No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

ROYHEM DEEDS,

Petitioner,

v.

KEVIN SPRAYBERRY, WARDEN,

Respondent.

_____

On Petition for Writ of Certiorari
to the Supreme Court of Georgia

_____

PETITION FOR WRIT OF CERTIORARI

_____

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February 18, 2025

QUESTION PRESENTED

The state habeas court held that an oral exculpatory statement, made by a complaining witness to a state law enforcement officer, cannot constitute *Brady* material unless it is committed to writing or otherwise recorded:

> Because Petitioner failed to establish the victim's alleged second statement was nothing other than an oral statement to law enforcement, Petitioner failed to satisfy his burden to prove the State possessed the statement. Therefore, Petitioner failed to meet his burden to establish the favorable evidence was suppressed because the State cannot suppress something it does not possess.

Final Order, *Deeds v. Sprayberry, Warden*, No. 23-CH-008, at 12 (Super. Ct. Telfair Co. Dec. 15, 2023) (attached as Exhibit A).

The question presented is whether *Brady v. Maryland*, 373 U.S. 83 (1963), applies to exculpatory oral statements made to the State that the State does not memorialize or otherwise record.

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TABLE OF AUTHORITIES

PARTIES TO THE PROCEEDING

Petitioner Royhem Deeds was the petitioner in the proceedings below. Respondent Kevin Sprayberry, Warden, was the respondent in the proceedings below.

LIST OF RELATED PROCEEDINGS

Trial and Direct Appeal

State of Georgia v. Royhem Delshawn Deeds, Super. Ct. Telfair Co. No. 15-R-259

Royhem Deeds v. State of Georgia, Ga. Ct. App. No. A18A1644 (Mar. 11, 2019)

Royhem Deeds v. The State, Ga. S. Ct. No. S19C0978 (Nov. 4, 2019)

State Post-Conviction and Appeal

Royhem Deeds v. Kevin Sprayberry, Warden, Super. Ct. Telfair Co. No. 2023-CH-008

Royhem Deeds v. Kevin Sprayberry, Warden, Ga. S. Ct. No. S24H0543 (Oct. 22, 2024)

PETITION FOR WRIT OF CERTIORARI

Petitioner Royhem Deeds respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Georgia.

OPINIONS BELOW

The Order of the Superior Court of Telfair County, Georgia, denying Mr. Deeds's state habeas petition is attached as Exhibit A. The order of the Supreme Court of Georgia denying a certificate of probable cause to appeal the denial of state habeas corpus is attached as Exhibit B.

JURISDICTION

The Supreme Court of Georgia denied Mr. Deeds's application for a certificate of probable cause to appeal the denial of his state habeas corpus petition on October 22, 2024. On December 30, 2024, Justice Thomas extended the time within which to file this petition for writ of certiorari to and including February 19, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in relevant part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." U.S. Const. amend. XIV, § 1.

INTRODUCTION

The state habeas court ruled that if an exculpatory statement made orally by a witness to a police officer is not written down by the officer, it cannot constitute *Brady* material.

> Because Petitioner failed to establish the victim's alleged second statement was nothing other than an oral statement to law enforcement, Petitioner failed to satisfy his burden to prove the State possessed the statement. Therefore, Petitioner failed to meet his burden to establish the favorable evidence was suppressed because the State cannot suppress something it does not possess.

Ex. A at 12. That is a false statement of constitutional law, applied below to deny Royhem Deeds relief from an unconstitutional conviction. In light of the state court's blatantly unconstitutional analysis, this Court should "wipe the decision off the books" so the lower court's "aberrant decision" does not stand. *Coalition for TJ*

v. Fairfax County School Board, No. 23-170, 601 U.S. __, at 9 (Feb. 20, 2024) (Alito, J., dissenting from denial of certiorari). The Court should grant this Petition and summarily reverse.

STATEMENT OF THE CASE

The complaining witness in this case, Edrick Clark, was shot in his leg on July 27, 2015, in Telfair County. Ex. A at 3. At the hospital after the shooting, law enforcement questioned Mr. Clark about the identity of his shooter. *Id.* Mr. Clark said that he saw the shooter, but did not recognize him. *Id.* Investigation eventually led the prosecutors to indict Royhem Deeds for the shooting, based on the identification by a minor child who claimed that Mr. Deeds was the shooter. *Id.* at 5. Mr. Deeds was charged with several felonies, including aggravated assault, and faced up to twenty years in prison. *Id.* at 2.

After Mr. Clark was released from the hospital, he was interviewed again by a Telfair County law enforcement officer who "specifically asked [him] if the Petitioner [Royhem Deeds] was the person who shot him, to which [Mr. Clark] said 'no.'" *Id.* at 4 (quoting testimony). Even though Mr. Deeds's attorney had filed a request for *Brady* material, the State never disclosed this critical admission from Mr. Clark. Thus, Mr. Deeds and his attorney were unaware that the complaining witness, who saw the shooter and knew Mr. Deeds, told the police the shooter was *not* Mr. Deeds.

Mr. Deeds has always maintained his innocence. His attorney, however, who was never informed of the complainant's exonerating statement, urged Mr. Deeds to

accept an offer that was uniquely generous in his experience in the county: enter an *Alford*[1] plea with no admission of guilt in exchange for First Offender treatment (and no criminal record), the dismissal of five felony charges, immediate release from custody (Mr. Deeds was being held on a pretrial bond he could not afford), no additional imprisonment, and probation to potentially terminate after two years. *Id.* at 6.

Mr. Deeds initially rejected this offer but, after trial counsel enlisted the help of a colleague, Mr. Deeds ultimately accepted it. *Id.* at 13. He entered a plea that was in his "best interests" based on what he knew of the case against him. *Id.* at 16. At the plea hearing, his attorney stated:

> I will say this is a defensible case. It's not a slam dunk by any means for the State, but it's also a case that would hinge on the credibility of this one witness [the minor child] and, as I said, if believed Mr. Deeds could be looking at a far worse punishment than what's on the table by way of this agreement.

Id. at 6. Mr. Deeds was sentenced to probation under the First Offender Act and was released from custody.

