted benefitted from the testimony of at least one eye (or ear) witness."); App.13-17 (discussing expert and forensic evidence).

A State may also violate a defendant's due-process rights by failing to "preserve evidentiary material" that is "potentially useful" to the defense. *Arizona v. Youngblood*, 488 U.S. 51, 57, 58 (1988). But a defendant can succeed on such a claim only by "show[ing] bad faith." *Id.* at 58. Petitioner accuses the State of failing to "analyze" his cell phone; of improperly using "different" "methods" and "procedures" for handling his phone than for "other phones in th[e] case"; and of "destroy[ing]" his phone and its contents. Pet. 23, 25, 26. His claims do not withstand scrutiny. A report prepared by the State's cyber-crime center, which was disclosed to the defense before trial, explained that data was recovered from the two phones recovered from petitioner upon arrest. BIO App.1-2. Due to passcode protection, only "partial" data was recovered from one phone—the "Galaxy Note 5" that petitioner cites. BIO App.2; *see* Pet. 25. Petitioner points to nothing that suggests that the State used improper methods to analyze the phone or that the State improperly caused any data loss. *Cf. Youngblood*, 488 U.S. at 58-59 (rejecting view that "the Due Process Clause is violated when the police fail to use a particular investigatory tool" or "perform any particular tests"). Before the state supreme court, petitioner's counsel alleged that the State "rais[ed] the barrier for [the defense's] efforts to find [helpful] evidence" "on [petitioner's] phone" by "us[ing] a method of data extraction ... that made its data impossible for the defense to read *without expert analysis*." Appellant Br. 7 (bit.ly/3Dk59jd) (emphasis added). But counsel did not claim that the defense was

unable to use the data that was recovered or that the State failed to preserve any other evidence. Petitioner's speculation that the "destruction" of his phone deprived him of "[h]is one opportunity to defend himself" (Pet. 26) does not change the outcome or remove his burden to show bad faith—a burden he does not attempt to carry.

Fifth, petitioner asks this Court to decide whether "failure to ... complete" a "court[-]order[ed]" psychiatric examination "den[ies] Due Process" under "the [F]ourteenth and [E]ighth Amendment[s]." Pet. i; *see* Pet. 11-15; *see also* Pet. 16-18, 20. This claim is meritless. Before petitioner was indicted, his initial attorney "filed a motion for a psychiatric evaluation," "which was granted by the justice[-]court judge" assigned to his preliminary hearing. Pet. 11. Petitioner claims that, by later failing to "respect[ ]" that "mandatory" order, the trial court violated his "due[-]process" rights. *Ibid.* But petitioner's trial counsel "did not move to renew the order for a psychiatric evaluation." App.52. Petitioner points to no law requiring the trial court to enforce an order from an inferior court (the justice court is inferior to the trial court)—let alone an order that defense counsel did not seek to renew. Separately, when the State later "filed its own motion for [petitioner] to undergo a mental evaluation" in the trial court, petitioner's counsel "object[ed]" to that request. *Ibid.* The trial court "h[e]ld the motion in abeyance until ... the defense indicated that [petitioner's] competency was in question," but "[t]he defense never raised competency as an issue." *Ibid.*; *see* App.53. The trial court did not err in failing to enforce an initial order for a psychiatric evaluation in these circumstances.

Petitioner invokes *Ake v. Oklahoma*, 470 U.S. 68 (1985), which held that a State must give an indigent defendant access to a psychiatrist when the defendant

"demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial," *id.* at 83, and claims that that requirement applied here. Pet. 14-15. That is not so. As noted, petitioner's counsel "never raised [petitioner's] competency as an issue" and "object[ed]" to the State's request for a mental evaluation of petitioner. App.52. So the defense did not establish to the trial judge that petitioner's sanity would "be a significant factor at trial." *Ake*, 470 U.S. at 83.

Petitioner also claims that the trial court erred by failing to sua sponte order a competency hearing under state law and that his trial counsel was ineffective for not requesting such a hearing. Pet. 13, 20; *see* Pet. 16-18. But, as the Mississippi Supreme Court observed, the record is "devoid of evidence indicating whether a mental examination was necessary for [petitioner] to stand trial." App.53. And any claim that trial counsel "should have raised the issue of competency" is, as that court recognized, "best reserved for a future petition for post-conviction relief with the benefit of a more complete record." *Ibid.* Petitioner does not call those rulings into question, and there is no basis for this Court to review petitioner's claims here.

