No. 25-5070

IN THE

Supreme Court of the United States

KEDRICK JOHNSON,

Petitioner,

v.

STATE OF LOUISIANA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

KEDRICK JOHNSON, No. 437115
PRO-SE
ALLEN CORRECTIONAL CENTER
3751 LAUDERDALE WOODYARD RD.
KINDER, LA 70648

QUESTION PRESENTED

Did the State violate *Brady v. Maryland* when it failed to disclose a June 8, 2010, supplemental police report that would have made key witness Stephen Hymel's statement inadmissible under the forfeiture by wrongdoing exception of La. Code Evid. art. 804(B)(7)?

PARTIES TO THE PROCEEDINGS BELOW

All parties appear in the caption of the case on the cover page.

LIST OF PROCEEDINGS

Louisiana Supreme Court

Nº. 2024-KH-01142

State of Louisiana v.
Kedrick Johnson

Date of Final Opinion: February 19, 2025

Louisiana Court of Appeal, Fourth Circuit

Nº. 2024-K-0444

State of Louisiana v.
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Date of Final Opinion: August 8, 2024

Louisiana District Court (Orleans Parish)

Nº. 503-317

State of Louisiana v.
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OPINIONS BELOW

The opinion of the Louisiana Supreme Court, dated February 19, 2025, is included in the appendix at App.1a. The opinion is reported at *State v. Johnson*, 2024-01142 (La. 2/19/25), 400 So.3d 916 (Mem). The ruling of the Louisiana court of Appeal, Fourth Circuit, dated August 8, 2024, is included below at App.2a. The ruling is not published. The findings of fact and conclusions of law of the district court in and for

the Parish of Orleans, State of Louisiana, dated May 24, 2024, is included below at App.3a-5a. The ruling is not published.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on February 19, 2025. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI of the U.S. Constitution states that:

> in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV, Section 1 of the U.S. Constitution (Citizens of the United States) states that:

> 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.

Art. 1, Section 16 of the Louisiana Constitution (Right to a Fair Trial) states that (in pertinent part):

> Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

Federal Rules of Evidence 804(b)(6)
Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.

A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

Louisiana Code Evidence Article 804(B)(7)
Forfeiture by wrongdoing.

(a) A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did procure the unavailability of the declarant as a witness.

(b) A party seeking to introduce statements under the forfeiture by wrongdoing hearsay exception shall establish, by a preponderance of the evidence, that the party against whom the statement is offered, engaged or acquiesced in the wrongdoing.

STATEMENT OF THE CASE

This case comes to this Honorable Court by way of a collateral attack on the conviction and sentence by Johnson. The single issue brought to Louisiana's highest court was the withholding of evidence by the State in violation of U.S. Const. amend. XIV and *Brady v. Maryland*, 383 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). On February 24, 2011, Kedrick Johnson was charged by grand jury with two counts of Second-Degree Murder. Johnson was also charged with violating the Louisiana Street Terrorism Enforcement and Prevention Act. Ten months later Johnson's first trial ended with a hung jury. Before the second trial, the State brought an 804 hearing to introduce the testimony of deceased witness Stephen Hymel using the forfeiture by wrongdoing exception of La. Code Evid. Art. 804(B)(7). Following the taking of evidence and testimony, the trial judge allowed Hymel's statement to be introduced at trial. Johnson was retried and convicted by a non-unanimous jury of the responsive verdict of Manslaughter and acquitted of any involvement with criminal street gang activity. The trial court sentenced Johnson to a de facto life sentence of two consecutive 80-year terms totaling 160 years. Johnson's conviction was upheld by the Court of Appeal, Fourth Circuit and the Louisiana Supreme Court denied writs. The Honorable Court denied writs as well.

