No. 24-7368

In the Supreme Court of the United States

IN RE ANTHONY FLOYD WAINWRIGHT,

Petitioner,

RESPONSE TO PETITION FOR AN
ORIGINAL WRIT OF HABEAS CORPUS

EXECUTION SCHEDULED FOR JUNE 10, 2025, AT 6:00 P.M.

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Capital Case

QUESTION PRESENTED

Whether this Court should entertain a petition for an original writ of habeas corpus raising a claim of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), involving cumulative impeachment of a prosecution witness regarding his expectation of a reduced sentence in exchange for his testimony that is not material in a case with a confession and DNA evidence?

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While this is an original proceeding, the Florida Supreme Court addressed the same *Brady* claim in its recent published opinion at *Wainwright v. State*, 2025 WL 1561151, *8-*9 (Fla. June 3, 2025). A petition for writ for certiorari regarding that opinion, including the same *Brady* claim, is currently pending before this Court. *Wainwright v. Florida,* No. 24-7365.

JURISDICTION

This Court has jurisdiction to entertain original habeas petitions. Sup. Ct. R. 20.4(a); *Felker v. Turpin*, 518 U.S. 651, 658 (1996) (concluding the AEDPA did not deprive this Court of jurisdiction to entertain original habeas petitions relying on *Ex parte Yerger*, 8 Wall. 85, 19 L.Ed. 332 (1869)).

On June 6, 2025, Wainwright, represented by his federal habeas counsel, the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-N), filed a petition for an original writ of habeas corpus in this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution, which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just

compensation.

U.S. Const. amend. V.

The Fourteenth Amendment to the United States Constitution, section one, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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 laws.

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY REGARDING THE *BRADY* CLAIM

The facts of the crime and procedural history of the case are recounted in detail in the State's brief in opposition to the petition for writ of certiorari from the Florida Supreme Court's decision currently pending before this Court. *Wainwright v. Florida,* No. 24-7365. This statement of the facts and procedural history is limited to the facts and procedural history related to the *Brady* claim.

Trial testimony

The State presented the testimony of Robert Allen Murphy, who had been housed with Wainwright in the Taylor County Jail, shortly after the murder. (DAR Vol. 20 2702 - handwritten page number). At the time of his testimony, Murphy was a DOC inmate serving a 12-year sentence. *Id.* at 2703. On direct examination, Murphy testified that he had "four or five" felony convictions. *Id.* He testified that he was an inmate in the Taylor County Jail in Perry, Florida in September of 1994.

He was housed in confinement with Anthony Floyd Wainwright. *Id.* at 2705. While he had trouble identifying Wainwright at first, he then identified Wainwright at counsel table as looking like Wainwright but he did not have any hair when he was in jail with Murphy. *Id.* at 2705-07; 2710-2711.

Murphy testified that an inmate named Wainwright told him that he and Richard Hamilton escaped from jail or prison and came down to Florida. (DAR Vol. 20 at 2708). Wainwright said there was a woman at a store and they abducted her and her vehicle. Wainwright told him that Hamilton had sex with the woman but that he did not. They took her naked out of the car after raping her. Wainwright told Murphy that he strangled her but she did not die, so he shot her twice in the back of the head. Wainwright told him that while he was strangling her, she was "kind of like a puppy when you hit a puppy in the head and it kind of shakes a little bit" which angered Wainwright and then he shot her in the back of the head. *Id.* at 2708.

Wainwright told him they had a shoot-out with the Mississippi Highway Patrol and both ended up in the hospital because both of them got shot. (DAR Vol. 20 at 2709). Wainwright told him that when he woke up in the hospital Hamilton was on his way back to Florida on a plane with the police to show them where the body was. *Id.* at 2710. Wainwright was upset with Hamilton for showing the officers where the body was. Wainwright told him if Hamilton hadn't shown them where the body was or even if he had just waited a little longer, the authorities would have never found the body because there were already parts of the body missing. *Id.* Wainwright knew that from the autopsy report of the victim, which he showed to Murphy.

