No. 17-8176

In The Supreme Court of the United States

KEVIN KEITH,
Petitioner,
v.
STATE OF OHIO,
Respondent.

On Petition For Writ of Certiorari to the
Supreme Court of Ohio

REPLY TO PETITION FOR WRIT OF CERTIORARI

Office of the Ohio Public Defender

Rachel Troutman (0076741)
Supervising Attorney
Death Penalty Department
Counsel of Record

Kathryn K. Polonsky (0096468)
Assistant State Public Defender
Death Penalty Department

250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394/ (614) 644-0708 (Fax)
Rachel.Troutman@opd.ohio.gov
Kathryn.Polonsky@opd.ohio.gov

Counsel for Petitioner Keith

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

OTHER AUTHORITIES

REPLY

The Ohio courts denied Kevin Keith the ability to file his new trial motion, because they faulted Keith for failing to uncover earlier the evidence that the State should have willingly provided him at the time of his trial in 1994.[1] In Keith's new trial motion, he argued the merits of his *Brady* claim and combined it with the evidence at issue in his previously-litigated *Brady* claims. Despite denying him leave to file his new trial motion, the Ohio courts made materiality findings about the most recectly discovered suppressed evidence, and they did not consider the previously-litigated suppressed evidence.[2]

The State argues that "Keith's real objection is that the Ohio courts misapplied *Brady* in denying him relief." Brief in Opp., p. 3. Keith does not, of course, pretend that he believes the Ohio courts properly determined his *Brady* claims. The Ohio courts absolutely came to the wrong conclusions. But, as Keith's petition demonstrates, the problem is not just the conclusions they came to, but also how they got there. The Ohio courts should not have faulted Keith for the State's suppression, and they could not have appropriately determined materiality without considering in the aggregate **all** of the evidence that the State has suppressed.

---

[1] Question Presented #1: When the State conceals evidence from the defendant, is it inconsistent with due process to condition the consideration of a *Brady* claim on the defendant's ability to first prove he looked hard enough to find what the State concealed?

[2] Question Presented #2: When a defendant uncovers favorable evidence that had been suppressed by the State, should the court's materiality analysis include all pieces of suppressed evidence, despite that the pieces were uncovered at separate times and raised in separate proceedings?

I. Summary of Ohio courts' rulings

In order to have his new trial motion—containing his *Brady* claim—considered on the merits, Ohio law required that Keith establish that he was unavoidably prevented from discovering the Yezzo information at trial or within 120 days of trial. *See* Ohio Crim.R. 33(B). The trial court refused to permit Keith to file his motion for new trial on the merits. Appendix A, A-1. The trial court found that Keith failed "to show by clear and convincing evidence that the information contained in Yezzo's personnel file was unavailable to the defendant with the exercise of reasonable diligence," because "[t]his information could have easily been obtained through cross-examination" or "through a simple public records request." Appendix B, A-13. Although Keith was not permitted to file his motion on the merits, the trial court "reject[ed] the defendant's contention that failing to provide Yezzo's personnel file to the defendant constitutes a *Brady* violation." *Id.* at A-11.

The Ohio Court of Appeals adopted the trial court's reasoning that it was *Keith's* burden to have sought out the information about Yezzo at the time of his trial. Appendix C, A-32-33. It rejected Keith's arguments in which he demonstrated that he could not have obtained the information through "reasonable diligence" by using public records law. In 1994, a defendant had to first exhaust his direct appeals before he could use the Public Records Act to obtain information. *State ex re. Clark v. Toledo*, 54 Ohio St. 3d 55, 57 (1990). And by the time Keith exhausted his direct appeals, *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420 (1994) prohibited a defendant from using public records to challenge his conviction even after exhausting direct

appeals. *Id*. at 428. The Court also rejected Keith's argument that it was the State's burden to provide the impeachment evidence, not the defense's job to seek it out.

The Ohio Court of Appeals then considered only the Yezzo information and determined it was immaterial anyway: "Based on the record we cannot find that, even assuming Yezzo's personnel file was suppressed, and that it contained information favorable to Keith, there is no reasonable possiblity that the information contained in Yezzo's file would have made any difference in the outcome of this case." Appendix C, A-36-37.

