

No. \_\_\_\_\_

CAPITAL CASE

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STEPHEN ELLIOT POWERS, *Applicant*,

v.

STATE OF MISSISSIPPI, *Respondent*

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APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A  
PETITION FOR A WRIT OF CERTIORARI

S. BETH WINDHAM  
*Counsel of Record*  
KRISSEY C. NOBILE  
MISSISSIPPI OFFICE OF CAPITAL  
POST-CONVICTION COUNSEL  
239 North Lamar Street, Suite 404  
Jackson, MS 39201  
(601) 359-5733  
[bwindham@pcc.state.ms.us](mailto:bwindham@pcc.state.ms.us)  
[knobile@pcc.state.ms.us](mailto:knobile@pcc.state.ms.us)

August 4, 2025

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

1. In accordance with this Court's Rules 13.5, 22, 30.2 and 30.3, Applicant Steven Elliot Powers respectfully requests that the time to file his petition for a writ of certiorari be extended for 30 days, through October 17, 2025. The Mississippi Supreme Court issued its order on September 11, 2024 (Exhibit A) and denied rehearing on June 19, 2025. (Exhibit B). Absent an extension of time, the petition would be due on September 17, 2025. This Court's jurisdiction is based on 28 U.S.C. 1257. This request is unopposed.

2. This case presents two important questions of federal constitutional law in the context of capital conviction and sentencing: 1) whether the Mississippi Supreme Court may hold that *Brady v. Maryland*, 373 U.S. 83 (1963) claims and *Brady*-related prosecutorial claims are time and successive-writ barred without reaching the merits of these claims to avoid federal review of a constitutional violation; and 2) whether the State's suppression of exculpatory evidence and misleading statements to the trial court and the jury deprived Powers of his right to a fair trial in violation of the Fourteenth Amendment.

3. Newly-discovered evidence shows that the prosecution suppressed material DNA evidence and evidence of the original, alternative suspect, misled the jury with false and prejudicial statements at trial and failed to correct false testimony at a suppression hearing and later by omission at trial. See *Napue v. Illinois*, 360 U.S. 264 (1959). Powers could not have raised his *Brady* and *Napue* claims earlier as he was unaware of the evidence that the government concealed from him until 2023.

4. Powers was indicted for capital murder with the underlying crime of attempted rape on September 16, 1998. A key piece of evidence in showing Powers was engaged in the crime of attempted rape was a used sanitary napkin and a blood-stained note found in Powers' possession. The State argued that Powers took the sanitary napkin as a trophy from the victim (who was menstruating) and represented to the jury that the DNA analysis by the State crime lab on the napkin was inconclusive. But the State left out that it had also sent the note and sanitary napkin to ReliaGene, an out-of-state laboratory *that excluded the victim as the DNA donor*, and determined the blood on the note *belonged to a male*, not a female. Nor did it provide this information in discovery to the defense. Other than the sanitary napkin and note the only evidence of an attempted rape was a set of color crime scene photographs and the evaluation of those photographs by the State's now discredited forensic pathologist, Dr. Stephen Hayne. The jury found Powers guilty of attempted rape and convicted him of capital murder. The next day after a separate sentencing hearing in which no mitigation evidence was presented he was sentenced to death. The Mississippi Supreme Court affirmed Powers's conviction and sentence.

5. Powers' current post-conviction counsel discovered his *Brady* claims in 2023. On March 9, 2023, the Mississippi Crime Lab provided Powers access to its file and an inventory of biological evidence including a Bioscience Worksheet from ReliaGene Technologies, the out-of-state lab. And in 2023, current post-conviction counsel for Powers received a police incident report naming an alternative suspect, one of the victim's boyfriends, Ray Jeffus. There was no mention of Jeffus in the police report, or the discovery

provided to Powers and his counsel, or at trial -even though the victim was seen speaking to an individual matching his description on the day before her death. Failure by the prosecution to disclose an alternative suspect is material, and must be disclosed, when there is “some plausible nexus linking the other suspect to the crime.” *Kiley v. United States*, 260 F. Supp. 2d 248, 273 (D. Mass. 2003); *see also Crawford v. Cain*, No. Civ. A. 04-0748, 2006 WL 1968872, at \*19 (E.D. La. July 11, 2006), *aff’d*, 248 F. App’x 500 (5th Cir. 2007) (“When there is evidence available to link the alternative suspect to the crime, however, courts have found the prosecution’s failure to inform the defense about the alternative suspect material.”); *Juniper v. Zook*, 876 F.3d 551, 570 (4th Cir. 2017). Here the failure to inform Powers about Jeffus is material as Jeffus contacted the victim on her beeper the night she was killed and she was last seen alive talking to a thin, white male matching Jeffus’ description. The disclosure of Jeffus as an alternative suspect could have been the basis for a compelling defense that was otherwise unavailable.