On cross-examination, defense counsel established that Murphy currently had a motion for a modification of his sentence pending. (DAR Vol. 20 at 2711). Murphy explained that he was sentenced incorrectly. *Id.* at 2712. Defense counsel asked Murphy if the judge during the upcoming resentencing could take into account anything that Murphy has done since his prior sentencing which Murphy responded: "I guess so." *Id.* at 2712-13. Murphy guessed that with gain time he could have to serve "up to six or seven" years. *Id.* at 2714. Defense counsel asked Murphy how many times he had been convicted of a felony, pointing out that in his deposition he had stated that he had been convicted "eight or nine" times, not the four or five times Murphy had testified to in the direct examination. *Id.* at 2714-15. Murphy responded that he did not remember saying that in the deposition but he might have done so but also testified that he "did not know the exact number" of prior felony convictions he had. *Id.*

On redirect, the prosecutor, elected State Attorney Jerry Blair, asked Murphy if he had promised him anything in return for his testimony and Murphy responded: "no, sir." (DAR Vol. 20 at 2726). Murphy was asked if "anyone" had promised him "anything" in return for his testimony and Murphy responded: "no, sir." *Id.*

On recross, defense counsel asked Murphy if he knew of anything that would preclude his attorney at the modification hearing from bringing to the court's attention that he had testified for the State in this capital case and Murphy responded: "No." (DAR Vol. 20 at 2726).

Procedural history in state court

On May 30, 1995, the jury convicted Wainwright of first-degree murder, robbery, kidnapping, and sexual battery, as charged. *Wainwright v. State*, 704 So.2d 511, 512 (Fla. 1997). Following the penalty phase, the jury unanimously recommended a death sentence. *Id.* at 512. The trial court found six aggravating circumstances: (1) under sentence of imprisonment; (2) prior violent felony; (3) felony murder based on the robbery, kidnapping, and sexual battery; (4) committed to effect escape; (5) the murder was especially heinous, atrocious or cruel (HAC); and (6) the murder was committed in a cold, calculated, and premeditated manner (CCP). *Id.* at 512, n.2. The trial court found no statutory mitigating circumstances, but found nonstatutory mitigation regarding his difficulties in school and adjustment problems. *Id.* at 512-13, n.3.

The Florida Supreme Court affirmed the convictions and the death sentence, concluding the death sentence was proportionate. *Wainwright v. State*, 704 So. 2d 511, 516 (Fla. 1997). Wainwright filed a petition for writ of certiorari in this Court which this Court denied on May 18, 1998. *Wainwright v. Florida*, 546 U.S. 878 (1998).

On May 14, 1999, Wainwright, represented by registry counsel Glenn Arnold, filed the initial postconviction motion raising 14 claims. *Wainwright v. State*, 896 So. 2d 695, 697, n.1 (Fla. 2004). The state postconviction court denied the initial postconviction motion. The Florida Supreme Court affirmed the denial of initial postconviction relief *Id.* at 703-04. Wainwright filed a petition for writ of certiorari

in this Court which was denied on October 3, 2005. *Wainwright v. Florida*, 546 U.S. 878 (2005) (No. 05-5025).

Wainwright then filed numerous successive postconviction motions, including both pro se motions and counseled motions, over the years. *Wainwright v. State*, 2 So 3d 948, 949 (Fla. 2008); *Wainwright v. State*, 43 So.3d 45 (Fla. 2010); *Wainwright v. State*, 2011 WL 955603 (Fla. 2011); *Wainwright v. State*, 2017 WL 394509 (Fla. Jan. 30, 2017).

Procedural history in federal court

On June 21, 2019, CHU-N filed a Rule 60(b)(6) motion to reopen the closed habeas case in the district court. The motion to reopen asserted the district court should reconsider its prior ruling regarding equitable tolling. Wainwright also raised a gateway claim of actual innocence based on *McQuiggin v. Perkins*, 569 U.S. 383 (2013). The claim of innocence was premised on an affidavit, dated June 19, 2019, from DNA analyst Candy Zuleger criticizing the testing methods and testimony of the State's two DNA experts at trial. The motion to reopen also raised numerous new grounds for habeas relief that were not raised in the original habeas petition filed in 2005. The district court denied the Rule 60(b)(6) motion concluding that the motion to reopen was an unauthorized successive habeas petition over which it lacked jurisdiction.