II. The State was constitutionally required to disclose the impeachment evidence.

It is undisputed that Keith did not receive the impeaching information about forensic analyst G. Michele Yezzo at the time of trial. In the courts below, the State faulted Keith for not discovering the impeaching information about Yezzo on his own at the time of his trial. The State has also, as it did in the Brief in Opposition, disputed that the State even had an obligation to disclose the impeachment information regarding Yezzo. *See* Brief in Opp., p. 3 ("Keith attempts to establish a Constitutional requirement that the State (the prosecutor) must disclose unfounded allegations that have no bearing on the work product of the witness.").

Yezzo was an agent of the State, employed by the Ohio Bureau of Criminal Investigation ("BCI"). The "three agencies" involved in the prosecution of Keith were the Bucyrus Police Department, the Crawford County Sheriff's Department, and BCI. Tr. 84. The State possessed the impeaching information concerning Yezzo's reputation, credibility, and biases at the time of trial.

BCI put Yezzo on administrative leave in 1993, and her behaviors that led to her suspension are definitely relevant to her credibility as an analyst as a whole.[3] But more concerning is that in the ensuing investigation, it was documented that Yezzo had a "reputation of giving dept. answer wants if [they] stroke her." Appendix to Motion for Leave, Ex. 2, p. 12. And this was not the first time this was documented in her file. *See* Appendix to Motion for Leave, Ex. 1. The State, like the court below, seems to find it significant that Yezzo's 1993 suspension was not **directly caused** by the reports of her willingness to lie for law enforcement, but that collateral point does not diminish the impeachment value of the fact that she would "stretch the truth to satisfy a department." Appendix to Motion for Leave, Ex. 1, p. 2.

It appears that the State is implying that, because Yezzo was not immediately fired after allegations that she lied for law enforcement, then her supervisors must have determined she was not untruthful. *See* Brief in Opposition, p. 1 ("The actions taken by her superiors provide evidence that was not true."). *See also id.* at 2 ("Despite these **unfounded claims,** then Attorney General Lee Fisher, who now claims he would not have allowed her to testify, gave Yezzo a reward for her service.")(emphasis added).

What the documents actually demonstrate, however, is that:

- In 1989, five years before Yezzo testified against Keith, the Ohio Bureau of Criminal Investigations documented that it was a "consensus" among BCI analysts that analyst Yezzo's "findings and conclusions regarding

[3] The reasons cited in the letter to Yezzo for her administrative leave were her "threatening co-workers and failure of good behavior." Appendix to Motion for Leave, Ex. 12, p. 2. The Director of Human Resources cited some specific examples including threatening to kill a variety of people on multiple occasions while in a rage.

evidence may be suspect. She will stretch the truth to satisfy a department." Appendix to Motion for Leave, Ex. 1, p. 2.

- In 1993, less than one year before Yezzo testified against Keith, BCI noted that Yezzo had a "reputation of giving dept. answer wants if [they] stroke her." Appendix to Motion for Leave, Ex. 2, p. 12.

- In 2009, fifteen years after Yezzo testifed against Keith, Yezzo received the last of many verbal reprimands of her career as a forensic scientist with Ohio's Bureau of Criminal Investigation. BCI's documentation referred to her "interpretational and observational errors" as "failures that could lead to a substantial miscarriage of justice." Yezzo tendered her resignation the following month. Appendix to Motion for Leave, Ex. 10.

In other words, the reliability of Yezzo's findings was an issue before Keith's trial, and it remained an issue after Keith's trial. It is disingenuous to claim they were determined to be baseless.

Contrary to the State's representation, these were not "complaints filed by her co-workers who she supervised." Brief in Opp., p. 1. It was not that a "[State's] witness was not liked by her co-workers and had difficulty in the workplace." *Id.* at 4-5. This was years of evidence that Yezzo was biased, that she had a reputation as such, and that management documented it. For example, the 1989 document was a memorandum from the Assistant Superintendent to the Superintendent. Appendix to Motion for Leave, Ex. 1. Moreover, in it, the Assistant Superintendent explained that "[t]he feelings and attitudes [about Yezzo] are shared by all of the labs, not merely London." Appendix to Motion for Leave, Ex. 1, p. 3. It further demonstrates that the union would not even represent Yezzo, and the union representative "indicated he would **resign as a representative** before representing Michele." *Id.* (emphasis added). *See also* Appendix to Motion for Leave, Ex. 10 (Memorandum

authored by the Superintendent); Ex. 12, p.1 (authored by Deputy Director); Ex. 12, p. 2-3 (authored by Director of Human Resources); Ex. 13 (authored by Laboratory Director); Ex. 14, pp. 1-3 (all authored by Central Laboratory Supervisor); Ex. 14, p. 4 (authored by Laboratory Division Chief).

