No. 25-5191

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN EDWARD STEIN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

I. Whether this Court should grant review of a decision of the Florida Supreme Court rejecting a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), concluding the claim was untimely under state law and meritless because the information was not suppressed by the prosecution?

II. Whether this Court should grant review of a decision of the Florida Supreme Court concluding the witness' expectation of a deal to not be charged with a crime in exchange for his testimony, who was not involved in the crime, was not material under *Brady v. Maryland*, 373 U.S. 83 (1963)?

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The Florida Supreme Court's published opinion is available at *Stein v. State,* 406 So. 3d 171 (Fla. 2024).

JURISDICTION

On June 2, 2024, the Florida Supreme Court issued its published opinion. On March 19, 2025, the Florida Supreme Court denied rehearing. Stein v. State, 2025 WL 855671 (Fla. Mar. 19, 2025). Seventy-five days later, on June 2, 2025, Stein, represented by Capital Collateral Regional Counsel – North (CCRC-N), filed a motion for extension of time to file a petition for writ of certiorari, which this Court granted. On July 16, 2025, Stein filed the petition. The petition is timely. See Sup. Ct. R. 13.3; 28 U.S.C. § 2101(d). Jurisdiction exists pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the due process amendments. The Fifth Amendment to the United States Constitution, which provides, in part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law. . .

U.S. Const. amend. V.

Section one of the Fourteenth Amendment to the United States Constitution, which provides, in part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law. . .

U.S. Const. amend. XIV.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In 1990, Stein, White, and White's then fiancée, Sandra Sidas, moved from Phoenix, Arizona, to Jacksonville, Florida. Steven Stein, Marc Christmas, and Kyle White were roommates. *Stein v. State*, 632 So. 2d 1361, 1363-64 (Fla. 1994); *see also Christmas v. State*, 632 So. 2d 1368-69 (Fla. 1994). Stein worked at the Pizza Hut on Lem Turner Road in Jacksonville, Florida and Christmas had previously worked at the Pizza Hut on Edgewood Avenue. *Stein*, 632 So. 2d at 1363; *Christmas*, 632 So. 2d at 1369. About a week before the murders, Stein and Christmas were discussing their plan to rob one of the Pizza Huts with White. Stein and Christmas acknowledged that they could be recognized by the other employees and agreed that there could be no witnesses.

On January 20, 1991, Stein and Christmas left home at 9:30 p.m., with Stein carrying his Marlin .22 rifle, saying they were going to Christmas' father's house to discuss selling Stein's rifle to his father. Christmas' father, however, testified that they did not go to his house that night and that he never bought a rifle from Stein. Instead, Stein and Christmas went to the Edgewood Avenue Pizza Hut. An employee, Ronald Burroughs, testified that on the night of the murders, when he left the restaurant at 11:15 p.m., only two customers remained. *Stein*, 632 So. 2d at 1363. He identified those two customers as Stein and Christmas at trial. Christmas' fingerprints were on the guest check on the table inside the restaurant. *Id.* at 1363.

Stein and Christmas ordered the two shift supervisors, Dennis Saunders and Bobby Hood, into the men's bathroom and ordered them to sit on the floor. While Christmas held the two victims at gun point with a .38-caliber revolver, Stein shot

the victims repeatedly with his rifle from a few inches away. *Stein v. State*, 995 So. 2d 329, 342 (Fla. 2008). Stein shot Saunders four times and shot Hood five times. After his arrest, Stein confessed to the robbery but claimed the murders were a result of a robbery gone bad. *Stein*, 632 So. 2d at 1364; *Christmas*, 632 So. 2d at 1369.

Procedural history

On June 20, 1991, the jury convicted Stein of two counts of first-degree murder and one count of robbery with a deadly weapon. *Stein*, 632 So. 2d at 1364. At the penalty phase, Stein's sister and girlfriend testified on his behalf. The jury recommended a death sentence. The trial judge sentenced Stein to two death sentences for the murders and to life imprisonment for the armed robbery. *Id*. at 1364. The trial court found five aggravating circumstances but the Florida Supreme Court struck the heinous, atrocious, or cruel (HAC) aggravator on appeal but affirmed the death sentences based on the four remaining aggravators. *Id*. at 1367. The four remaining aggravators were: (1) prior conviction for a violent felony based on the contemporaneous murders of the two victims; (2) felony murder based on the armed robbery; (3) avoid arrest; and (4) cold, calculated, and premeditated (CCP) murder.