The Eleventh Circuit granted a certificate of appealability (COA) on the denial of the motion to reopen. The Eleventh Circuit affirmed the district court's denial of the Rule 60(b)(6) motion to reopen. *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 2023 WL

4582786 (11th Cir. July 18, 2023).

On February 10, 2024, Wainwright, represented by CHU-N, filed a petition for a writ of certiorari in this Court raising two questions related to the Rule 60(b)(6) motion. On April 15, 2024, this Court denied review. *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024) (No. 23-6737).

Current warrant litigation

On May 9, 2025, Governor DeSantis signed a death warrant scheduling Wainwright's execution for June 10, 2025, at 6:00 p.m. On May 15, 2025, Wainwright, represented by lead state postconviction counsel, registry counsel Baya Harrison III, and *pro bono*, second-chair counsel, Terri Backhus, retired from the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-N), filed an amended eighth successive postconviction motion. (8th Succ. PC ROA at 181-205). The amended motion raised three claims: (1) a claim that the death sentence violated the Sixth Amendment right-to-a-jury trial relying on *Erlinger v. United States*, 602 U.S. 821 (2024); (2) a claim of newly discovered evidence of mitigation of neurodevelopmental effects due to Agent Orange exposure; and (3) a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), regarding a State's witness, Robert Allen Murphy, receiving probation in exchange for his trial testimony against Wainwright. The appendix included an expert report regarding neurodevelopmental effects of Agent Orange, based on a 2023 study of Vietnamese children as well as a recent affidavit from Murphy, dated May 13, 2025. *Id.* at 219-233; 239-241.

The *Brady* claim was based on a recent affidavit. Murphy, in his May 13, 2025, affidavit, states that he spoke with the Florida Department of Law Enforcement (FDLE) about what Wainwright told him about the murder, while they were housed together in the Taylor County Jail in 1994 and 1995. (8th Succ. PC ROA at 240 at ¶ 1-3). Murphy stated that he spoke with another inmate, Dennis Givens, who told Murphy that "he was receiving a benefit in exchange for his testimony" in the capital case. *Id.* at ¶ 4-5. Murphy called his father and told him to speak with his defense attorney handling the sentence modification to make sure he received a benefit in exchange for his testimony too. *Id.* at 6. Murphy states that his defense attorney assured him he would also receive a benefit in exchange for his testimony and his defense attorney told him that he had spoken with the State. *Id.* at ¶ 6. He admits, however, that there was no formal deal with the prosecutor regarding leniency in exchange for his testimony but asserts that "everyone" knew that he would receive "something" in exchange for his testimony against Wainwright. *Id.* at 241 ¶ 6. Murphy avers that his sentence modification hearing "was pushed back" until after he testified against Wainwright. *Id.* at 7. At the modification hearing, the judge called the prosecutor on the phone who provided the judge with information about Murphy's testimony at Wainwright's trial. *Id.* at 7. He was placed on probation.

On May 20, 2025, the postconviction court summarily denied the amended eighth successive postconviction motion. (8th Succ. ROA at 441-460).

Wainwright appealed to the Florida Supreme Court. On June 3, 2025, the Florida Supreme Court affirmed the summary denial of the amended eighth

successive postconviction motion. *Wainwright v. State*, 2025 WL 1561151 (Fla. June 3, 2025). The Florida Supreme Court rejected the same *Brady* claim that is currently being raised in the petition for an original writ of habeas corpus, concluding that the impeachment of Murphy was not material due to the "significant evidence introduced against Wainwright." *Wainwright*, 2025 WL 1561151, at *9 (Fla. 2025).

On June 5, 2025, Wainwright, represented solely by second-chair pro bono counsel, Terri Backhus, filed a petition for a writ of certiorari in this Court raising three questions related to the Florida Supreme Court's affirmance of the summary denial of the amended eighth successive postconviction motion. *Wainwright v. Florida*, No. 24-7365. One of the three questions raised in the petition is the *Brady* claim rejected by the Florida Supreme Court.