The State claims the Attorney General Lee Fisher gave Yezzo a "reward for her service," and that purportedly demonstrates that the claims against her were "unfounded." Brief in Opp., p. 2. But as former Attorney General Fisher stated in his sworn affidavit in the courts below, he was not made aware of the "troubling information" about Yezzo and did not review her personnel file during his time as the Ohio Attorney General. Appendix to Motion for Leave, Ex. 3, p. 2. He further stated that had he known, he would not have permitted Yezzo to testify, would have ordered the evidence she examined to be resubmitted to another analyst, and that the State had a duty to disclose to the defense this information about Yezzo. *Id.* at 3.

The evidence of Yezzo's biases—both pro-police and anti-African American—is evident in Yezzo's personnel files. There is no evidence in the record (or in Yezzo's files) to support the State's contention that the claims against her were unfounded.

Whether the individual prosecutor had actual knowledge of the impeachment evidence is not relevant under *Brady*. Even without actual knowledge, the prosecutor still "has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case." *Kyles v. Whitley,* 514 U.S. 419, 437 (1994). In this case that means the prosecutor had a duty to learn of Yezzo's file and of the impeachment material it contained. "[W]hether the prosecutor succeeds or fails in

meeting this obligation (whether, that is, a failure to disclose [the *Brady* material] is in good faith or bad faith), the prosecution's responsibility for failing to disclose" impeachment evidence known to the State "is inescapable." *Id.* at 437-38. It is the fairness of the trial, not "the moral culpability[] or the willfulness[] of the prosecutor," that matters for *Brady*. *United States v. Agurs*, 427 U.S. 97 (1976) at 110; *see Kyles*, 514 U.S. at 439 ("[T]he government simply cannot avoid responsibility for knowing when the suppression of evidence has come to portend such an effect on a trial's outcome as to destroy confidence in its result."); *cf. Smith v. Phillips*, 455 U.S. 209, 220 n. 10 (1982).

III. Yezzo was a material witness, and she would have been impeached.

As the State points out, Yezzo testimony "was supplied through a deposition." Brief in Opp., p. 2. What it does not point out, however, is that the Ohio Criminal Rules allow for a witness's testimony "be taken by deposition" only when that witness is unavailable at trial and when the witness's "**testimony is material** and that it is necessary to take his deposition in order to prevent a failure of justice." Ohio Crim. R. 15(A) (emphasis added). Thus, in order for Yezzo's deposition to be admitted in the State's case at Keith's trial, Yezzo's testimony had to be so material that *justice* required allowing her to testify by deposition. Now, however, the State claims Yezzo was not critical and, was—incredibly—"favorable to Keith." Brief in Opp., p. 2.

The tire and license plate imprints in the snow were the key forensic evidence that allegedly linked Keith to this crime—and Yezzo is the witness who provided that evidence for the State. The State needed Yezzo's testimony to bolster its shaky

eyewitness testimony. For example, Nancy Smathers provided her eyewitness testimony regarding the getaway car she saw, and though she could not initially identify Keith, she ultimately did from the witness stand. To demonstrate "why should we believe Nancy Smathers," the prosecutor essentially linked her to Yezzo. Tr. 836. If Smathers claimed she saw a car and Keith, and Yezzo determined that a car linked to Keith left snow imprints at the scene, Smathers' identification of Keith was more credible. *See* tr. 836-37 (The prosecutor described how Smathers saw a car get stuck in the snow, BCI was "able to take photographs that, as you heard from the deposition of Michele Yezzo, were used in determining the tire prints and the partial license plate impression.") *See also id*. at 841 (asserting in closing that neither Warren nor Smathers had "the motive or opportunity to fabricate. Their statements are corroborated by each other and by other witnesses. There is no way they can be lying because their statements are backed by the facts as we have seen from other sources.").

In fact, Smathers' description of the car she saw did not match the car purportedly linked to Keith. Smathers described the getaway car she saw as follows:

> A It was a light cream color but I couldn't, you know, with the lights and stuff, see the exact color. I know it was a white, cream, light yellow.