On March 15, 2017, Johnson filed a *pro se* Application for Post-Conviction Relief with accompanying Memorandum in Support. Six months later in September of 2017 Johnson retained counsel. Counsel filed a supplemental brief on August 31, 2020, following a continuance without a date in order to properly investigate the *pro*

se claims. Following oral arguments on March 14, 2024, the trial court denied relief ten days later. App.3a. Counsel timely sought writs, and filed a writ application to the Court of Appeal, Fourth Circuit on July 17, 2024. The Fourth Circuit denied writs twenty-two days later without reasons. App.2a. The La. Supreme Court denied writs with reasons on February 19, 2025. App.1a.

REASONS FOR GRANTING THE PETITION

The application to this Court hinges on one thing, was the supplemental police report, which contained material evidence that was favorable to Johnson, withheld by the State in violation of Johnson's XIV Amendment right to due process and *Brady v. Maryland*, 383 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Among other things, due process guarantees the right to a fair trial. *Cone v. Bell*, 556 U.S. 449, 451 (2009). Johnson did not receive a fair trial due to the State blatantly ignoring its duty under the constitution and *Brady*. The answer to the previously imposed question is a resounding yes. Johnson needs this Honorable Court to stand in the gap to ensure adherence to the constitutional guarantees and jurisprudential precedence. This Honorable Court should grant this petition.

A. Brady requires the State to turn over evidence that is favorable to the accused.

In *Brady v. Maryland*, this Honorable Court held that, "suppression by the prosecution of evidence favorable to the accused . . . violates a defendant's due process rights where the evidence is material either to guilt or punishment, without regard to the good or bad faith of the prosecution. *Brady*, 373 U.S. at 87, 83 S.Ct. at 1196-97. The *Brady* rule encompasses evidence which impeaches the testimony of a witness when the reliability or credibility of that witness may determine guilt or innocence, and applies whether a general, specific or even no request at all is made for the evidence. *United States v. Bagley*, 473 U.S. 667, 676, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). A prosecutor does not breach any constitutional duty to disclose favorable evidence unless the omission is of sufficient significance to result in denial of the

defendant's right to a fair trial. *United States v. Agur*, 427 U.S. 97, 108, 96 S.Ct. 2392, 49 L.Ed.2s 342 (1976). For the purposes of *Brady*'s due process rule, a reviewing court determining materiality must ascertain not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence, he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Far from being a "game" of hide and seek, criminal discovery "is integral to the quest for truth and the fair adjudication of guilt or innocence." *Taylor v. Illinois*, 484 U.S. 400, 419 (1988) (Brennan, J., dissenting).

B. The Louisiana Supreme Court erred when it stated Johnson failed to show that the State withheld material exculpatory evidence.

At the second trial of this case, the trial court allowed Detective Michael McCleary to testify to what deceased witness Stephen Hymel had communicated to him and allowed Hymel's recorded statement to be admitted into evidence. These admissions came as a result of the trial court believing that the State proved by a preponderance of the evidence that Johnson was responsible for Hymel's death invoking the hearsay exception forfeiture by wrongdoing. La. Code Evid. art. 804(B)(7). To support its position, the State played two phone calls that it believed proved Johnson had Hymel killed. Neither call was related to Hymel's death in any way, shape, form, or fashion. The trial judge then gave her opinion concerning Johnson. Her opinion—based on hearsay—was as follows, ". . . [a]dditionally, and I don't know if this is really for the record, **I was told**, and I know that Mr. Johnson was looking around the courtroom to various people, that this Court was informed

left either immediately after the motion hearing was concluded, or even during it after certain information was on the witness stand. . . ." (Emphasis added).

Two eyewitnesses to the events that took place in the courtroom on the day in question, gave statements that were memorialized in a supplemental police report authored by Detective McCleary. Deputy Elizabeth Sabathe and Deputy Shawonda O'Neal were both working Judge Buras' section on the date of the hearing.