Sixth, petitioner asks this Court to decide whether his trial counsel performed deficiently in "violation of [the] Sixth Amendment." Pet. i; *see* Pet. 16-20. The Mississippi Supreme Court soundly declined to resolve petitioner's ineffective-assistance claims and this Court should too. To succeed on such a claim, petitioner must show that counsel's performance "fell below an objective standard of reasonableness" and "prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687, 688 (1984). As in many States, Mississippi law provides that ineffective-assistance claims "[g]enerally ... are more appropriately brought during

postconviction proceedings" rather than on direct appeal. App.59 (quoting *Ross v. State,* 288 So. 3d 317, 324 (Miss. 2020)); *cf. Massaro v. United States*, 538 U.S. 500, 504-05, 508 (2003). Mississippi courts "address such claims on direct appeal when [1] the record affirmatively shows ineffectiveness of constitutional dimensions, or [2] the parties stipulate that the record is adequate and the Court determines that the findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed.'" *Ibid.* (quoting *Ross*, 288 So. 3d at 324) (cleaned up). Neither factor is present here, and "[t]he record" before the state supreme court "lack[ed] sufficient evidence and information" to address petitioner's ineffective-assistance claims "on direct appeal." App.60. Petitioner's claims are "preserved" for "potential future ... petitions" for "post-conviction relief." *Ibid.* Petitioner gives no reason to question the lower court's application of state law or its view of the record, nor does he identify any federal question warranting this Court's review now.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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March 12, 2025

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

STATE OF MISSISSIPPI
OFFICE OF THE ATTORNEY GENERAL
CYBER CRIME CENTER

REPORT

CASE NUMBER: CC-18-00022 & B1700000244

SUBJECT: Technical Assistance Related to Mobile Devices

DATE: February 7, 2018

INVESTIGATOR: Charlie Rubisoff, CFCE, CFE

Pursuant to a request from the Mississippi Bureau of Investigation and the Lincoln County District Attorney's Office, I have provided technical assistance in the form of data collection and reporting from two mobile devices related to alleged homicides. The devices submitted are a Samsung Galaxy S5, model SM-G900R7, Mobile Equipment Identifier 99000466985002, Item 1; and a Samsung Note 5, model SM-N920R7, Mobile Equipment Identifier 99000584948161, Item 2. Search authority for the submitted devices was derived from search warrants issued on February 2, 2018. Each of the devices was found in sealed envelopes labeled as containing biohazards.

On submission of the devices for examination, District Attorney Investigator John Whitaker completed an Advanced Data Extraction Waiver permitting the use of Chip Off methods for data collection from the devices.

In the course of the examination, the devices were surveyed and photographed.

Item 1, the Samsung Galaxy S5, was found to have damage to the screen and what appeared to be dried blood on the casing. Data collection from Item 1 was attempted using Cellebrite tools. In this attempt the device gave indications of power related issues which caused the device to power off. An external power source was used to power the phone in an effort to mitigate this power issue. With the external power supply the device continued to power off. Based on the phone's inability to remain powered during the data collection, I determined it was a candidate for Chip Off methods. I contacted MBI Special Agent Jason Leggett to discuss the use of Chip Off methods on the device and recommended their use. SA Leggett agreed. The phone was disassembled and the eMMC chip containing the device's stored user data was identified. The chip was removed using a hot air source to melt the underlying solder and adhesive. The chip was cleaned to remove remaining adhesive. The chip was then read using a chip adapter and a write block device. A digital copy, or forensic image, of the chip's contents was made using FTK Imager. The resulting forensic image was then examined using Cellebrite tools. The available recoverable data from the chip has been included in a report for Item 1.

Item 2, the Samsung Galaxy Note 5, was found to be in working order. Access to the device was blocked by an alpha-numeric user passcode. A partial file system collection from the device was successful using Cellebrite tools. I contacted SA Leggett to discuss alternative data collection methods which might potentially provide more data than was collected in the partial file system extraction. The methods I discussed each included the potential permanent loss of data on the device. Based upon these risks and discussion with the District Attorney's Office, SA Leggett requested no potentially destructive methods be employed on Item 2. The data recovered in the partial file system extraction has been included in a report for Item 2.

These reports are being made available for investigative review to the submitting law enforcement officers. If, in the course of this review, additional analysis or explanation is needed I can be contacted at chrub@ago.state.ms.us.