No. 25-1

IN THE

Supreme Court of the United States

JAMES SKINNER,

Petitioner,

v.

LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari
to Louisiana's 21st Judicial District Court

BRIEF OF PROFESSOR BRANDON L. GARRETT AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Amicus **Brandon L. Garrett** is the David W. Ichel Distinguished Professor of Law at Duke Law School and director of the Wilson Center for Science and Justice at Duke Law School. Professor Garrett's research and teaching focuses on criminal law and criminal procedure, with a particular emphasis on quantitative and qualitative analysis of *Brady* claims. Professor Garrett has published and lectured extensively on the adjudication of constitutional rights in postconviction proceedings, and his work has been widely cited by courts, including the U.S. Supreme Court, lower federal courts, state supreme courts, and courts in other countries. Professor Garrett is also involved with a number of law and science reform initiatives, including a National Academy of Sciences Committee concerning eyewitness evidence. Professor Garrett serves as co-director of CSAFE (Center for Statistics and Applications in Forensic Evidence).

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[1] Pursuant to this Court's Rule 37.6, counsel for amicus curiae state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than amicus and his counsel made a monetary contribution to the preparation or submission of this brief. Counsel for amicus provided counsel for respondent with notice of our intention to file on the same day counsel for amicus received a signed engagement letter, July 22, 2025.

SUMMARY OF ARGUMENT

In *Wearry v. Cain*, this Court found "[b]eyond doubt" that *Brady* violations undermined confidence in Mr. Wearry's conviction, which "resemble[d] a house of cards." 577 U.S. 385, 392 (2016). This Court summarily reversed Louisiana's postconviction court for "egregiously misappl[ying] settled law" in denying Mr. Wearry's request for relief. *Id.* at 395-96. Now Mr. Wearry's co-defendant, James Skinner, seeks the same postconviction relief that ruling afforded. Mr. Skinner was charged with the same crime, deprived of the same evidence (and more), convicted on the same gossamer case, and his request for relief in Louisiana's postconviction court had the significant benefit of invoking this Court's *Wearry* opinion. *See* Pet.i. The petition represents a compelling and obvious opportunity to "promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139 (2005). *Wearry* controls and dictates the outcome of Mr. Skinner's case, notwithstanding that the Louisiana lower court "does not feel it's bound by" a United States Supreme Court opinion singularly on all fours in both the facts and law. Pet.29.

"[S]ummary reversal sends a corrective message, particularly in the face of resistance, that reversal after plenary consideration does not." Edward A. Hartnett, *Summary Reversals in the Roberts Court*, 38 Cardozo L. Rev. 591, 613 (2016). Here, granting Petitioner summary relief would remind Louisiana's 21st Judicial District Court that it, "like any other state or federal court, is bound by this Court's interpretation of federal law." *James v. City of Boise*, 577 U.S. 306, 307 (2016). This brief offers two other reasons why such a "corrective message" is warranted.

1. The prosecution's missteps merit summary reversal. Mr. Skinner's case is rife with heartland *Brady* violations. The statements and records that Mr. Skinner's

prosecutors failed to disclose are the most common forms of suppressed evidence in successful *Brady* challenges. The case is notable for its sheer volume of suppression rather than any novel or thorny issues of law. A summary reversal will sit comfortably within the mine run of successful *Brady* claims and provide a clear admonition that "the prudent prosecutor" should "resolve doubtful questions in favor of disclosure." *United States v. Agurs*, 427 U.S. 97, 108 (1976).

2. The "error in the lower court's decision is so obvious" as to warrant summary reversal. *See* Stephen M. Shapiro, Kenneth S. Geller, Timothy S. Bishop, Edward A. Hartnett & Dan Himmelfarb, *Supreme Court Practice* § 4.17 (11th ed. 2019). The lower court gave unreasonably short shrift to Mr. Skinner's *Brady* claim. For much of the suppressed evidence, it gave no shrift whatsoever. The opinion contains no real "evaluation" to speak of, much less "the cumulative evaluation required by" this Court. *Kyles v. Whitley*, 514 U.S. 419, 441 (1995). The court also committed a number of analytical missteps that are unfortunately recurrent in lower court *Brady* analyses. Courts must offer more than the reflexive rejection of *Brady* claims. Summary reversal serves to reaffirm this basic requirement.