On June 6, 2025, Wainwright, represented by CHU-N, filed a petition for an original writ of habeas corpus in this Court raising five questions related to the same *Brady* claim raised in the pending petition for a writ of certiorari from the Florida Supreme Court's decision.

REASONS FOR DENYING THE PETITION FOR AN ORIGINAL WRIT

ISSUE

Whether this Court should entertain a petition for an original writ of habeas corpus raising a claim of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), involving cumulative impeachment of a prosecution witness regarding his expectation of a reduced sentence in exchange for his testimony that is not material in a case with a confession and DNA evidence?

Petitioner Wainwright seeks for this Court to issue an original writ of habeas corpus granting relief based on a claim of a violation of *Brady v. Maryland*, 373 U.S.

83 (1963). He asserts that the prosecution violated *Brady* by not disclosing that a State's witness, Robert Allen Murphy, expected a benefit from his trial testimony at his upcoming sentence modification hearing. The petition does not satisfy this Court's rules. S. Ct. R. 20.4(a). The same questions being raised in the petition for an original writ of habeas corpus can be raised in a normal petition for writ of certiorari. Indeed, many of those questions are currently being raised in this Court in *Wainwright v. Florida,* No. 24-7365. Nor is there anything "exceptional" about the questions or case, as required by Rule 20.4(a). Moreover, this Court historically only considers exercising its original habeas jurisdiction when the claim is a strong claim of actual factual innocence and possibly for strong claims of innocence of the death penalty claims. But this is a run-of-the-mill *Brady* claim. On the merits, there was no due process violation because the jury heard that there was a possibility that Murphy's sentence could be reduced at his upcoming sentence modification hearing. The *Brady* claim fails on the materiality prong. Any impeachment of Murphy would be cumulative and would simply be "too little" and "too weak" under *Turner v. United States*, 582 U.S. 313, 326 (2017), to be material to either the convictions or death sentence due to the strength of the prosecution's case. This case involves both his confession to premediated murder to law enforcement and DNA evidence of the rape and therefore of felony murder and the felony murder aggravating factor. Any cumulative impeachment of Murphy pales in comparison to the sheer strength of the State's case against Wainwright. This Court should deny the petition for a writ of habeas corpus.

The Court's rule governing original habeas writs

Wainwright raises five questions in his petition for an original writ of habeas corpus. But raising questions in an original writ petition that can easily be raised in a petition for writ of certiorari is improper under this Court's rules of court. This Court's rule governing original writs of habeas corpus, Rule 20.4(a), states that "the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." Sup. Ct. R. 20.4(a). The Rule then observes: "This writ is rarely granted."

Four of the five questions presented in the petition are improper because they can be raised in another "form." The majority of the questions raised in this petition are questions that can easily be raised in a petition for writ of certiorari. For example, question (2) regarding whether a *Brady* claim discovered after state postconviction proceedings was complete is or is not ripe under *Panetti v. Quarterman*, 551 U.S. 930 (2007), can be raised in a petition for writ of certiorari. A petitioner could make the same argument that Wainwright is making regarding that question in this petition in a typical petition for writ of certiorari. Pet. at 15-23. And questions (3), (4), and (5) can also be raised in a typical petition for writ of certiorari. Indeed, questions (3), (4), and (5) are currently pending before this Court in the petition for writ of certiorari filed in *Wainwright v. Florida,* No. 24-7365. The only question that technically cannot be raised in a petition for writ of certiorari is question (1), but the underlying claim in that question is a typical *Brady* claim which certainly could be raised in a petition

for writ of certiorari. For this reason, the State will limit its remarks to the first question of whether this Court should grant an original writ of habeas corpus regarding the *Brady* claim.

Furthermore, there is nothing about the questions presented including the first question, the facts of this case or the procedural posture of this case that is in any way "exceptional" or even unusual, as required to invoke Rule 20.4(a). Based on the failure to meet Rule 20.4(a)'s requirements alone, the petition should be denied.