When post-conviction counsel investigated the case, they learned of the complaining witness's statement to law enforcement that exonerated Mr. Deeds. Mr. Deeds moved, unsuccessfully, to withdraw his *Alford* plea. *Id.* at 2. He then filed a state habeas petition, arguing that the State had violated *Brady* in failing to disclose the complainant's exonerating statement.

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

At the state habeas hearing, trial counsel testified that he had believed the complainant was irrelevant to the case because he could not make an identification, and thus the case would rise and fall with the minor child's identification. *Id.* at 6. What counsel and Mr. Deeds did not know, however, because the State withheld the information, was that the complainant would actually make a *non*-identification: he saw the shooter, knew Mr. Deeds, and knew the shooter was *not* Mr. Deeds. *Id.* at 4. Trial counsel testified at the hearing that he "certainly" would have changed his approach to Mr. Deeds's case had the State disclosed the complainant's exonerating statement.

The state habeas court denied the petition on December 15, 2023, ruling that:

> Because Petitioner failed to establish the victim's alleged second statement was nothing other than an oral statement to law enforcement, Petitioner failed to satisfy his burden to prove the State possessed the statement. Therefore, Petitioner failed to meet his burden to establish the favorable evidence was suppressed because the State cannot suppress something it does not possess.

Ex. A at 12. The Supreme Court of Georgia denied Mr. Deeds's application for probable cause to appeal, Ex. B, and this Petition follows.

REASONS FOR GRANTING THE WRIT

This Court's mandate in *Brady v. Maryland*, 373 U.S. 83 (1963), and the many cases interpreting it, is plain: the State must disclose evidence favorable to the accused as a matter of due process. This constitutional requirement does not distinguish between exculpatory evidence that the State chooses to memorialize and exculpatory evidence that the State hears but chooses not to reduce to writing. And for good reason. If *Brady* did not apply to exculpatory information the State hears

but chooses not to record, the incentives for dishonesty and concealment would reign, and the many State agents working on a criminal investigation would be free to evade *Brady*'s constitutional requirements simply by declining to memorialize exculpatory evidence. Such a rule would eviscerate the due process requirements *Brady* safeguards, and it would "cast[ ] the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice." *Brady*, 373 U.S. at 88.

The *Brady* requirement ensures that "criminal defendants are acquitted or convicted on the basis of all evidence which exposes the truth." *Kyles v. Whitley*, 514 U.S. 419, 440 (1995) (internal quotations and citations omitted). As a matter of due process, *Brady* applies whether the State chooses to write exculpatory information down or not. The State's constitutional duty to disclose encompasses exculpatory statements that have not been, for whatever reason, reduced to writing. There can be no honest disagreement that this is so.

The habeas court's conclusion that exculpatory oral statements made to the State that are not otherwise recorded are exempt from *Brady* disclosure because they are not in the "possession" of the State, Ex. A at 12, is an incorrect statement of constitutional law. Indeed, the state court did not, because it could not, cite any authority for such an unconstitutional proposition. To the contrary, oral exculpatory statements made to state agents are uncontrovertibly in the possession of the State. *See, e.g.*, *LaCaze v. Warden La. Correctional Institute for Women*, 645 F.3d 728 (5th Cir. 2011) (reversing where State failed to disclose unwritten immunity deal); *Bell v. Bell*, 512 F.3d 223 (6th Cir. 2008) ("The existence of a less

formal, unwritten, or tacit agreement is also subject to *Brady*'s disclosure mandate."); *United States v. Rodriguez*, 496 F.3d 221, 222 (2d Cir. 2007) ("When the Government is in possession of material information that impeaches its witness or exculpates the defendant, it does not avoid the obligation under *Brady*/*Giglio* to disclose the information by not writing it down."); *United States v. Casas*, 425 F.3d 23, 43 (1st Cir. 2005) ("The *Brady* rule . . . encompass[es] verbal cooperation agreements."); *United States v. Joseph*, 533 F.2d 282, 286 (5th Cir. 1976) (finding that it "would be incongruous to hold that an oral agreement falls outside the scope of *Brady*, a written agreement within"); *see also Savage v. State*, 600 So. 2d 405, 408 (Ala. 1992) (applying the *Brady* rule to "*any* statement, whether oral or written"); *Flores v. State*, 940 S.W.2d 189, 191-92 (Tex. Ct. Crim. App. 1996) (same); *Strobbe v. State*, 752 S.W.2d 29, 31-32 (Ark. 1988) (same).

The state habeas court's ruling that a law enforcement officer's decision not to write down or otherwise memorialize a clearly exculpatory statement renders the statement exempt from *Brady* because it is not in the "possession" of the State and thus cannot be "suppressed" is constitutionally indefensible and relieves the State of its *Brady* obligations in this case and in any case that should rely on the lower court's opinion in the future. Worse, the ruling incentivizes layers of complicity. If a State actor can avoid the mandates of *Brady* simply by choosing not to write down exculpatory information, then a police officer, line prosecutor, or other State agent who receives exculpatory information could avoid its disclosure obligations by hearing it and simply ignoring it. Thus, even the most honest of prosecutors might,

unwittingly, not know (let alone share with the defense) exculpatory information because a State agent preceding him or her in the investigation decided not to write down the information. That is not how the system is meant to work; it certainly is not how *Brady* is meant to work.

In this case, the state habeas court's decision that *Brady* only applies to exonerating statements that are written or recorded is so egregiously unconstitutional that it must be wiped "off the books" so that the "aberrant decision" does not stand as reliable authority. *See Coalition for TJ*, 601 U.S. at 9 (Alito, J., dissenting from denial of certiorari). As such, this Court should summarily reverse to ensure that other Georgia trial courts do not interpret *Brady* and its progeny in such an unconstitutional way.

CONCLUSION

This Court should grant certiorari and summarily reverse the judgment of the Supreme Court of Georgia.