ARGUMENT

"Under *Brady*, the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment." *Smith v. Cain*, 565 U.S. 73, 75 (2012). The *Brady* doctrine assigns responsibilities to both the prosecution and the courts. The prosecutor's duty arises first. "There are three distinct steps in the *Brady* compliance process: gathering evidence from all government officials who have worked on the case, assessing which evidence is material, and disclosing

material evidence to the defense." Jennifer Mason McAward, *Understanding* Brady *Violations*, 78 Vand. L. Rev. 875, 888 (2025). When the State fails to discharge this duty, *Brady* tasks courts with assessing whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). In performing this analysis, courts must not "fail[] even to mention" pieces of suppressed evidence, must not "evaluate[] the materiality of each piece of evidence in isolation rather than cumulatively," and must not "emphasize[] reasons a juror might disregard new evidence while ignoring reasons she might not." *Wearry*, 577 U.S. at 394.

The *Brady* doctrine thus tempers the traditional "partisan struggle to convict" with a "step in [the] direction" toward "a neutral, detached investigation into the truth." Stephanos Bibas, *The Story of* Brady v. Maryland*: From Adversarial Gamesmanship Toward The Search for Innocence?* 10 (July 29, 2005), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1076&context=faculty_scholarship. *Brady* endorses a quasi-inquisitorial model of criminal justice, with defense counsel and prosecutors operating as "partners in the quest for justice" and the court providing "active judicial oversight." *Id.* While the inertia of the adversarial system and other tensions have limited that move, *id.* at 11-13 (cataloging impediments), *Brady's* inquisitorial residue—the prosecutor's disclosure obligation and the court's required analysis—remains. Unfortunately, in Mr. Skinner's case, both the State and the state court appear to have washed their hands of it.

I. Mr. Skinner's conviction was procured through heartland *Brady* violations.

A prosecuting attorney "is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." *Berger v. United States*, 295 U.S. 78, 88 (1935). The volume and substance of the undisclosed evidence in this case suggests Petitioner's prosecution fell woefully short on both counts.

As Mr. Skinner's petition catalogs, the prosecutors withheld a trove of valuable information from the defense, including that:

- The state's "hero" witness against Mr. Skinner (Pet.6), Sam Scott, had a vendetta against Skinner's co-defendant, a sweetheart deal for his testimony, and an apparently well-founded belief that lying about the murder at issue was a ticket to lighter sentences. *Id.* at 7-8.

- A second witness, Eric Brown (*Id.* at 5), had "twice attempted to secure a deal with the State in exchange for his testimony" and initially identified another man, not Mr. Skinner, as Mr. Wearry's co-defendant—a man who bragged about committing the murder for which Mr. Skinner was charged. *Id.* at 8, 12.

- A third witness, Ryan Stinson, only agreed to testify after being promised a transfer to a different prison. *Id.* at 14.

- A fourth witness, Raz Rogers, *confessed to the same murder* for which Mr. Skinner was convicted. *Id.*

These represent only the highlights of Mr. Skinner's *Brady* claim (and lowlights of his prosecution). But they also fall squarely into the mine run of material evidence at the heart of successful *Brady* claims. *See* McAward, *Understanding* Brady *Violations*, at 920 (a plurality of successful *Brady* claims involve the suppression of "Witness Statements" like Scott's; "Witness Compensation and Informant History" like Stinson's transfer and Scott's plea deal comprise an additional 12%).

Or consider the laundry list of other suspects (including one of the witnesses against Mr. Skinner) whose identities were not revealed to the defense. Pet.15. "Courts have long recognized that 'new evidence suggesting an alternate perpetrator is "classic Brady material."'" *Juniper v. Zook*, 876 F.3d 551, 570 (4th Cir. 2017) (citation omitted) (collecting cases demonstrating the "significant exculpatory value" of such evidence). In surveying successful *Brady* claims and "favorable but not material" near misses, scholars have determined that "exculpatory evidence was present much more often in cases involving *Brady violations* than in cases in which *Brady* claims were rejected on materiality grounds." Brandon L. Garrett & Adam M. Gershowitz, *The* Brady *Materiality Standard*, 78 Stan. L. Rev. (forthcoming 2025) (manuscript at 17), available at https://ssrn.com/abstract=5195153. Such evidence is also strikingly common in convict exonerations. "In a 2012 report, the National Registry of Exonerations highlighted that 42% of exonerations involved Brady violations. In a more recent 2021 report, the National Registry of Exonerations found that concealed exculpatory evidence 'contributed to the convictions of 44% of exonerees, more than any other type of official misconduct that we know of.'" *Id.* (manuscript at 12) (footnotes omitted); *see also* Vida B. Johnson, *Federal Criminal Defendants Out of the Frying Pan and into the Fire?* Brady *and the United States Attorney's Office*, 67 Cath. U. L.