Original writs of habeas corpus

The standard for this Court's consideration of an original habeas petition is "a demanding one." *In re Bowe*, 144 S. Ct. 1170, 1171 (2024) (Sotomayor, J., statement respecting the denial of a petition for an original writ of habeas corpus). This *Brady* claim is not even within the realm of the type of claims this Court considers granting an original writ to correct.

This Court has adjudicated the grand total of one writ of habeas corpus in the past 50 years. *In re Davis*, 557 U.S. 952 (2009) (directing the district court to "receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes petitioner's innocence."); *id.* at 954 (Scalia, J., dissenting) (noting the Court had not adjudicated a state prisoner's petition for an original writ of habeas corpus "in nearly 50 years"). *In re Davis*, however, involved a claim of actual factual innocence in a capital case based on the recantations of seven witnesses who had testified at trial. *In re Davis*, 557 U.S. at 953 (Stevens, J., concurring). The concurrence relied on 28 U.S.C. § 2241(b), as well as

Byrnes v. Walker, 371 U.S. 937 (1962), and *Chaapel v. Cochran*, 369 U.S. 869 (1962), as a basis for jurisdiction. *Id.* at 953. The Court's concern was that there had been no evidentiary hearing regarding those numerous recantations and no determination of their credibility in any Court. *Id.* So, this Court transferred the case to the federal district court to explore those multiple recantations at an evidentiary hearing. *In re Davis*, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010). But, ultimately, after the evidentiary hearing, the district court denied relief. The Eleventh Circuit affirmed and this Court denied review. *Davis v. Terry*, 625 F.3d 716 (11th Cir. 2010), *cert. denied, Davis v. Humphrey*, 563 U.S. 904 (2011). Troy Davis was executed shortly afterwards.

This Court historically only invokes its original habeas authority for strong claims of actual innocence and perhaps for a strong claim of innocence of the death penalty. But Wainwright is not raising a claim of actual innocence. Instead, at most, he is raising a claim of innocence of the death penalty that is without any support in either the law or the facts. Pet. at 31. He seems to assert that his death sentence is invalid because, while there are six aggravators, his death sentence rests, in part, on two aggravators that relied on Murphy's trial testimony.

Even assuming that this Court would entertain a claim of innocence of the death penalty in a compelling case, this case is not that case. This Court's historical framework for claims of innocence of the death penalty is *Sawyer v. Whitley*, 505 U.S. 333, 345 (1992), which required a showing that there were "no aggravating circumstance or that some other condition of eligibility had not been met."

Wainwright cannot meet the *Sawyer* standard. He must negate all of the aggravating factors but he has negated none of the six aggravators.

Six aggravating factors were found by the sentencing court. *Wainwright v. State*, 2025 WL 1561151, at *1, n.2 (Fla. June 3, 2025) (listing the six aggravators). The petition only attacks two of the six aggravators which leaves four unchallenged aggravators remaining, including the prior violent felony aggravator for the aggravated assault on a law enforcement officer. So, even applying a freestanding version of *Sawyer*, this would not be a valid claim of innocence of the death penalty.

Actually, the innocence-of-the-death-sentence claim is even weaker because only the heinous, atrocious and cruel (HAC) aggravator is really at issue. The sentencing court's order finding the cold, calculated and premediated (CCP) aggravator was not attributable to any particular testimony but seems to depend mainly on Sheriff Reid's testimony. The CCP aggravator remains intact regardless of Murphy's recent affidavit. So, this claim of innocence of the death penalty really involves only one of the six aggravators.

And the claim is not significant even as to the HAC aggravator. While the sentencing court's order quoted Murphy's testimony regarding the victim looking like a puppy being hit at one point in its finding of the HAC aggravator, there were additional findings made by the sentencing court to support its finding of the HAC aggravator that did not depend on Murphy's testimony. And more importantly, Murphy did <u>not</u> recant any of his substantive testimony regarding Wainwright's confession to him in the recent affidavit, including that particular testimony. There

was no substantive recantation of his trial testimony in Murphy's recent affidavit. So, even the attack on the HAC aggravator is invalid. The HAC aggravator remains intact as well. All six aggravators remain. This is not even the beginning of a valid claim of innocence of the death penalty under *Sawyer*.