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APPENDIX A

IN THE SUPERIOR COURT OF TELFAIR COUNTY
STATE OF GEORGIA

ROYHEEM DEEDS GDC # 1001762576, Petitioner, v. KEVIN SPRAYBERRY, Warden, Respondent.	)	Habeas Action File No. 23-CH-008

FINAL ORDER

Royheem Deeds ("Petitioner"), through counsel, filed an Application for Writ of Habeas Corpus ("Writ") on March 27, 2020 in Chattooga County challenging the validity of his April 4, 2016 Telfair County Alford plea and conviction. The Court, as a preliminary finding, determines that Petitioner's Writ was timely filed within the provisions of O.C.G.A. § 9-14-42(c) and was filed on the appropriate, required Administrative Office of the Courts ("A.O.C.") forms and the allegations therein have been verified. Legal service was perfected on the Warden of Hays State Prison on or about April 24, 2020. Petitioner completed his sentence prior to an evidentiary hearing, and on January 20, 2023 the case was transferred to Telfair County pursuant to O.C.G.A. § 9-14-43 ("If the petitioner is not in custody . . . the petition must be filed in the superior court of the county in which the conviction and sentence which is being challenged was imposed."). Petitioner entered his plea and was sentenced as a First Offender in Telfair County Criminal Action No. 15-R-259 on April 4, 2016. ("Case") (HT 81-91). Venue and jurisdiction are proper in the Superior Court of Telfair County. Based on the foregoing findings, the Court has jurisdiction over the parties and subject matter jurisdiction to adjudicate the allegations set out in Petitioner's Writ. An evidentiary hearing ("Hearing") was held on June 21, 2023 in Telfair County, Georgia. After

reviewing Petitioner's Writ, the evidence, the entire record of the case, and applicable law, the Court DENIES Petitioner's Writ and makes the following findings:

PROCEDURAL HISTORY

On November 2, 2015, a Telfair County grand jury indicted Petitioner for aggravated assault (Counts 1-2 and 4-5), criminal attempt to commit a felony (Count 3), and cruelty to children in the first degree (Counts 6-7) (Transcript from Habeas Corpus Evidentiary Hearing 690-93) [hereinafter HT]. On April 4, 2016, Petitioner entered an *Alford*[1] plea as to Count 1, and the remaining Counts were nolle prossed. (HT 81-82). Stuart Deal ("plea counsel") of the public defender's office represented Petitioner at the plea hearing. *E.g.*, (HT 237). Petitioner was sentenced as a first offender and ordered to serve 5 years on probation, with a special condition that probation could be terminated after two years of successful supervision. (HT 82, 90).

Petitioner, through new counsel, filed a Motion to Withdraw Guilty Plea ("Motion") on February 23, 2017,[2] and this Court (Johnson, J.) held a hearing on February 27, 2018. (HT 329-403). On March 8, 2018, this Court (Johnson, J.) dismissed the Motion on jurisdictional grounds (HT 682-84), and the dismissal was affirmed on appeal on March 11, 2019 in *Deeds v. State*, 349 Ga. App. 348 (2019). *See also* (HT 574-79).

On November 21, 2019, this Court (Johnson, J.) revoked Petitioner's First Offender status and sentenced him to serve the remainder of the five-year sentence in prison. As discussed above, Petitioner filed the Writ, completed his sentence during the pendency of his habeas case and prior

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

[2] (HT 298-301). Petitioner filed supplements to the Motion on February 21, 2018 (HT 294-96) and February 26, 2018 (HT 305-07).

to an evidentiary hearing. This Court obtained jurisdiction when the case was transferred to Telfair County pursuant to O.C.G.A. § 9-14-43.

ISSUES

Petitioner raised the following Grounds for relief:

> **Ground One:** The State's withholding of material, exculpatory evidence violated *Brady v. Maryland* and requires a reversal of Petitioner's conviction. (Writ 5); (HT 3).
>
> **Ground Two:** The State's withholding of the victim's exculpatory statement rendered Petitioner's *Alford* plea involuntary and unknowing. (Writ 8); (HT 3).
>
> **Ground Three:** The trial court failed to establish the requisite strong record of actual guilt before accepting Petitioner's *Alford* plea. (Writ 9); (HT 3-4).
>
> **Ground Four:** The Oconee Circuit Public Defender's simultaneous representation of the victim created an impermissible conflict of interest in violation of Petitioner's Sixth Amendment right to conflict-free counsel. (HT 71-76); (Pet. Br. 28-31).[3]

At the Hearing, plea counsel testified and was cross-examined, and documentary evidence was admitted. The evidence was closed at the conclusion of the Hearing. The transcript was filed on August 3, 2023. Both Petitioner and Respondent timely filed post-hearing briefs.

FACTUAL BACKGROUND

On July 27, 2015, Edrick Lee Clark ("victim") was shot in the leg in Telfair County, Georgia. Following the shooting, the victim allegedly gave two statements to law enforcement. He gave the first statement to an agent from the Georgia Bureau of Investigation ("GBI") on the day of the shooting, stating he saw the shooter, but he did not know the shooter. (HT 120-25). At some point after the victim was released from the hospital following treatment for the gunshot wound to

[3] This Ground was not raised in the original Writ or in any amendment, and was first raised in Petitioner's rebuttal argument following Respondent's closing argument. Following the Hearing, Petitioner's counsel filed an Unopposed Motion to Amend Pending Petition for Writ of Habeas Corpus on July 14, 2023. Ground Four has been briefed by both parties in their post-hearing briefs. Therefore, the Court will address Ground Four on the merits.

his leg, the victim was arrested for sale of cocaine. While the victim was being held in custody on the cocaine offense (and prior to Petitioner entering his plea in the Case), someone allegedly from the Telfair County Sheriff's Office questioned the victim about the shooting and specifically asked the victim if the Petitioner was the person who shot him, to which the victim said "no." (HT 339-40).

On November 2, 2015, Petitioner was indicted in the Case. Petitioner was arrested on December 11, 2015. On January 31, 2016, plea counsel filed a discovery motion seeking all exculpatory evidence in the State's possession. (HT 220-22). The State disclosed the victim's first statement (HT 120-25) and other witness statements provided to the GBI, but the State did not provide the victim's alleged second, subsequent statement to the Telfair County Sheriff's Office received following the victim's cocaine arrest. At the Motion to Withdraw Plea hearing, the victim testified[4] that he knew the Petitioner prior to the shooting; that he saw the person who shot him, but did not know who it was; and that it was not the Petitioner who shot him. (HT 339-40).