Rev. 321, 323 (2018) ("Brady violations are the most common form of prosecutorial misconduct cited by courts when overturning convictions."). Summarily holding these omissions to be material would break no new ground in the *Brady* landscape.

II. Mr. Skinner's postconviction relief was denied through a multitude of analytical errors.

While the prosecutors' failures are remarkable for their breadth, the postconviction court's failures are remarkable for their brevity. The district court's five-sentence disposal of Mr. Skinner's *Brady* claim "is as inexplicable as it is unexplained." *Felkner v. Jackson*, 562 U.S. 594, 598 (2011). The district court's denial of relief evinces disregard for its obligation under *Brady*. It also suffers from defects common in lower court *Brady* analysis. Two of its five sentences entertain, but then immediately rebuff, the applicability of *Wearry* to Mr. Skinner's case. That leaves three sentences of factual analysis to dissect.

Empirical analysis suggests that courts in large part enunciate the materiality standard correctly. *See* Garrett & Gershowitz, *The* Brady *Materiality Standard* (manuscript at 27) (of 103 cases where courts rejected *Brady* claims on materiality grounds, "93 correctly stated the test," nine did not state the standard for materiality, and "[o]nly a single court incorrectly stated the legal standard"). Unfortunately, as here, lower courts' adherence to the *Brady* materiality standard often begins and ends with that enunciation.

A survey of five years of *Brady* claims rejected on materiality grounds (that is, where courts acknowledged that favorable evidence was withheld but nevertheless denied relief) reveals several categories of courts' failures to conduct adequate materiality analyses. *See id.* (manuscript at 27-33). The district court's order denying

Mr. Skinner's *Brady* claim, remarkably, commits all three, averaging one analytical failure per sentence.

1. Conclusory analysis

Some courts fail to perform any "evaluation" of the materiality of suppressed evidence at all, disposing of *Brady* claims with "legal reasoning" that is "nearly non-existent and amount[ing] to the court saying, 'trust us.'" *Id.* (manuscript at 28-29) (collecting such cases). The 21st Judicial District Court plainly committed this error. Consider the first sentence of its analysis: "Defendant's claim of a violation of his right to due process through *Brady* violations relies upon statements made by multiple parties over two decades ago." Pet.App.2a. In whittling Mr. Skinner's panoply of evidence down to "statements made by multiple parties," the district court lopped off a fair bit of Mr. Skinner's claim, including medical documents (Pet.19), investigatory reports (Pet.15), contemporaneous letters (Pet.8-9), and arrest records (Pet.14-15). A materiality analysis that fails even to acknowledge the existence of suppressed documents cannot constitute "the cumulative evaluation required by" this Court's case law, because the court has failed in the first instance to properly cumulate the evidence. *Kyles*, 514 U.S. at 441.

2. Bare bones analysis

A second major pitfall in *Brady* materiality analysis comes when courts offer an "extremely perfunctory . . . explanation for finding the evidence to be immaterial." Garrett & Gershowitz, *The* Brady *Materiality Standard* (manuscript at 29-31) (collecting such cases). A ruling deficient in this manner may offer a glimmer of legal reasoning, but still "affords the reader no opportunity to see how the court reached its conclusion." *Id.* at 30. The Skinner order careens into this pitfall in its third sentence of factual analysis. Having reduced the voluminous and variegated suppressed evidence in Mr. Skinner's case to a

lump of nondescript "statements," the court jettisons Petitioner's claim in 13 words: "Defendant failed to present any evidence as to the credibility of these statements." Pet.App.3a.[2]

As the petition and other amici note, this "credibility" concern short-circuits both law and logic. As to the law, the credibility of evidence is a quintessential jury question and one this Court has cautioned lower courts not to consider in evaluating *Brady* claims. *See* Brief of Law Professors as Amici Curiae Supporting Petitioner 16-17. As to logic, the court does not, and cannot, explain why Mr. Skinner must sufficiently establish the credibility of statements by witnesses he seeks to impeach, nor why his case for relief would be stronger if he were successful. Pet.23.