Tr. 389. But the car the State impounded[4] was not a "white, cream, or light yellow" car. Although the State never had Smathers identify it in court—instead admitting the pictures of it through Yezzo—this is the car the State claims was the getaway car Smathers saw:

Yezzo's testimony was crucial to connecting the above car to the scene. Beyond the fact that it did not fit Smathers' description, there was not a single fiber in the car that connected it to the scene or to Keith. Tr. 481, 489-90; Yezzo deposition, p. 19-21, 26.

It is inconceivable that Yezzo's testimony could be so material to the State at trial that her deposition was permitted, but the critical impeachment evidence establishing her bias and tendency for untruthfulness is now considered immaterial. Yezzo's own boss at that time—the Ohio Attorney General—submitted a sworn affidavit in the proceedings below, explaining how important the impeachment

[4] The lower courts have referred to this car as "the automobile Kevin Keith was known to have had access," but as supported by the lack of any forensic evidence connecting it to Keith (or to the scene, for that matter), Keith has never even been in this car.

evidence was to him. Appendix to Motion for Leave, Ex. 3. If even he doubted her credibility after being made aware of the documentation regarding her biases, then surely the jury would have.

Moreover, had a correct forensic analysis been conducted, the car purportedly linked to Keith would not have been linked to the scene. *See* Appendix to Motion for Leave, Ex. 4 (retired FBI Special Agent William Bodziak reviewed the evidence relied upon by Yezzo and excluded the car as the one that left the impressions at the scene). And an alternative suspect—whose light yellow/cream-colored car fit the description of the car given by Smathers—might have been inculpated.

Yezzo's forensic conclusions allowed the police to disregard one of the biggest pieces of evidence against Rodney Melton: his light yellow car with the license plate 043LIJ. *See* Appendix for Motion to Leave, Ex. 21, pp. 11, 31. The Bucyrus Police were focused on finding a car with a "043," because that was what they determined was the impression in the snow left by the getaway car. But the officers rejected Melton's 043LIJ as a possibility, despite its color, because of Yezzo's conclusion about the "spacing and orientation similar to the license plate 'MVR043' (the plate on Keith's girlfriend's grandfather's car)." *See* Tr. 745, 822. *See also* State's Tr. Ex. 8:

Again, according to Bodziak, Yezzo was wrong about this.

The shaky eyewitness testimony would not have been bolstered by Yezzo's testimony had she not testified or if she had been impeached with the evidence of bias in her personnel file. The forensic connection to the car above would not have been made. Yezzo was a critical witness for the State, and the cumulative effect of the withheld evidence undermines confidence in the jury's verdict. *See infra,* pp.13-19.

IV. There is no consensus regarding a "due diligence" requirement in the *Brady* context, and Keith should not be punished for his inability to find sooner what the State hid.

The Ohio courts denied Keith's Motion for Leave to File a New Trial Motion, because they determined Keith did not act with reasonable diligence in learning of and obtaining the impeaching information about BCI analyst Yezzo at the time of his trial. This type of burden-shifting only "incentivizes prosecutors to delay disclosure of, or even purposely withhold, exculpatory evidence." *Prosecutors Hide, Defendants Seek: The Erosion of Brady Through the Defendant Due Diligence Rule*, 60 UCLA L. Rev. 138, 158. Even when evidence is inadvertently suppressed, it is inconsistent with due process to fault the defendant, because it is the prosecutor who "has a **duty**

to learn of any favorable evidence known to the others acting on the government's behalf in the case." *Kyles*, 514 U.S. at 437 (emphasis added).

In its response to this, the State presents a confusing and inapplicable argument concerning *Arizona v. Youngblood,* 488 U.S. 51 (1988) and the fact that Keith has not alleged "bad faith by the Prosecutor." Brief in Opp., p. 4, 5. Keith is not asking this Court to "elaborate further" on where to look to determine whether police acted in bad faith. Because the State's Brief in Opposition does not address the arguments Keith made in his first Reason For Granting the Writ, Keith will rest on his Petition. *See* Petition, pp. 14-19.

V. The materiality analysis should encompass the suppressed evidence at issue in all previous proceedings, and the State should not get to benefit from successfully suppressing some evidence longer than other evidence.

The State referenced Keith's extensive litigation, and Keith readily admits that he has had to continuously litigate his case—because **this is the fourth time** Keith has uncovered favorable evidence that the State suppressed. With each discovery, the State never really disputes that the evidence was, in fact, suppressed. The State just argues that it does not matter and is immaterial.