The victim also testified that after he got out of the hospital he got arrested for selling cocaine, and he talked to a detective with the Telfair County Sheriff's Office who asked him about the shooting and whether it was the Petitioner who shot him – to which he answered "no."[5] (HT 339-40). As to the identity of the detective to whom the victim made the statement, the victim testified "I don't know his name, but he's the detective that made an arrest on a sale case that he arrested me for that day." (HT 344-45). At the Hearing, Petitioner did not call any witnesses from

[4] The victim died prior to the Hearing; therefore, the Court can only evaluate his testimony from the hearing on Petitioner's Motion to Withdraw Guilty Plea.

[5] The victim was asked "Did you ever speak with anyone from law enforcement regarding getting shot?" – to which he replied "After I got out of the hospital I got arrested for sale of cocaine charge. I talked to a detective and he mentioned my sale case. He mentioned Royheem's name and asked . . . was he the one that shot me." (HT 340).

the Telfair County Sheriff's Office, despite the victim's specific description of the detective who allegedly solicited the second statement as the detective who arrested the victim in connection with the cocaine charge.

At the Motion to Withdraw Plea hearing, the State called Jeff Deal ("Sergeant Deal"), who at the time was a sergeant at the Telfair County Sheriff's Office who worked as a drug investigator and arrested the victim in his cocaine case. (HT 374-75). Sergeant Deal testified as to a conversation he had with the victim outside of the jail following the victim's release from the hospital and just prior to the victim's arrest. Sergeant Deal testified he had secured a warrant for the victim's arrest for sale of cocaine, and the purpose of the meeting was in connection with the victim's apparent desire to clear his name. *See* (HT 375-76). Sergeant Deal testified the victim met with him outside the Telfair County Jail and wanted to see the evidence, at which point Sergeant Deal showed the victim still shots from a video of the sale and pointed out the victim's cane he was using after he got shot in the leg and the victim's distinctive chipped tooth. (HT 375-76). The victim denied his involvement and said the person was just someone who looked like him. (HT 376). Sergeant Deal testified he never asked the victim about the shooting incident and did not even know who the Petitioner was at that point in time. (HT 376). Petitioner chose not to cross-examine Sergeant Deal. (HT 376).

There was a second witness to the shooting – a minor child – who gave a statement to the GBI specifically naming Petitioner as the shooter. (HT 118, 127-31, 189). The minor child's written statement was as follows: "I seen a blue car drive by after that the car came back and Reheem jump out an start shooting he took 2 shoots then they left[.] Me, sister[,] Edrick Dee was in the yard[.]" (HT 189). The statement dated July 27, 2015 (day of the shooting) was signed by the minor child and witnessed by one of the officers who responded to the scene.

At the plea hearing, the State represented to the Court (Johnson, J.) that the victim had been shot in his leg in Lumber City, and Petitioner had been identified "by witnesses" as the shooter. (HT 244). In response, plea counsel stated on the record:

> Your Honor, I'll state first of all for the record that, of course, Mr. Deeds is doing this because he feels it's in his best interest to resolve the case in this manner.
>
> As [the State] indicated, a witness did identify Mr. Deeds as the shooter, but out of the multiple people that were interviewed by law enforcement, both locally and with the GBI on this occasion, this young witness, this juvenile, was the only person to put Mr. Deeds' name as being involved in this.
>
> The victim, Mr. Clark, did not name anyone, the other witnesses did not name or describe anyone. It, basically, all falls back on this one witness. I've explained to Mr. Deeds this one witness, if believed, could be enough to convict him, not only of Count One, but of multiple other counts in the indictment.
>
> I will say this is a defensible case. It's not a slam dunk by any means for the State, but it's also a case that would hinge on the credibility of this one witness and, as I said, if believed Mr. Deeds could be looking at a far worse punishment than what's on the table by way of this agreement.

(HT 244-45). This Court (Johnson, J.) found a factual basis for the plea and accepted the plea as having been freely and voluntarily entered. (HT 246).

RULING

As an initial matter, the Court determines that none of Petitioner's claims are procedurally barred because the claims were never litigated and decided in any appeal.[6]

In Georgia, there is a presumption of regularity in final judgments of conviction, and when the validity of a conviction is assailed by way of habeas corpus, the petitioner bears the burden of proving by a preponderance of the evidence that his constitutional rights were violated in obtaining

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[6] *See, e.g.*, *Schofield v. Palmer*, 279 Ga. 848, 851 (2005); *Head v. Stripling*, 277 Ga. 403, 407 (2003); *Dupree v. State*, 279 Ga. 613, 614 (2005) (holding a guilty plea may be withdrawn at any time to correct a manifest injustice). Also see *Deeds*, 349 Ga. App. at 350. After affirming this Court's (Johnson, J.) dismissal of the Petitioner's motion to withdraw plea on jurisdictional grounds, the Court of Appeals of Georgia expressly noted that his plea may only be withdrawn in a habeas corpus proceeding. *Id.* (citing *Dupree*).

the judgment of conviction. *Gaither v. Gibby*, 267, Ga. 96 (1996). Where the conviction was obtained as a result of a plea, the Petitioner bears the burden of proving that his plea was not voluntary, knowing, and intelligent. *E.g.*, *Lejeune v. McLaughlin*, 296 Ga. 291 (2014). Additionally, "[t]he withdrawal of a plea is appropriate . . . to correct manifest injustice[,]" and the State's failure to comply with the clear mandate of *Brady* spawns such injustice, such that a defendant should be permitted to withdraw a plea. *See Carroll v. State*, 222 Ga. App. 560, 562 (1995).

Ground One

In Ground One, Petitioner alleges the State withheld exculpatory evidence in violation of *Brady*, and the conviction should be reversed.