Because this is not a claim of actual innocence of the murder or a valid claim of innocence of the death penalty, it is not the type of claim that warrants this Court exercising its original habeas jurisdiction. Instead, this is a run-of-the-mill *Brady* claim and a relatively weak one at that. A *Brady* claim is simply not the type of claim that warrants this Court invoking its original habeas discretionary authority. This Court should deny the petition due to the nature of the claim.

Due process

The Court's main concern in its due process line of cases, starting with *Napue v. Illinois*, 360 U.S. 264 (1959)), and *Giglio v. United States*, 405 U.S. 150 (1972), and including *Brady*, is the reliability of a verdict when the jury is misled by false testimony, as in *Napue* and *Giglio*, or by omission of available information, as in *Brady*. *Napue*, 360 U.S. at 271 (explaining that evidence matters if there is a reasonable likelihood that it could have "affected the judgment of the jury."). The jury being misled is a critical aspect of this Court's due process jurisprudence. *Turner v. United States*, 582 U.S. 313, 324 (2017) (stating that the "overriding concern" of *Brady* is "the justice of the finding of guilt" quoting *United States v. Agurs*, 427 U.S. 97, 112 (1976); *United States v. Bagley*, 473 U.S. 667, 678 (1985)).

But here, the jury was not misled. On recross examination, defense counsel

asked Murphy if he knew of anything that would preclude his attorney at his upcoming modification hearing from bringing to the presiding judge's attention that he had testified for the State in a capital case and Murphy responded: "No." (DAR Vol. 20 2726). Wainwright's jury knew from this testimony that Wainwright's attorney could inform the presiding judge at his upcoming sentence modification hearing that he had testified for the State in a capital case and ask that Murphy's sentence be reduced for his testimony.

Wainwright points to no case from any court finding a violation of *Brady* when the jury knew, from the testimony it heard, that there was a possibility of the witness obtaining a benefit from his testimony. There can be no meaningful violation of due process from failing to disclose information, if the jury learns much the same information from cross-examination or recross-examination.

Brady and materiality

The government violates the Due Process Clause "if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment." *Turner v. United States*, 582 U.S. 313, 315-16 (2017). To establish a violation of *Brady*, a convicted defendant must show: (1) the evidence at issue is favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) the State suppressed the evidence, either willfully or inadvertently; and (3) prejudice ensued. *Skinner v. Switzer*, 562 U.S. 521, 536 (2011). A defendant is only entitled to a new trial if he establishes the prejudice necessary to satisfy the materiality prong. *Turner*, 582 U.S. at 324. Evidence is material under *Brady* when there is a reasonable probability

that, had the evidence been disclosed, the result of the proceeding would have been different. *Id.* at 324. And a reasonable probability is one in which the suppressed evidence undermines confidence in the outcome of the trial. *Id.*

Here, the information at issue is impeachment of a state's witness rather than any exculpatory evidence. And while impeachment can be powerful evidence in a case that depends mainly on that witness' testimony, as in *Smith v. Cain*, 565 U.S. 73, 76 (2012), where witness' testimony "was the only evidence linking Smith to the crime," this case is not that type of case. Murphy's testimony was not the only evidence linking Wainwright to this crime. Rather, there is both his own confession as well as DNA evidence linking him to this murder. This is a case where the impeachment is not material because the State's "other evidence is strong enough to sustain confidence in the verdict." *United States v. Agurs*, 427 U.S. 97, 112-13, and n. 21 (1976).

The cumulative impeachment of Murphy is not material to either the convictions or death sentence. The first step in a materiality analysis is a determination of the strength of the non-disclosed information. Any impeachment of Murphy would be cumulative in multiple ways.

First, another inmate, Gary Gunter, also testified that Wainwright confessed to him. (DAR Vol.21 at 2736-76). Gunter testified that Wainwright was the actual triggerman. Gunter, who was dying of AIDS, testified that he expected to die in prison and did not want to leave prison because he believed he was better off in prison. Gunter did not receive a reduced sentence in exchange for his testimony. He did not

want to be released and was credible on that point due to his illness. And Gunter's testimony in many aspects mirrored Murphy's testimony.