In the direct appeal to the Florida Supreme Court, Stein raised nine issues. *Stein*, 995 So. 2d at 332 n.1 (listing the direct appeal issues in a footnote).[1] The

[1] The nine issues were: (1) erred in denying his motion to suppress the statements made to investigators; (2) erred in allowing a suppression hearing to proceed in the absence of Stein's counsel; (3) erred in failing to declare a mistrial after two witnesses made certain statements about Stein's character; (4) failed to find in mitigation that Christmas, rather than Stein, was the primary actor in the crimes at issue and that Stein was of good character; (5) erroneously found the aggravating circumstance of a previous conviction for a violent felony; (6) erroneously found both that the murders were committed to avoid arrest and that the murders were cold, calculated, and

Florida Supreme Court affirmed the three convictions and the two death sentences. *Stein v. State*, 632 So. 2d 1361 (Fla. 1994).

Stein filed a petition for writ of certiorari from the direct appeal in the United States Supreme Court asserting the jury instruction on the HAC aggravator, which had been stricken, violated *Shell v. Mississippi*, 489 U.S. 1 (1990). On October 3, 1994, the United States Supreme Court denied the petition. *Stein v. Florida*, 513 U.S. 834 (1994). So, Stein's convictions and death sentences became final on the direct appeal on Tuesday, October 4, 1994.

On November 15, 1995, Stein, represented by Capital Collateral Representative (CCR), filed his initial rule 3.851 motion for postconviction relief. On June 6, 1996, Stein filed an amended initial motion. On May 3, 2002, Stein, now represented by Capital Collateral Regional Counsel – North (CCRC-N), filed a second amended initial postconviction motion raising 12 claims. *Stein*, 995 So. 2d at 332 (listing the 12 issues raised in the initial postconviction motion).[2] The second

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premeditated (CCP); (7) erred in finding that the murders were heinous, atrocious, or cruel (HAC); (8) erroneously admitted testimony during the penalty phase that Stein was carrying a concealed weapon at the time of his arrest and that the carrying of that weapon was a felony offense; and (9) erred in denying Stein's request for a mistrial after the prosecutor made certain statements to the jury in his closing argument.

[2] The 12 issues were: (1) ineffective assistance of counsel because trial counsel failed to investigate and present sufficient mitigating circumstances; (2) the co-defendant's life sentence was newly discovered evidence of relative culpability; (3) an unsigned sentencing order discovered in the State's file and not in the defense's file indicated that the trial judge delegated his responsibility of drafting the sentencing order to the State; (4) ineffectiveness of trial counsel for conceding Stein's guilt to the armed robbery charge; (5) ineffectiveness of trial counsel for failing to present an intoxication defense; (6) the prosecutor made improper comments; (7) Florida's death sentencing scheme is unconstitutional; (8) the cold, calculated, and premeditated

amended motion was the operative motion.

On October 18, 2002, the trial court held an evidentiary hearing on the second amended postconviction motion. On May 2, 2006, the state trial court denied the initial postconviction motion.

Stein appealed to the Florida Supreme Court raising four issues: (1) the denial of his motion to disqualify the postconviction judge; (2) ineffectiveness of trial counsel for conceding the armed robbery to the jury; (3) ineffectiveness of trial counsel for failing to present numerous lay background mitigation witnesses at the penalty phase; and (4) newly discovered evidence of relative culpability based on the codefendant's sentence being reduced to life. *Stein v. State*, 995 So. 2d 329, 333 (Fla. 2008) (SC06-1505). On September 25, 2008, the Florida Supreme Court affirmed the denial of the initial postconviction motion. The Florida Supreme Court denied rehearing on November 19, 2008, and issued the mandate on December 5, 2008.

On October 26, 2010, Stein, represented by registry counsel Linda McDermott, filed a first successive postconviction motion reraising a claim of ineffectiveness of trial counsel for failing to present mitigation based on *Porter v. McCollum*, 558 U.S. 30 (2009). The state trial court summarily denied the *Porter* claim. On April 26, 2012, the Florida Supreme Court affirmed the summary denial of the first successive postconviction motion. *Stein v. State*, 91 So. 3d 784 (Fla. 2012) (citing *Walton v. State*,

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aggravating factor is unconstitutionally vague; (9) the trial court erred in instructing the jury on the HAC aggravator because this factor was overturned on direct appeal; (10) the rules prohibiting Stein from interviewing jurors is unconstitutional; (11) Stein's sentencing jury was misled by comments, questions, and instructions that diluted the jury's responsibility in sentencing in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985); and (12) cumulative error.