"The suppression by the prosecution of favorable evidence to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. Regardless of whether a plea is determined to be knowing and voluntary, "a *Brady* violation by the State may nevertheless constitute grounds for withdrawing such plea if it resulted in a 'manifest injustice' and materially contributed to that plea." *Flanders v. State*, 360 Ga. App. 855, 855 n.3 (2021). To prevail on a *Brady* claim, Petitioner must show

> (1) the State possessed evidence favorable to [Petitioner's] defense; (2) [Petitioner] did not possess the favorable evidence and could not obtain it [himself] without any reasonable diligence; (3) the State suppressed the favorable evidence; and (4) had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the trial would have been different.

Muse v. State, 316 Ga. 639, 662 (2023). Petitioner bears the burden of proof to establish each prong. *Id.*

Favorable Evidence

To establish a *Brady* violation, the evidence alleged to have been suppressed must be favorable. *Brady*, 373 U.S. at 87. Evidence is "favorable" where it is material either to guilt or punishment. *Id.*

The victim's first statement to law enforcement was that he saw the shooter but did not know the shooter. (HT 120-21). The GBI investigative summary details the victim told the GBI he saw a vehicle stop in front of his house, and he "observed a light skinned person of unknown race or gender, get out of the front passenger seat of the vehicle quickly and lean across the hood of the vehicle with an unidentified object in their hand." (HT 121). The victim told the GBI he "began running toward the rear of his residence . . . [and] heard what he thought was a gunshot and felt a pain in his right leg." (HT 121). The victim could not provide further details about the shooter and "stated he did not know the individual and could not provide any more descriptors." (HT 121).

The victim's alleged second statement was to a law enforcement officer with the Telfair County Sheriff's Office. The victim died prior to the Hearing; therefore, the Court can only evaluate his testimony from the hearing on Petitioner's Motion to Withdraw Guilty Plea when the victim testified that following his (the victim's) arrest for selling cocaine, and while he was at the Telfair County Jail, a law enforcement officer questioned him about the shooting and asked whether Petitioner was the one who shot him, to which the victim responded "no." (HT 339-40). The victim also testified that he saw the person who shot him but did not know who it was. (HT 339). On cross-examination, the victim explained all he saw was "a blur" of the person, but he knew it was not the Petitioner because he knew the Petitioner, and he said "I would know him if I see him." (HT 344).

"The failure of the victim to identify [the defendant as an offender] does not create a reasonable doubt as to the guilt of the defendant." *Radford v. State*, 251 Ga. 50, 52 (1983). In line with the holding in *Radford*, the inability of the victim to identify the shooter is not necessarily probative of whether Petitioner was or was not the shooter. Here, the victim's alleged second statement is no more favorable than the first. In each statement, the victim failed to identify the shooter. Thus, it makes no difference that the victim essentially failed to identify the shooter because Petitioner would have known prior to entering his plea that the victim was not able to identify him as the shooter.

Assuming, *arguendo*, the victim's second statement to law enforcement can be differentiated from the first statement in that the second statement was specific that Petitioner was not the shooter, it would have been more favorable to Petitioner than a blanket statement that the victim did not know the shooter. (HT 121). Therefore, the Court addresses the four prongs of the *Brady* inquiry under the assumption that the evidence was favorable.

State's Possession of Favorable Evidence

As to the first prong, Petitioner must demonstrate the State possessed the favorable evidence. *Id.* "Information only falls within *Brady* . . . 'when it is possessed by the prosecutor or anyone over whom the prosecutor has authority.'" *Black v. State*, 261 Ga. App. 263, 267 (2003) (quoting *Zant v. Moon*, 264 Ga. 93, 100(3) (1994)). "For purposes of *Brady* . . . whether someone is on the prosecution team [is generally determined] on a case-by-case basis by reviewing the interaction, cooperation[,] and dependence of the agents working on the case." *Head v. Stripling*, 277 Ga. 403, 408 (2003) (citations omitted). Law enforcement personnel who took part in investigating the Case are considered part of the prosecution team, and as explained in *Schofield v. Palmer*, 279 Ga. 848, 852 (2005):

> [i]t is irrelevant that a police agency may have possessed the favorable evidence without the knowledge of the prosecutor; the law places the responsibility and ultimate burden on the prosecutor for the failure to provide the favorable evidence to the defendant if any part of the prosecution team possessed and suppressed the favorable evidence.

"There can be no possession, custody, or control of a witness' statement which has neither been recorded nor committed to writing." *Simmons v. State*, 321 Ga. App. 743, 746 (2013) (cleaned up) (discussing the State's obligations to provide witness statements prior to trial and reiterating "[t]he statutory obligation of O.C.G.A. § 17-16-7 is not triggered when a witness merely makes an oral statement"); *see also Whatley v. State*, 326 Ga. App. 81, 87 (2014) (citing *Simmons*).

Assuming the victim did make the second statement to law enforcement, Petitioner failed to present evidence to show the statement was ever recorded. The evidence presented establishes only that the victim made an oral statement to law enforcement, and Petitioner never introduced a written statement or video recording dated prior to the date of the plea showing the victim giving the alleged second statement. On cross-examination at the Hearing, plea counsel testified that no one had ever presented any such evidence to him.[7] Accordingly, Petitioner failed to carry his burden to prove the State possessed the favorable evidence. *Simmons*, 321 Ga. App. at 746.

Petitioner's Possession of Favorable Evidence, Reasonable Diligence

As to the second prong, Petitioner must demonstrate that he did not possess the favorable evidence, and he could not have obtained it himself despite reasonable diligence. *Muse*, 316 Ga. at 662. "*Brady* applies to 'the discovery, after trial, of information which had been known to the

[7] *See* (HT 28). When asked: "At any point in time has anyone presented to you any information that shows the District Attorney's Office or law enforcement actually had been told by [the victim] that [Petitioner] was not the person that shot him?" plea counsel responded: "That's just what I've heard." Plea counsel confirmed that he had never seen a report to that effect, either. (HT 28).

prosecution but unknown to the defense.'" *Clark v. State*, 186 Ga. App. 106, 109 (1988) (quoting *Baker v. State*, 245 Ga. 657, 661 (1980)).