But even were credibility a legitimate part of the *Brady* materiality analysis, this Court has made clear that where "the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt." *United States v. Agurs*, 427 U.S. 97, 113 (1976). The lower court offered no particulars as to the strength of the prosecution's case. But the petition and the *Wearry* opinion show Mr. Skinner's conviction to be "hanging on the barest of threads and dependent on the omission of exculpatory evidence." *United States v. Ford*, 550 F.3d 975, 995 (10th Cir. 2008) (Gorsuch, J., dissenting). The state failed to convict Petitioner on its first go-round, and never managed to secure a unanimous verdict.

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[2] Fewer words than items of suppressed evidence listed in Mr. Skinner's petition. *See* Pet.7-15.

Pet.24.[3][4] The State offered no physical evidence against Mr. Skinner. Pet.5. And it pinned its case on the testimony of two eyewitnesses who the jury knew "did not have an exemplary record of veracity" nor pristine motives. *Wearry v. Cain*, 577 U.S. at 393; *id.* at 398-99 (Alito, J., dissenting). The district court opinion does not mention any of this. Nor does it offer any assessment of how the "statements of multiple parties," even lacking some undefined quantum of "credibility," might factor into the jury's deliberations.

3. Reliance on "overwhelming" labels

The third common deficiency seen in *Brady* materiality analyses is an improper reliance on the strength of the prosecution's case, which courts often adorn with superlative labels. Courts shrug off their duty to analyze the effect of suppressed evidence by noting that the prosecution's case was otherwise "'overwhelming,' 'extensive,' 'large,' 'compelling,' 'substantial,' 'significant,'

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[3] This procedural history offers two insights, given that Louisiana allowed convictions "based on 10-to-2 verdicts" at the time of Mr. Skinner's conviction. *Ramos v. Louisiana*, 590 U.S. 83, 87 (2020) (holding that practice unconstitutional). First, the hung jury in Mr. Skinner's pre-*Ramos* first trial means that at least a full quarter of the jury (three of twelve or more) harbored a reasonable doubt about the prosecution's case. Second, it is impossible to know how many bites at the apple the State would have required to convict Mr. Skinner had *Ramos'* unanimous conviction rule been in place to safeguard this "vital right." *Ramos*, 590 U.S. at 90.

[4] The *Ramos* decision, of course, does not apply retroactively on collateral review. *Edwards v. Vannoy*, 593 U.S. 255 (2021). But, so far as counsel for amicus can find, this Court has not passed upon whether a non-unanimous conviction warrants special consideration in a court's harmless error or materiality analysis—that is, whether a conviction obtained over the objections of one or more jurors might be more susceptible to a "different result" with the advantage of unfairly suppressed evidence, effective counsel, or the like.

[or] a 'mountain'" and then deferring to their own characterizations. Garrett & Gershowitz, *The* Brady *Materiality Standard* (manuscript at 31-33) (collecting such cases). To be sure, the strength or weakness of a case is a relevant consideration in the materiality analysis. *Agurs*, 427 U.S. at 112-13. But the court's referee function—its duty to assess materiality by focusing on how the jury would have considered the suppressed evidence—remains the same both in close games and ones where the prosecution runs up the score.

The lower court's shortfall here is more subtle. Its opinion does not attach any formulaic labels to the prosecution's case; indeed, it does not mention the prosecution's case at all. Instead, the court's second sentence of analysis commits this error implicitly: it asserts that "[t]he statements presented, on their face, without further evidence of credibility, are not sufficient to undermine confidence in the outcome of the trial." Pet.App.3a. Assuming the court properly considered all of Mr. Skinner's withheld evidence (doubtful, given its reductive characterization), the failure of that evidence to move the needle must stem from a nearly unshakeable "confidence in the outcome of the trial." *Id.* What is the source of this confidence? The lower court does not say. What evidence would suffice to undermine the court's confidence? The court does not hint at that, either.

Even granting the lower court the extreme benefit of the doubt, its opinion is not merely "the misapplication of a properly stated rule of law." Sup. Ct. R. 10. It is a wholesale abdication of what *Brady* requires. This Court can correct this egregious error simply by reaffirming its longstanding principles.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari and summarily reverse the judgment of Louisiana's 21st Judicial District Court.

Respectfully submitted,

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