As an initial matter, the State's inconsistent arguments demonstrate that this is an area in which lower courts need this Court's guidance. Inexplicably, the State contradicts itself and takes two opposing positions on the issue of considering all the suppressed evidence collectively. At one point, the State argues that "[t]he theory the Defendant asks the Court to adopt would result and encourage more unfounded appeals which would further create a serious lack of confidence in the judicial

system." Brief in Opp p. 7. But later, the State claims that "such clarification is unnecessary" because "there is a clear consensus among state and federal courts that materiality review requires a collective assessment of all *Brady* material, including that identifed in previous proceedings." *Id.* at 16. If what Keith proposes is just his own "theory" that the State believes—if put in practice—would lead to "more unfounded appeals," then the State cannot also argue it is already in practice among state and federal courts.

Regardless of the State's arguments, the point of the *Brady* materiality analysis is to determine to what extent the State's suppression affected the outcome of the trial. Each piece of suppressed evidence has a different impact on the trial, and the multiple pieces of suppressed, favorable evidence affected Keith's trial exponentially.

VI. Simply labeling evidence "overwhelming" doesn't make it so.

The State went through a list of what it claims is the "overwhelming" evidence of Keith's guilt, and it conveniently ignored three things: (1) the eyewitness testimony was weak and/or exculpatory of Keith; (2) the evidence suppressed by the State and uncovered in the years since trial sheds new light on the prosecutor's purported evidence against Keith; and (3) the Governor of Ohio, in 2010, granted Keith clemency on the basis that there were too many "legitimate questions" concerning the evidence the State used to convict Keith. http://www.cnn.com/2010/CRIME/09/02/ohio.death.penalty.lifted/index.html, 2010 [Accessed 30 Apr. 2018].

There are three "eyewitnesses" in this case: surviving victims Quanita Reeves and Richard Warren, and Nancy Smathers. Seven-year-old Reeves told her nurse and then the police that it was her "Daddy's friend, Bruce" who shot them, and she excluded Keith's picture as the shooter. Tr. 715, 721. Warren initially told four people that he did not know who shot him and that the man wore a mask. *See* tr. 240, 305, 620, 623. He did not identify "Kevin" until the next day, after the police had decided Keith was the shooter, and the police admittedly provided Warren with four "Kevins" to choose from. Tr. 353. Warren testified at Keith's trial that he did not know whether it was the police who first suggested the name "Kevin" to him. *See* Tr. 372 (Defense Counsel: "So you don't recall whether you mentioned the name to them or they mentioned it to you; do you?" Warren: "No, sir, I do not.").

With regard to Smathers, it was not until the third police interview (conducted over a month after the murders and after she saw Keith on television as the suspect) that Smathers told police that it was Keith she saw in the car. The first time Smathers spoke to police, she told them that she could not identify the driver. Tr. 385. And Smathers admitted that, when she talked to police the second time, she could not identify the person. *Id.* at 390-91. Then, over a month later, she spoke to police a third time. *Id.* at 391. This time, after seeing Keith's picture on the news as the man arrested for the murders, Smathers told police that she was 90 percent sure that was the man she saw driving the car. *Id.* at 391-92.

Smathers' real value as an eyewitness was that she saw the getaway car. As the prosecutor described in closing arguments, what she saw and reported to police

led to the collection of evidence provided to Yezzo. Once Yezzo provided her conclusions about Keith's girlfriend's grandfather's car, it did not matter to the jury that the car was the wrong color or that Smathers did not identify Keith until the third time police interviewed her. Yezzo bolstered Smathers.

Conversely, what if the defense had found out at the time of trial about the documentation in Yezzo's personnel file? Counsel could have challenged Yezzo as a witness all together, and as we know from the affidavit of former Ohio Attorney General Lee Fisher, Yezzo would not have been permitted to testify if Fisher had known about her documented biases. The evidence could have been evaluated by another—unbiased—forensic analyst, and as we know from Bodziak, it would not have implicated Keith's girlfriend's grandfather's car. If Yezzo had not been permitted to testify or had been impeached, Smathers' testimony regarding the person she saw would have been seen for what it was: very weak.

VII. The collective effect of the suppressed evidence leads to one conclusion: Keith would not have been convicted.

The State labels the evidence it suppressed and Keith uncovered previously as "at most, merely cumulative of the evidence Keith presented at trial." Brief in Opp., p. 19. It is correct that Keith argued at the time of his trial that he is innocent and it was likely either Bruce or Rodney Melton (hereinafter referred to as "Bruce" and "Rodney") who committed the shootings. But what Keith had at the time of trial, compared to what he **would have had** if the State had not suppressed the evidence, are two entirely different things.