77 So. 3d 639 (Fla. 2011)). Stein then filed a petition for writ of certiorari in the United States Supreme Court raising the *Porter* claim. On November 26, 2012, the United States Supreme Court denied the petition. *Stein v. Florida*, 568 U.S. 1034 (2012).

On April 14, 2016, Stein, represented by registry counsel Linda McDermott, filed a state habeas petition in the Florida Supreme Court raising a claim based on *Hurst v. Florida*, 577 U.S. 92 (2016). On March 3, 2017, the Florida Supreme Court denied the state habeas petition ruling that *Hurst* did not apply retroactively to Stein. *Stein v. Jones*, 2017 WL 836806 (Fla. Mar. 3, 2017) (denying *Hurst* relief citing *Asay v. State*, 210 So. 3d 1 (Fla. 2016)).

On January 9, 2017, Stein, represented by registry counsel Linda McDermott, filed a second successive postconviction motion in the state trial court raising four claims based on *Hurst v. Florida* and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). On January 31, 2018, the Florida Supreme Court affirmed the trial court's denial of the second successive *Hurst* claim again ruling that *Hurst* did not apply retroactively to Stein. *Stein v. State*, 237 So. 3d 919 (Fla. 2018) (denying *Hurst* relief citing *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017)).

Stein filed a petition for writ of certiorari in the United States Supreme Court again raising the *Hurst* claim. On October 1, 2018, this Court denied review. *Stein v. Florida*, 586 U.S. 866 (2018).

Pending federal habeas litigation

On November 30, 2009, Stein, represented by then CJA counsel Linda McDermott, filed a federal habeas petition in the Middle District of Florida. *Stein v.*

Sec'y, Fla. Dep't of Corr., 3:09-cv-1162 (M.D. Fla.). The Secretary filed an answer to the petition in 2010. (Doc.16). The reply was filed in August of 2010. (Doc.21). So, as of today, the petition has been pending for over 15 years since the original briefing was completed.

In 2011, the district court granted a motion to stay, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), to exhaust a claim based on *Porter v. McCollum*, 558 U.S. 30 (2009), over the Secretary's written objection and without an analysis of the *Rhines* factors. (Doc.26).

Then, in 2015, the district court *sua sponte* stayed the case based on this Court's granting review of Florida's death penalty statute in *Hurst v. Florida*, 575 U.S. 902 (2015). (Doc.46). The Secretary immediately filed an objection, pointing out no Sixth Amendment right-to-a-jury-trial claim had been raised in the petition and therefore, any amendment would be untimely under *Mayle v. Felix*, 545 U.S. 644 (2005). The Secretary also pointed out the jury had found the felony-murder aggravating factor in the guilt phase when the jury convicted Stein of armed robbery, so any claim would be plainly meritless. (Doc. 47; *see also* Docs. 51; 56; 60). The district court denied the Secretary's motion to lift the stay. (Doc. 49). The habeas litigation was stayed until 2018 due to *Hurst v. Florida,* 577 U.S. 92 (2016). (Docs. 58; 61; 62). The district court permitted Stein to amend the petition with an untimely and *Teague*-barred *Hurst* claim. *Teague v. Lane*, 489 U.S. 288, 309 (1989); (Docs. #63 citing *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1165, n.2 (11th Cir. 2017); *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004)); 64).

In 2020, the district court permitted supplemental briefing regarding *Andrus v. Texas*, 590 U.S. 806 (2020), over the Secretary's written objection. (Docs. 5; 76; 82). And, in 2021, the district court reserved ruling on permitting yet another untimely amendment based on *Martinez v. Ryan*, 566 U.S. 1 (2012), over the Secretary's written objection. (Docs. 92; 96; 98; 99; 100; 105).[3]

On July 27, 2021, the Secretary filed a motion to expedite the final ruling which the district court denied. (Docs. 101; 103). On September 3, 2021, the Secretary filed a mandamus petition in the Eleventh Circuit seeking an order directing the district court to rule on the petition that had been pending for over a decade. (Doc. 104) The mandamus was denied. *In Re Att'y Gen. of Fla.*, 21-13033 (11th Cir. Sept. 23, 2021).