Here, Petitioner elected to participate in reciprocal discovery under O.C.G.A. § 17-16-1 *et seq.* (HT 220). Petitioner filed a request for all *Brady* material. (HT 221-22). The victim's first statement was made to the GBI, and the State disclosed the first statement by providing the defense with the entire GBI report. (HT 116-63). The State did not disclose a second statement of the victim allegedly made to a detective with the Telfair County Sheriff's Office. Assuming, *arguendo*, that the State was required to disclose the victim's alleged second statement,[8] the State's discovery disclosures would have been incomplete.

In the case of incomplete disclosure, the defense may be justified in failing to pursue an independent investigation it would have otherwise pursued had a full disclosure been made. *See Walker v. Johnson*, 282 Ga. 168, 171 (2007) (citing Justice Blackmun's plurality opinion in *Bagley*, 473 U.S. at 682-83). In other words, even if Petitioner could have obtained the same favorable evidence form the victim, Petitioner was justified in failing to pursue that line of investigation because the State's incomplete disclosure "ha[d] the effect of representing to the defense that the evidence [did] not exist." *Walker v. Johnson*, 282 Ga. 168, 171 (2007) (quoting *Bagley*, 473 U.S. at 682-83 (plurality opinion of Blackmun, J.)). Accordingly, Petitioner has demonstrated that he could not have obtained the victim's alleged second statement despite reasonable diligence. *Muse*, 316 Ga. at 662.

[8] See *supra*, this Court's discussion of "possession" under the first prong of the *Brady* inquiry.

Suppression

As to the third prong, Petitioner must prove the State suppressed the favorable evidence. However, the State cannot "suppress" something it was under no obligation to disclose, such as an oral statement by a witness that has not been recorded or reduced to writing. *See generally Whatley v. State*, 326 Ga. App. 81 (2013). Because Petitioner failed to establish the victim's alleged second statement was nothing other than an oral statement to law enforcement, Petitioner failed to satisfy his burden to prove the State possessed the statement. Therefore, Petitioner failed to meet his burden to establish the favorable evidence was suppressed because the State cannot suppress something it does not possess.[9] *Muse*, 316 Ga. at 662.

Materiality

As to the fourth prong, "[e]vidence 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.'" *Walker v. Johnson*, 282 Ga. 168, 169 (2007) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). "To establish the fourth prong, often referred to as materiality, [Petitioner] does not need to show that he necessarily would have been acquitted, but only that the State's evidentiary suppression undermines confidence in the outcome of the trial." *Muse v. State*, 316 Ga. at 662 (quoting *Anglin v. State*, 312 Ga. 503, 510 (2021)).

Here, it is not reasonably probable that the victim's second statement would have changed the outcome. Had Petitioner elected to go to trial, the jury would have been tasked with weighing the victim's inability to identify the shooter against the minor child's statement that Petitioner was

[9] See this Court's analysis of the first prong of *Brady, supra.*

the shooter.[10] The jury would have been responsible for assessing the credibility of the witnesses and for determining the weight to be given to the witness's statements.

Under the circumstances, the materiality inquiry turns on whether Petitioner's plea was valid in light of the absence of the later-discovered favorable evidence (victim's alleged second statement). "Determining whether a plea was validly entered requires consideration of 'all the relevant circumstances surrounding it.'" *Ward v. Medina*, 316 Ga. 345, 349 (2023) (quoting *Brady*, 397 U.S. at 749). "The focus of any inquiry into the validity of a guilty plea is 'to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced.'" *Medina*, 316 Ga. at 350 (quoting *Shepard v. Williams*, 299 Ga. 437, 439 (1) (2016)).

Based on the totality of the circumstances, Petitioner understood the evidence against him, and Petitioner's implication that he was somehow induced to enter the *Alford* plea is unfounded. Petitioner now argues he was pressured into the plea by plea counsel's insistence that he take the plea, which was compounded when plea counsel requested that another attorney from the public defender's office speak with Petitioner independently about whether to take the plea. *See* (HT 16-18). Plea counsel testified Petitioner was reluctant to take a plea, but the Petitioner's assertions of innocence were not "repeated" that he could recall. (HT 16-17). Plea counsel's testimony established that he requested a colleague to give the Petitioner an "independent perspective" or an "outside viewpoint." (HT 16-17).

Ultimately, both plea counsel and his colleague recommended an *Alford* plea. (HT 18). Petitioner had to weigh his options of plea versus trial in light of the evidence that the victim was

[10] *E.g.*, (HT 118, 127-31, 189).

not able to identify the shooter, and there was a second witness to the shooting specifically naming Petitioner as the shooter. Plea counsel explained to the Petitioner that the testimony of one adverse witness, if believed, could be enough to convict him of multiple counts at trial. *See* (HT 14, 17, 21). Petitioner made his decision based upon the advice of plea counsel, and plea counsel's advice was not overreaching.

Furthermore, Petitioner did not testify at the Hearing. The Court acknowledges Petitioner's testimony is not required to demonstrate he would not have entered the plea.[11] However, his testimony would have served a legitimate purpose because the record reflects he entered the plea because he understood it was in his best interests, despite plea counsel's recognition the case was "defensible." *See* (HT 244-45). Additionally, Petitioner failed to present "other direct evidence" that shows a reasonable probability of a different outcome. *See Brownlow v. Schofield*, 277 Ga. 237, 239 (2003). Therefore, based on the totality of the circumstances, the Court does not find any merit in the Petitioner's assertion that he was induced to enter the plea, and confidence in the outcome has not been undermined. *See id.* Consequently, Petitioner failed to meet his burden to demonstrate the State's suppression of the victim's second statement undermined confidence in the outcome. *Muse*, 316 Ga. at 662.

Accordingly, Ground One provides no basis for relief.

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[11] *Cf. Yarn v. State*, 305 Ga. 421, 427-28 (2019); *Evelyn v. State*, 357 Ga. App. 368, 371-72 (2018); *Brownlow v. Schofield*, 277 Ga. 237, 239 (2003).