At the time of trial, the defense knew that Quanita Reeves told police that it was her "Daddy's friend, Bruce" who shot them. They also knew that Bruce, Rodney, and Quanita Reeves' father had just been indicted for their roles in string of pharmacy burglaries across Ohio. And they knew that Rodney had a previous conviction for a homicide, and there were rumors of other homicides attributed to him. *See* Tr. 695-702. Rodney's own family contacted Keith's trial attorney during the trial and told him that Melton is a "psychopathic killer." Tr. 700.

But what they—and the jury—did **not** know at the time of trial, and what Keith learned in 2007, included the following: On January 31, 1994, Rodney Melton told a confidential informant "that he had been paid $15,000 to cripple 'the man' who was responsible for the raids in Crestline, Ohio last week." Appendix to Motion for New Trial, Ex. 21, p. 11. That conversation took place just two weeks before Rudel Chatman's family members were shot and killed. As the State pointed out at Keith's trial, Rudel Chatman was the man responsible for the Crestline drug raids on January 21, 1994. T.p. 590. This was the State's theory for the motive behind the shooting rampage at Bucyrus Estates on February 13, 1994. *See id*. at 830 (The prosecutor argued "The purpose of [Keith's] murderous intentions was revenge for the activities of Rudel Chatman which resulted in the State of Ohio securing trafficking indictments against himself and other members of his family and friends.").

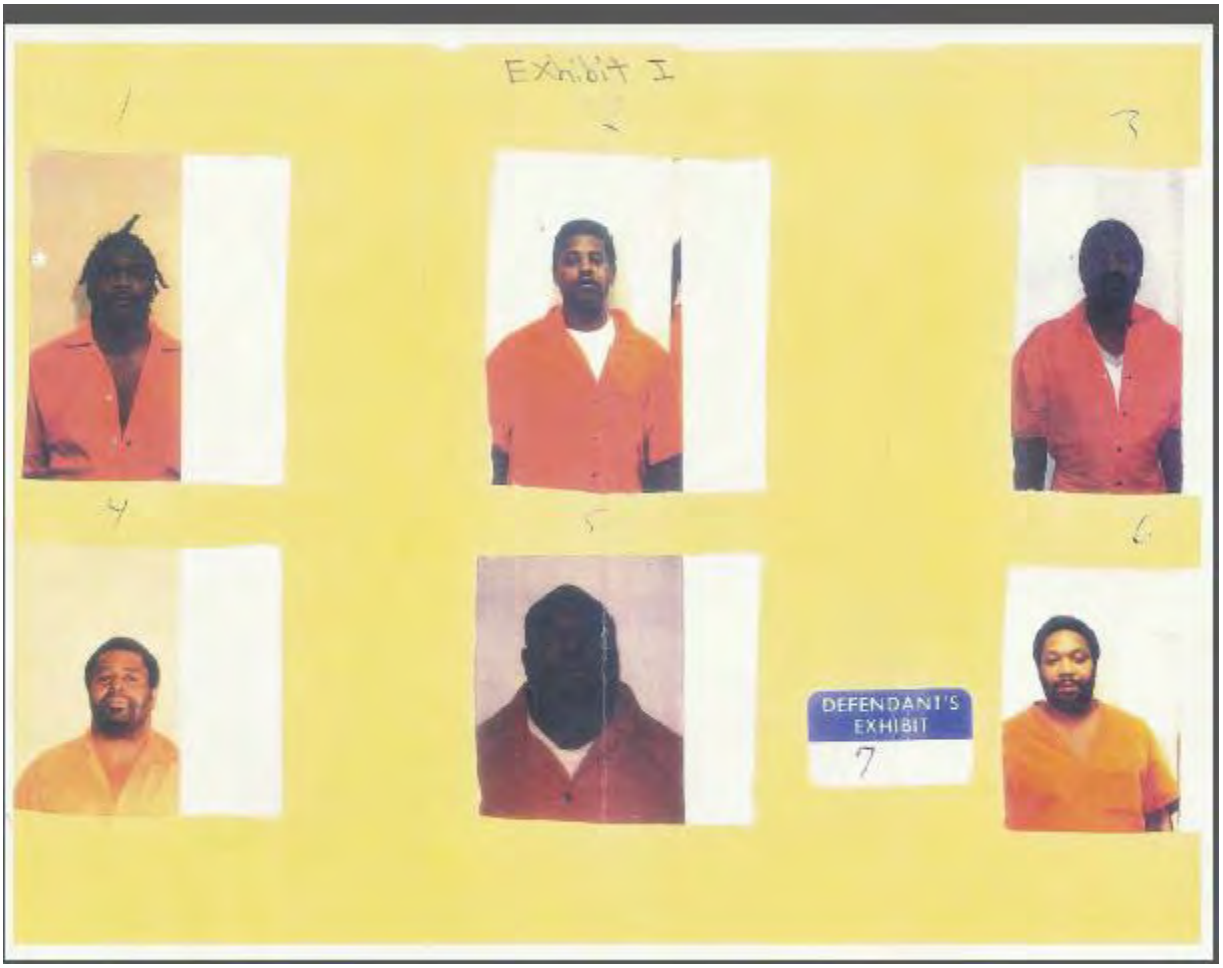
Keith also learned in 2007 that "[t]he Melton's [sic] [had] spread the word that anybody that snitches on them would be killed." Appendix to Motion for New Trial,