Earlier, on July 21, 2020, Linda McDermott joined the Capital Habeas Unit of the Federal Public Defender's Office of the Northern District of Florida (CHU-N), and CHU-N became counsel of record in the federal district court. (Doc. 74). Approximately a year after the appointment of CHU-N as federal habeas counsel, in July of 2021, an investigator with CHU-N spoke with Sandra Sidas and her statement was the basis of the current successive *Brady* claim.

On December 1, 2021, the CHU-N filed a motion to stay the federal habeas proceedings to exhaust the new *Brady* claim in state court. (Doc. 107). The Secretary filed a written objection to the stay pointing out the *Brady* claim would be untimely under *Mayle v. Felix*, 545 U.S. 644 (2005), because no such *Brady* claim had been

[3] The motion to amend with the *Martinez* claim is due to be denied under this Court's decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022).

raised in the original habeas petition. (Doc.108). On July 6, 2022, the district court granted the motion to stay the federal habeas pending the state court litigation on the *Brady* claim. (Doc.112).

As of today, the federal habeas proceedings remain stayed pending the resolution of the petition in this Court, despite the law that proper exhaustion does not require the filing of a petition for writ of certiorari in this Court. *Lawrence v. Florida*, 549 U.S. 327, 332-33 (2007) (citing *Fay v. Noia*, 372 U.S. 391, 435-38 (1963)); *Roper v. Weaver*, 550 U.S. 598, 601 (2007). (Doc. 132). The district court deferred ruling on permitting yet another untimely amendment to the petition on the *Brady* claim. (Doc. 132).

Current state third successive postconviction litigation

On November 24, 2021, Stein, now represented by Capital Collateral Regional Counsel - North (CCRC-N), filed a third successive rule 3.851 postconviction motion in the state postconviction court raising a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The basis of the *Brady* claim is a conversation between an investigator with the Capital Habeas Unit (CHU-N), who were representing Stein in federal court and Sandra Sidas in July of 2021. At the time of the murders, Sidas was the fiancée of one of the prosecution's key witnesses, Kyle White. She had moved with Stein and White to Jacksonville in 1990 and lived with them in the trailer until shortly before the murders. ((3rd succ. PC at 53-91; 2022 Amend. Succ. Motion at 7, ¶4 and at 8, ¶¶6-7). Sidas told the federal investigator that White told her shortly after the murders in 1991 that he "wanted to make a deal"

with the prosecution in which he would testify against Stein in exchange for not being charged with any crime. No affidavit from Sidas was attached to the successive postconviction motion, so it is not clear whether Sidas stated that White told her that he actually had a deal with the prosecution or merely that he wanted to make such a deal with the prosecution.

On December 10, 2021, the State filed an answer to the third successive motion in the state trial court including the argument that the *Brady* claim was insufficiently pled under Florida Rule of Criminal Procedure 3.851(e)(2)(C). The trial court allowed Stein 60 days to file an amended successive postconviction motion to cure the pleadings deficiency. On March 29, 2022, CCRC-N filed an amended successive postconviction motion raising the same claim of newly discovered evidence of a *Brady* violation. On April 4, 2022, the State filed an answer to the third successive amended postconviction motion pointing out that the amended motion still failed to comply with Rule 3.851(e)(2)(C). On October 12, 2022, the postconviction court summarily denied the amended third successive postconviction motion. (3rd succ. PC at 3899-4857). CCRC-N filed a motion for rehearing. On November 7, 2022, the state postconviction court denied rehearing.

Stein appealed the summary denial of the amended third successive postconviction motion to the Florida Supreme Court. The Florida Supreme Court affirmed the summary denial finding the *Brady* claim to be untimely and concluding it was meritless on two of the three prongs of *Brady*. *Stein v. State*, 406 So. 3d 171 (Fla. 2024).

Stein seeks review of the Florida Supreme Court's rejection of the *Brady* claim in this Court raising two questions.

REASONS FOR DENYING PETITION

ISSUE I

Whether this Court should grant review of a decision of the Florida Supreme Court rejecting a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), concluding the claim was untimely under state law and meritless because the information was not suppressed by the prosecution?