Deputy Elizabeth Sabathe stated:

> [S]he was working in section H on Wednesday, April 29, 2009 and was seated at a desk on the defendant's side of the courtroom. Sabathe relayed that she did not recall anything unusual that day. Further, she relayed she issued a subpoena for a male in a case that was not related to Johnson's case. After issuing the subpoena, she left the courtroom and doesn't recall any inmates speaking with anyone in the gallery while she was there.

Deputy Shawonda O'Neal stated:

> [S]he sat in the front of the court room near the bench and was working on Wednesday, April 29, 2009. O'Neal advised she did not recall any inmates speaking with any family members in the courtroom that day, nor was visitation between family and inmates allowed. O'Neal advised that no one was all to sit behind the inmates. **O'Neal did recall Judge Camille Buras clearing the courtroom of anyone associated with Johnson before Johnson's hearing.** O'Neal advised that eight to nine people, both males and female, left the courtroom. One person remained and after being question by Judge Buras, the person admitted to being an associated of Johnson. Judge Buras then ordered that person out of the courtroom again, with him leaving. (Emphasis added).

These statements directly conflict with the information provided to Judge Buras and the statement Judge Buras made concerning the events on the day of the hearing. Judge Buras failed to disclose the source of the information concerning Johnson and his behavior in the court on the date of the hearing.

The State revealed for the first time—via a public records request made by Johnson during collateral attack of his conviction—the supplemental report authored by Detective McCleary. This report revealed that the grounds relied upon by Judge Buras for admission of Hymel's statement were erroneous. Judge Buras was a testifying witness at the hearing. Her testimony was impeached by the contents of the report. *Brady* also applies to impeachment evidence. The phone calls used by the State stretched the limits emphasizing obscure language to make them fit their narrative, and would not have overcome the contents of the report. The State's suppression of Detective McCleary's report violated *Brady*. Because the very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, with the framework of the rules of evidence, due process requires that prosecutors disclose all evidence that is favorable to an accused and material either to guilt or to punishment. See *United States v. Nixon*, 418 U.S. 683, 709 (1974); See *Brady*, 373 U.S. at 87. Evidence is material for *Brady* purposes when it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict – that is, when there is a reasonable probability of a different result. *Banks v. Dretke*, 540 U.S. 668, 698-699, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004) (internal quotations omitted).

The supplemental report was material to Johnson's case. The State's case against Johnson concerning the murder of Alexander Williams relied heavily on the statement of deceased witness Stephen Hymel. Because Johnson did not have the supplement report, there was no knowledge that the deputies working section H the

day of the hearing provided eye witness testimony concerning Johnson's activities and the activities of the court. The record is void of any mention by counsel of this supplemental report at the April 2009 hearing. The admissibility of Hymel's statement rested on the State proving that the statement could be introduced under the exception clause of La. Code Evid. art. 804(B)(7), forfeiture by wrongdoing. Hymel's statement should never have been allowed into Johnson's trial. Hymel's statement gets suppressed, then the State loses its greatest witness against Johnson. The trial court denied Johnson a fair trial; the State denied Johnson's right to due process.

The importance of the admissibility of Hymel's statement was not lost on the Louisiana Court of Appeal, Fourth Circuit when ruling on Johnson's direct appeal. The Fourth Circuit stated that "if these hearsay statements were properly admitted, the conviction will stand; if the hearsay statements were inadmissible and not harmless error, **the conviction must be reversed and a new trial ordered**." *State v. Johnson*, 2013-0343 (La.App. 4 Cir. 10/1/14), 151 So.3d 683, 692 (citing, *State v. Hearold*, 603 So.2d 731, 738 (La. 1992)) (emphasis added). At that time, the Fourth Circuit was not aware of the supplemental report not being turned over to the Defense for introduction at the motion's hearing and its implications under *Brady*.