Second, Murphy himself was impeached in numerous ways, including with his numerous prior felony convictions and the fact that some of his victims were family members. Defense counsel asked Murphy how many times he had been convicted of a felony, pointing out that in his deposition he had stated that he had been convicted "eight or nine" times, not the four or five times that Murphy had testified in the direct examination. (DAR Vol 20. at 2714-15). Murphy responded that he "did not know the exact number" of prior felony convictions he had. *Id.*

So, any impeachment of Murphy with his expectation of a reduced sentence would be merely cumulative. And again the jury was aware of the possibility of Murphy receiving a benefit at his upcoming sentence modification hearing. The cumulative impeachment of Murphy is not strong evidence.

The cumulative impeachment of Murphy is also not material due to the strength of the prosecution's case against Wainwright from other sources. *Agurs*, 427 U.S. at 112-13, and n.21 (observing that impeachment may not be material if the State's other evidence is strong). This case involves both a confession and DNA evidence.

Wainwright confessed to premeditated murder to Sheriff Reid in the presence of both an FDLE Special Agent and an Investigator with the Hamilton County Sheriff's Office, all of whom took notes. Wainwright told the Sheriff that they disposed of the victim's jewelry because they were planning on killing her. *Wainwright v. State*,

2 So.3d 948, 951 (Fla. 2008). Additionally, Wainwright's DNA matched the semen from the back of the victim's stolen Bronco at 1 in 6 billion Caucasians. (DAR Vol. 7 at 1027). This is scientific proof of both the rape and felony murder, as well as the felony murder aggravator. And then Wainwright and Hamilton were caught by a Mississippi State Trooper the next day after the murder, hundreds of miles away from the victim's home in Central Florida, driving the victim's Bronco. None of this damning evidence depends in any manner on Murphy's testimony.

Any cumulative impeachment of Murphy pales in comparison to the sheer amount of evidence of Wainwright's guilt and of aggravation. The Florida Supreme Court, in the recent warrant litigation noted the strength of the State's case against Wainwright and concluded that the cumulative impeachment of Murphy was not material due to the "significant evidence introduced against Wainwright." *Wainwright v. State*, 2025 WL 1561151, at *9 (Fla. June 3, 2025); *see also Wainwright v. State*, 2 So.3d 948, 950-52 (Fla. 2008) (detailing the evidence against Wainwright); *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 2023 WL 4582786, at *4-*7 (11th Cir. July 18, 2023) (rejecting a gateway actual innocence claim under *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013), based on an affidavit criticizing the State's DNA testing methods but not performing any new DNA testing as being insufficient under *Schlup v. Delo*, 513 U.S. 298, 326-27 (1995)), *cert. denied*, *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024). The Eleventh Circuit observed the criticism of the DNA evidence did not establish that the semen was not, in fact, Wainwright's semen. *Wainwright*, 2023 WL 4582786, at *5-*6.

In *Turner v. United States*, 582 U.S. 313 (2017), this Court held the withheld information was not material to the kidnapping, robbery, and murder convictions. This Court stated that "evidence that is too little, too weak, or too distant from the main evidentiary points to meet *Brady*'s standards is not material." *Id.* at 326. Any impeachment of Murphy, in a case where the jury was aware that there was a possibility of his receiving benefit from his testimony, with both a confession and DNA evidence is simply "too little" and "too weak" to be material. *Turner,* 582 U.S. at 326. There was no violation of *Brady*.

Because the *Brady* claim fails on the materiality prong under this Court's existing precedent, an original writ of habeas corpus should not be issued. Indeed, this Court's original habeas jurisdiction should not be invoked for run-of-the-mill issues like this one. Original jurisdiction should be reserved for compelling cases of actual innocence and perhaps compelling cases of innocence of the death penalty.

Accordingly, this Court should deny the petition for an original writ of habeas corpus.

CONCLUSION

The petition for a writ of certiorari should be denied.

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