Petitioner Stein seeks review of the Florida Supreme Court's decision concluding the impeachment of key prosecution witness, Kyle White, who may have had an expectation that he would not be charged with any crime in exchange for his testimony, was not suppressed in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Pet. at 12. The basis of the claim was a statement from White's ex-fiancée that he believed he would not be charged with any crime due to his cooperation. The Florida Supreme Court found the claim to be untimely as a matter of state law. This Court does not grant review of matters of state law. Moreover, Stein is asking this Court to review a question that is purely theoretical. Alternatively, the Florida Supreme Court's conclusion that the witness' expectation was not suppressed does not conflict with this Court's *Brady* jurisprudence regarding suppression. The ex-fiancée's statement was made decades after Stein's trial. The ex-fiancée's statement did not exist at the time of the trial, and therefore, obviously, was not in the possession of the prosecution and thus, could not have been suppressed. Nor does the Florida Supreme Court's conclusion that the witness' expectation was not suppressed conflict with any decision from any

federal circuit courts or state court of last resort. For all these reasons, this Court should deny review of this question.

The Florida Supreme Court's Decision

The Florida Supreme Court affirmed the summary denial of the third successive postconviction motion raising a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *See Stein v. State*, 406 So. 3d 171, 173 (Fla. 2024). The *Brady* claim was based on a statement from White's ex-fiancée, Sandra Sidas, made in 2021, that White told her shortly after the murders that he expected a deal with the State not to be charged in exchange for testifying for the prosecution at trial. *Stein*, 406 So. 3d at 174.

The Florida Supreme Court found the *Brady* claim to be "untimely." *Stein*, 406 So. 3d at 174. The Florida Supreme Court explained that to be timely under the exception to the one-year time limit when the facts supporting the claim are "unknown to the defendant and could not have been ascertained by the exercise of due diligence" quoting Florida Rule of Criminal Procedure 3.851(d)(2)(A). *Id.* at 174. The state supreme court explained that "Stein knew Sidas before trial" because she was engaged to his roommate, Kyle White, but they all "lived together" at one point. *Id.* The Court noted that Stein "had access to both" White and Sidas and "could have questioned" them both on the theory that White was testifying against Stein to avoid prosecution altogether. *Id.* The Court also observed that "Stein has offered no reason why, with due diligence, he could not have timely discovered White's alleged expectation of an agreement with the State" and thus, the claim was untimely under Rule 3.851(d)(2)(A).

Id. at 174-75.

The Florida Supreme Court, alternatively, addressed the merits of the *Brady* claim. *Stein*, 406 So. 3d at 175 (stating that even if the claim was not barred, "it would fail on the merits."). The state supreme court first explained that to prevail on a *Brady* claim, a defendant must prove that (1) favorable evidence which is exculpatory or impeaching (2) was suppressed by the State, and (3) because the evidence was material, he was prejudiced. *Id*. at 175 (citing *Sweet v. State*, 293 So. 3d 448, 451 (Fla. 2020)).[4] The Florida Supreme Court held that Stein's claim failed both "the second and third prongs" of *Brady*. *Id*. at 175.

Regarding the second prong of suppression, the Florida Supreme Court found that Stein failed to allege that the prosecution "knew about or suppressed information relating to White's expectations" regarding his testimony. *Stein*, 406 So. 3d at 175. The Florida Supreme Court reasoned that there "is no *Brady* violation where the information is equally accessible to the defense and the prosecution." *Id*. (quoting *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (quoting *Peede v. State*, 955 So. 2d 480, 497 (Fla. 2007)). And therefore, the *Brady* claim did "not warrant relief." *Id*. at 175.

[4] The Florida Supreme Court's decision in *Sweet* cited to this Court's decision in *Turner v. United States*, 582 U.S. 313, 315 (2017), which explained that the Government violates due process "if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment."

Matter of State Law

This Court does not review matters of state law. *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (noting that this Court lacks jurisdiction to review a state court judgment if that judgment rests on state law citing *Harris v. Reed*, 489 U.S. 255, 260 (1989)); *Johnson v. Williams*, 568 U.S. 289, 309 (2013) (Scalia, J., concurring) (noting that 28 U.S.C. § 1257 imposes a federal-question requirement as a condition of this Court's appellate jurisdiction); *Wolf v. Weinstein*, 372 U.S. 633, 636 (1963) (vacating a grant of certiorari review as improvidently granted because the issue primarily implicates questions of state law and presents no federal question of substance).

The Florida Supreme Court denied the *Brady* claim as untimely as a matter of state law relying on a state rule of court. Fla. R. Crim. P. 3.851(d)(2)(A). The *Brady* claim was untimely, according to the Florida Supreme Court, due to Stein's lack of diligence in speaking with Sidas earlier. There was no explanation given in the state courts as to why Sidas was not interviewed prior to July of 2021. Stein never attempted to explain why it took decades to speak with her. He never attempted to establish his diligence in the state courts. And he simply ignores the time bar altogether in his petition in this Court. On this basis alone, review of the first question should be denied.