Ex. 21, p. 8. He learned in 2010 that Rudel Chatman had been a "snitch" against Rodney in 1993. And there were several other documents discovered that implicated Rodney, as well. For example, an informant had told police that it was Rodney's habit to wear a mask that covers his mouth because he has a gap between his front teeth. Appendix to Motion for New Trial, Ex. 27, pp. 7, 8. Significantly, Quanita Reeves and Richard Warren both recalled that the man who shot them wore a mask that covered his mouth. T.p. at 348, 716. Also, after Keith was arrested for the Bucyrus Estates murders, Rodney's accomplice in the pharmacy burglary ring told the police that Rodney was paid to kill Rudel Chatman. Appendix to Motion for New Trial, Ex. 25, p. 16.

In fact, as noted earlier, Smathers' description of the getaway car fit Rodney's car. It was a 1979 Chevy Impala with a "new yellow paint job," and Keith learned in 2007 that Melton apparently would "insist[]" on using this car for criminal activities. Appendix to Motion for New Trial, Ex. 21.

Similarly, at the time of trial, the defense argued that the police improperly influenced Warren into "remembering" the name "Kevin." But without the suppressed evidence that Keith uncovered in 2010, the defense did not have much more than this—the State's impermissibly suggestive photo lineup—to demonstrate how police caused Warren to choose Keith[5] as the shooter:

[5] Keith is in the bottom center, and his photo is both darkened so his features are not visible, and his is a closer-up photo than the others.



The defense did not know that the police station's radio logs (discovered by Keith in 2010) demonstrated no incoming call from Warren's nurse—a call which, according to the police—is what prompted them to provide Warren with a name lineup of four "Kevins." Without that incoming call, the implication is that the police provided Warren with the name "Kevin," and not the other way around.

Keith also could not, at the time of trial, impeach the State's witness who testified that she found the bullet casing in front of her home, which was across from the General Electric plant where Keith's girlfriend worked. Tr. 428. The bullet casing's location near Keith's girlfriend's job was used by the State to implicate Keith. But according to the Bucyrus Police radio dispatch logs, obtained by Keith in 2010,

when the woman reported the found casing, she reported that she "thinks she may have found it in the McDonalds area." McDonalds was approximately a mile away from where Keith's girlfriend worked.

Had it not been for the State's suppression, Keith could have presented the above and more at the time of trial. No court has ever considered the suppressed evidence in its totality, and the Ohio courts did not consider the previously uncovered evidence in assessing the materiality of the impeachment evidence concerning Yezzo. Due process requires more than was Keith was given.

CONCLUSION

Because of the failure to disclose multiple pieces of exculpatory and impeaching evidence, the State's "case was much stronger, and the defense case much weaker, than the full facts would have suggested." *Kyles*, 514 U.S at 429. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Office of the Ohio Public Defender

By: /s/ Rachel Troutman
Rachel Troutman (0076741)
Supervising Attorney
Death Penalty Department
Counsel of Record

By: /s/ Kathryn K. Polonsky
Kathryn K. Polonsky (0096468)
Assistant State Public Defender
Death Penalty Department

250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394/ (614) 644-0708 (Fax)
Rachel.Troutman@opd.ohio.gov
Kathryn.Polonsky@opd.ohio.gov

Counsel for Petitioner Keith