C. La. Code Evid. art. 804(B)(7) is parallel to Federal Rules of Evidence 804(b)(6)

The forfeiture by wrongdoing exception to the hearsay rule is codified in La. Code Evid. Art. 804(B)(7)(a), which is modeled after Federal Rule of Evidence 804(b)(6). Under this article, "[a] statement offered against a party that has engaged

or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness," is an exception to hearsay. La. Code Evid. Art. 804(B)(7)(a). Further, under La. Code Evid. Art. 804(B)(7)(b), "[a] party seeking to introduce statements under the forfeiture by wrongdoing hearsay exception shall establish, by a preponderance of the evidence, that the party against whom the statement is offered, engaged or acquiesced in the wrongdoing." This Honorable Court in *Davis v. Washington* stated that it takes no position on the standards necessary to demonstrate such forfeiture, but federal courts using Federal Rule of Evidence 804(b)(6), which codifies the forfeiture doctrine, have generally held the government to the preponderance of the evidence standard. State courts tend to follow the same practice. *Davis v. Washington*, 547 U.S. 813, 833, 126 S.Ct. 2260, 2280, 165 L.Ed.2d 224 (2006) (internal citations omitted).

1. **There is a direct relationship between the State's failure to disclose and Johnson's right to confrontation.**

The United States Constitution Amendment VI and La. Const. art. 1 § 16 guarantee an accused person in a criminal prosecution the right to confront the witnesses against him. In *Crawford v. Washington*, this Honorable Court restricted the admissibility of testimonial statements as evidence at a criminal trial when the declarant is unavailable, unless the accused had a prior opportunity to cross-examine the declarant. *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). This Court further examined the relationship between the Confrontation Clause and the forfeiture by wrongdoing doctrine in *Giles v. California*, 554 U.S. 353, 128 S.Ct. 2678, 171 L.Ed.2d 488 (2008). There, a defendant shot and killed his ex-

girlfriend. Weeks before the shooting, officers responded to a domestic violence report concerning the two. Prosecutors sought to admit statements from the victim that the defendant punched and threatened to kill her. The trial court admitted the statements during the murder trial. The defendant appealed his conviction. During this time, this Court decided *Crawford*, supra. In response, the California Supreme Court affirmed the conviction under the forfeiture by wrongdoing doctrine. It determined that the defendant had forfeited his right to confront the victim because he committed the murder that made the victim unavailable. This Court reversed and determined the California Supreme Court found incorrectly that the intent of the defendant was irrelevant to its application of the forfeiture doctrine. This Court wrote "the manner in which the rule was applied makes plain that unconfronted testimony would not be admitted without a showing that the defendant intended to prevent a witness from testifying." *Giles*, 554 U.S. at 361. Further, if the "evidence suggested that the defendant had caused a person to be absent, but had not done so to prevent the person from testifying—as in the typical murder case involving accusatorial statements by the victim—the testimony was excluded unless it was confronted or fell within the dying-declarations exception." *Giles*, 554 U.S. at 361-62.

In this case, at no time did Johnson have the opportunity to cross-examine Hymel. The veracity of his statement was never tested. Additionally, the State failed to prove by a preponderance of evidence that Johnson prevented Hymel from being available at trial. Johnson did not have Stephen Hymel killed. The withheld supplemental report would have provided the evidence needed to impeach Judge

Buras' testimony concerning Johnson's actions in the courtroom and Detective McCleary's testimony would have contradicted the State's evidence concerning the alleged phone calls placed by Johnson.

Under the *Brady* rule, the State withholding the supplemental report violated Johnson's right to due process. The supplemental report had both exculpatory and impeachment value. As noted, the supplement report was material to the submission of Hymel's statement under the forfeiture by wrongdoing rule. Johnson did not receive a fair hearing due to the failure to disclose; Johnson did not receive a fair trial as a result of the failure to disclose.

CONCLUSION

For these reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted this **16th** day of **May, 2025**.

Kedrick Johnson, # 437115

Kedrick Johnson, No. 437115
Allen Correctional Center
3751 Lauderdale Woodyard Rd.
Kinder, LA 70648