Petitioner correctly points out that *Yarn* and *Evelyn* are distinguishable cases where appellants sought to withdraw guilty pleas based on ineffective assistance of counsel. *See* (Pet. Br. at 20-21). In both *Yarn* and *Evelyn*, the appellate courts expressed a preference against upsetting a plea "because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *E.g.*, *Evelyn*, 347 Ga. App. at 371. And the courts "should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.*

Thus, the appellate courts in *Yarn* and *Evelyn* were primarily concerned with the prejudice necessary to show ineffective assistance of counsel to support withdrawal of a guilty plea, which is a different issue from Petitioner's requirement to show a "reasonable probability" of a different result which can be shown "when the government's evidentiary suppression 'undermines confidence in the outcome.'" *Brownlow*, 277 Ga. at 239 (quoting *Nikitin v. State*, 257 Ga. App. 852, 856(1)(c)).

Ground Two

In Ground Two, Petitioner alleges his *Alford* plea was involuntary and unknowing based on the State's alleged withholding of the victim's second statement to police that Petitioner was not the shooter.

In determining whether Petitioner's *Alford* plea was voluntarily and knowingly entered, the Court must answer "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. at 31 (citations omitted). "[T]he prosecution's violation of *Brady* can render a defendant's plea involuntary." *United States v. Wright*, 43 F.3d 491, 496 (10th Cir. 1994); *see also Miller v. Angliker*, 848 F.2d 1312, 1320 (2d Cir. 1988) ("[E]ven a guilty plea that was 'knowing' and 'intelligent' may be vulnerable to challenge if it was entered without knowledge of material evidence withheld by the prosecution.").

For the reasons discussed above, there was no *Brady* violation. Therefore, Petitioner's assertion that his plea was not involuntary and unknowing based on the State's suppression of the victim's alleged exonerating statement is meritless. Furthermore, the plea transcript reflects Petitioner was advised of his rights, and he affirmatively waived those rights for the purpose of entering his *Alford* plea. (HT 91, 239-46). Finally, based on the totality of the circumstances as discussed in the "materiality" section of Ground One, Petitioner failed to satisfy his burden to demonstrate the outcome of the proceeding would have been different, and there is no reason to doubt the outcome. *Walker*, 282 Ga. at 169; *Muse*, 316 Ga. at 662.

Accordingly, Ground Two provides no basis for relief.

Ground Three

In Ground Three, Petitioner alleges the trial court failed to establish "strong evidence of actual guilt" prior to accepting the plea. (Writ 3).

> Under *Alford*, the trial court may accept a guilty plea from a defendant who claims innocence if the defendant has intelligently concluded that it is in his best interest to plead guilty and the court has inquired into the factual basis for the plea and sought to resolve the conflict between the plea and the claim of innocence.

Duque v. State, 271 Ga. App. 154, 154 (2004). The factual basis for an *Alford* plea is sufficient when the record provides "ample information from which the trial court [can] discern that the facts alleged by the State actually satisfie[s] the elements of the charges to which [a defendant is] pleading guilty." *Williams v. State*, 337 Ga. App. 381, 388 (cleaned up).

The record reflects this standard was satisfied in Petitioner's case. The State gave a factual basis in that the victim sustained a gunshot wound and "witnesses"[12] had identified him as the shooter. (HT 244). In response, plea counsel clarified that only one witness had actually named Petitioner as the shooter, and plea counsel continued to explain exactly why an *Alford* plea was in Petitioner's best interest. (HT 245-46). Immediately after plea counsel's explanation, Petitioner was asked if there was anything he wanted to say or whether he had any questions about any of

[12] While it was not part of the factual basis placed on the record, the Court notes the GBI investigative report that was part of the discovery to the defense included an investigative summary of discussion with a third witness, Krystal Simpson. (HT 132-33). Simpson informed the GBI she knew the identity of the shooter, and her interview was audio recorded and attached to the investigative summary. *See* (HT 132) (the audio recording was not placed into evidence, but the Court presumes the defense had it in discovery). Simpson told the GBI "she knew the alleged shooter to go by the name Raheem (later identified as Royheem)." (HT 132). Simpson explained her personal knowledge of a disagreement between Petitioner and the victim that occurred at a local barbershop approximately one month prior to the incident. (HT 132). During the barbershop incident, Simpson said there were shots fired, but she did not know who fired the shots. *See* (HT 132-33). "Simpson also stated that a few days after the incident at the barbershop, she witnessed Raheem state that he was going to 'get him back' referring to retaliation against [the victim]." (HT 133). Petitioner did not challenge this evidence in the discovery, and Respondent did not rely on it as part of the defense to the Writ. In the absence of any objection or evidence that the statement was ever recanted, however, the Court has no reason to doubt the information was reliable and included in the discovery to the defense. The record also shows a stamp that reads "Oconee Public Defender File." (HT 132-33).

what had just been put on the record, and Petitioner verbally acknowledged "No, sir" he had nothing to say and "No, sir" he had no questions. (HT 246). As a result, the record shows the factual basis for the plea was adequate and this Court (Johnson, J.) fulfilled the requirement for resolving the conflict between Petitioner's claim of innocence and his desire to enter the plea. *See Duque*, 271 Ga. App. at 154. Consequently, Petitioner's Ground Three is meritless.

Accordingly, Ground Three provides no basis for relief.

Ground Four

In Ground Four, Petitioner claims the Oconee Circuit Public Defender's simultaneous representation of Petitioner and the victim created an impermissible conflict of interest in violation of the Sixth Amendment right to conflict-free counsel. (HT 71-76); (Pet. Br. at 28-31).

An impermissible conflict of interest that undermines the constitutional right to counsel may arise when a public defender office simultaneously represents co-defendants in the same case, or the defendant and witnesses in the same case who have conflicting interests. *White v. State*, 365 Ga. App. 101, 107-08 (2022). Our appellate courts have explained "the Sixth Amendment conflict-of-interest jurisprudence generally is confined to situations in which the reported conflict stems from the attorney's simultaneous representation of multiple clients involved in the same legal issue." *Id.* at 106 (cleaned up). While simultaneous representation is not prohibited, an impermissible conflict may arise when "there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's duties to another current client, a former client, or a third person." *Id.* at 107.