6. Powers’ due process rights were also violated because “the [ReliaGene] 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. *See also Banks v. Dretke*, 540 U.S. 668, 691 (2004)(three elements of a *Brady* claim are “[1] The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the State, either willfully or inadvertently; and [3] prejudice must have ensued.”)(internal quotations omitted). Further, if the prosecution had not committed the *Brady* violations, there is a reasonable probability that they could not prove the underlying

charge of attempted rape- sparing Powers a death sentence. *Wearry v. Cain*, 577 U.S. 385, 392 (2016)(favorable evidence qualifies as material under *Brady* if there is any reasonable likelihood it could have affected the judgment of the jury.)(internal citations omitted).

7. Rather than reach the merits, in a two-page order, the Mississippi Supreme Court simply held that Powers' claims were "time and successive writ barred" and the "newly-discovered-evidence exception is unmet." *See* Exhibit "A." The Court did not provide its reasoning for denying relief. *Id.* Powers submits that the lower court's interpretation and application of Mississippi law to Powers' claims amounts to a subterfuge to avoid federal review of his *Brady* claims. *See Radio Station WOW v. Johnson*, 326 U.S. 120, 129 (1945)(Court may not consider the correctness of non-federal ground unless it is an obvious subterfuge to evade consideration of a federal issue) and *Mullaney v. Wilbur*, 421 U.S. 684, 691, n. 11 (1975); *see also Lee v. Kemna*, 534 U.S. 362, 375 (2002)(Court will not take up question of federal law "if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment.")(internal citation omitted).

8. Powers' petition will thus satisfy the Court's criteria for certiorari because it will present important questions of federal constitutional law in the context of capital conviction and sentencing.

9. Counsel respectfully requests more time to file the petition for certiorari because counsel have many other substantial competing commitments in their other capital cases including:

- Pending motion by the State of Mississippi to set an execution date, and a pending successive state post-conviction petition in *Charles Crawford v. State of Mississippi*, 94-DP- 01016-SCT and 2024-DR-01386-SCT.
- Pending motion by the State of Mississippi to set an execution date, and a pending motion for rehearing on a successive state post-conviction petition in *Willie Jerome Manning v. State of Mississippi*, 95-DP-0066-SCT and 2023-DR-01076-SCT.
- Pending motion by the State of Mississippi to set an execution date, and a pending successive state post-conviction petition in *Robert Simon, Jr. v. State of Mississippi*, 91-DP-00353-SCT and 2016-DR-00092-SCT.
- Preparation for an evidentiary hearing, preparation of motion(s) and pending motion by the State of Mississippi for rehearing in *Tony Terrell Clark v. State of Mississippi*, 2022-DR-00829-SCT.
- Investigation and preparation of an initial state post-conviction petition in *Willie Cory Godbolt v. State of Mississippi*, 2020-DP-00440-SCT.
- Extensive travel, investigation, and preparation of successive state post-conviction petitions and related motions in other active capital cases.

For these reasons, Steven Elliot Powers respectfully requests that the time to file his petition for a writ of certiorari be extended for 30 days including October 17, 2025.

Respectfully submitted,

*S. Beth Windham*

S. BETH WINDHAM

*Counsel of Record*

*Counsel for Stephen Powers*

August 4, 2025

**CERTIFICATE OF SERVICE**

I certify that I have served copies of this *Motion* via U.S. mail, postage pre-paid, to all parties of record using the below address:

Ashley Sulser  
LaDonna Holland  
Office of the Attorney General  
P O Box 220  
Jackson, MS 39205-0220  
[Ashley.Sulser@ago.ms.gov](mailto:Ashley.Sulser@ago.ms.gov)  
[Ladonna.Holland@ago.ms.gov](mailto:Ladonna.Holland@ago.ms.gov)

This the 4<sup>th</sup> day of August 2025.

*S. Beth Windham*  
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COUNSEL FOR APPELLANT