> In cases where an alleged conflict of interest is based upon defense counsel's prior representation of a prosecution witness, [courts] must examine the particular circumstances of the representations to determine whether counsel's undivided loyalties remain with his or her current client, as they must. In this regard, ... the factors that arguably may interfere with effective cross-examination include: (1)

> concern that the lawyer's pecuniary interest in possible future business may cause him or her to avoid vigorous cross-examination which might be embarrassing or offensive to the witness; and (2) the possibility that privileged information obtained from the witness in the earlier representation might be relevant to cross-examination. Another factor that should be considered in determining whether an actual or potential conflict of interest rendered trial counsel ineffective, is whether the subject matter of the first representation is substantially related to that of the second.

Moss v. State, 312 Ga. 202, 206 (2021) (cleaned up). *Moss* is distinguishable from Petitioner's case in that the victim became a witness for the prosecution before he became a client of the public defender. Therefore, if there was any potential conflict, the issue would have been as to whether the public defender should have appointed conflict counsel for the victim, since the public defender was already committed to representing Petitioner. Regardless, the Court accepts the Petitioner's preference to apply the *Moss* factors in addition to the legal standard for conflicts of interest based on simultaneous representation. *E.g.*, *White*, 365 Ga. App. at 106-08.

As to the first *Moss* factor, Petitioner concedes there is no evidence that plea counsel had a pecuniary interest in any possible future business associated with either Petitioner's case or the victim's case. (Pet. Br. at 30). Additionally, as to the third *Moss* factor, Petitioner concedes there was no substantially connected subject matter between the two cases. (Pet. Br. at 30).

As to the second *Moss* factor, the public defender's office did not stand to gain any privileged information from either case that would have been detrimental to the other case. Petitioner argues that the victim's counsel "had an incentive to *avoid* having him testify favorably for [Petitioner], testimony that would have been against the interests of the State and could have resulted in less favorable treatment of [the victim] in his own prosecution." (Pet. Br. at 31) (emphasis in original).

Petitioner's argument is unintelligible. Petitioner cannot simply pretend the victim never made the first statement to the GBI, It was the first statement, which was recorded and disclosed in discovery, which made the victim subject to subpoena in the Petitioner's Case. While a conflict can arise in a situation when "one of the State's witnesses [is] a current client of defense counsel in an unrelated criminal matter, thereby constraining counsel's ability to cross-examine the witness"[13] (which Petitioner did *not* establish by any evidence), it is another matter entirely for Petitioner to suggest that the public defender would encourage a client to hide the truth about the facts of a case in which the client was the victim.

The Court fails to see the relevance of this argument to Petitioner's habeas case. The victim had an interest in seeing the "real" shooter caught, and Petitioner had an interest in being exonerated. To that extent, if what the victim had to say about the identity of the shooter was true, it would not have adversely affected either Petitioner or the victim, the victim's testimony would have promoted the ultimate goal of seeking the truth, and the State would not have had any incentive to treat the victim more harshly simply for telling the truth about the shooting. Petitioner's argument that the victim had incentive to "cooperate" with the State because he needed "prosecutorial leniency," is of no value and essentially amounts to a conclusory and baseless allegation that the State would have acted in some way to subvert the truth of the victim's testimony about the identity of the shooter in order to secure a conviction against Petitioner.

Furthermore, prejudice can only be presumed if there is an "actual conflict of interest." *Strickland v. Washington*, 466 U.S. 668, 692 (1984). Petitioner failed to present evidence of an actual conflict. As such, his entire argument is speculative, and therefore insufficient to establish

[13] *White*, 365 Ga. App. 107 (quoting *Williams v. State*, 302 Ga. 404, 411 (3) (2017)).

prejudice. *See Pierce v. State*, 286 Ga. 194, 198 (2009) (holding mere speculation is insufficient to establish *Strickland* prejudice). Consequently, the Court finds no merit in Petitioner's Ground Four.

Accordingly, Ground Four provides no basis for relief.

CONCLUSION

WHEREFORE, the instant Petition for Writ of Habeas Corpus is **DENIED**.

If Petitioner desires to appeal this Order, Petitioner must file a written application for certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within thirty (30) days from the date of this Order. Petitioner must also file a Notice of Appeal with the Clerk of the Superior Court of Telfair County within the same thirty (30) day period.

SO ORDERED, this 5th day of December, 2023.

Howard C. Kaufold, Jr., Judge
Telfair County Superior Court

CERTIFICATE OF SERVICE

I, Candi Dokey, Judicial Assistant to Judge Howard C. Kaufold, Jr., do hereby certify that I have this day served the within and foregoing ORDER upon the following parties:

☐ By depositing same in the United States Mail in a properly addressed envelope with adequate postage thereon, as follows:

☒ Via Statutory Electronic Service addressed as follows:

Ron Daniel, Special Assistant Attorney General
Via PeachCourt: ron@danielstaylorlaw.com and rebecca@dlawllc.com

Josh Moore, Office of the Georgia Capital Defender
Via PeachCourt: jmoore@gacapdef.org

Mark Loudon-Brown and Atteeya Hollie, Southern Center for Human Rights
Via PeachCourt: mloudonbrown@schr.org and ahollie@schr.org

On this day, December 15, 2023.

CANDI DOKEY
Judicial Assistant to Judge Howard C. Kaufold, Jr.
Oconee Judicial Circuit

APPENDIX B

SUPREME COURT OF GEORGIA
Case No. S24H0543

October 22, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ROYHEM DEEDS v. KEVIN SPRAYBERRY, WARDEN.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

All the Justices concur, except Ellington, J., not participating.

Trial Court Case No. 23CH008

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

CERTIFICATE OF SERVICE

I certify that, in accordance with Supreme Court Rule 29, on February 18, 2025, I served a copy of the foregoing via first class mail, postage prepaid, and via email, upon counsel for the Respondent.

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/s/ *Mark Loudon-Brown*
Mark Loudon-Brown