Theoretical Questions

This Court does not grant review of questions that are only theoretical or purely academic in the sense that the question does not affect the actual outcome of the case. *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955) (stating that

certiorari should not be granted when the issue is only academic); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) (stating this Court's power is "to correct wrong judgments, not to revise opinions" and explaining if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review would be nothing more than an advisory opinion). If the question presented is not outcome-determinative, this Court typically declines review of the question.

Stein is requesting that this Court grant review of a question that is not outcome determinative of the *Brady* claim. *Brady* requires proof of three prongs: (1) the omitted information is exculpatory or impeaching; (2) the information was suppressed by the prosecution; and (3) the omitted information was material to the conviction or sentence. *Skinner v. Switzer*, 562 U.S. 521, 536 (2011) (quoting *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)). But, regardless of the answer to the question regarding the suppression prong of *Brady*, the claim would still be properly denied on the materiality prong. This Court would have to grant review of both questions and find reversible error as to both prongs for Stein to obtain relief on his *Brady* claim.

The Reach of *Brady v. Maryland*

Brady requires disclosure of exculpatory or impeaching information in the possession of the prosecution or known to the prosecution team. *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1987) ("It is well settled that the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment"); *Strickler v. Greene*, 527 U.S. 263, 281 (1999)

(explaining the prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf" quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)). The prosecution, however, is "not required to deliver his entire file to defense counsel." *United States v. Bagley*, 473 U.S. 667, 675 (1985). Nor does *Brady* require the prosecution to provide the defense with a complete accounting of all investigatory work performed in the case. *United States v. Agurs*, 427 U.S. 97, 109 (1976); *Moore v. Illinois*, 408 U.S. 786, 795 (1972).

The prosecution has no duty under *Brady* to investigate possible impeachment for the benefit of the defense. *Polzin v. Mutter*, 503 Fed. Appx. 474, 476 (7th Cir. 2013) (explaining that neither the Due Process Clause or *Brady* impose a constitutional duty on the prosecution to search for, or assist a defendant in developing evidence citing *United States v. Gray*, 648 F.3d 562, 567 (7th Cir. 2011)); *United States v. Graham*, 484 F.3d 413, 417 (6th Cir. 2007) (stating that *Brady* "clearly does not impose an affirmative duty upon the Government to take action to discover information" quoting *United States v. Beaver*, 524 F.2d 963, 966 (5th Cir. 1975)); *United States v. Walker*, 559 F.2d 365, 373 (5th Cir. 1977) (explaining *Brady* "establishes no obligation on the Government to seek out" evidence).

Judge Posner found such an extension of *Brady* "difficult" to even understand as it implies that the prosecution "has a duty not merely to disclose" evidence "but also to create" evidence for the defense. *Gauger v. Hendle*, 349 F.3d 354, 360 (7th Cir. 2003). But that is exactly what this *Brady* claim amounts to. Stein is really asserting that the prosecution had a duty to investigate White's motive for testifying for the State,

including by interviewing Sidas. The prosecution has no duty under due process or *Brady* to investigate impeachment for the defense. The prosecution is simply required to disclose impeachment already in its possession.

Moreover, Sidas herself was equally known and equally available to the defense before trial. Information known and available to the defense cannot be said to have been suppressed by the prosecution. *United States v. Brown*, 628 F.2d 471, 473 (5th Cir. 1980) (observing that in "no way" can information known and available to the defendant be said to have been suppressed by the Government).[5] Indeed, Stein himself knew Sidas and her relationship with White better than the prosecution. Stein fails to explain why due process would mandate the reversal of a conviction based on information known to the defense before trial.

White may well have told law enforcement about the conversation between him and his roommates, Stein and Christmas, regarding the security at the various Pizza

[5] *See also Hernandez v. Terrones*, 397 Fed. Appx. 954, 971 (5th Cir. 2010) (stating that evidence is not suppressed for purposes of *Brady* if the defendant knows or should know of the essential facts citing *United States v. Runyan*, 290 F.3d 223, 246 (5th Cir. 2002), and *United States v. Brown*, 628 F.2d 471, 473 (5th Cir. 1980)); *Moran v. Calumet City*, 54 F.4th 483, 497 (7th Cir. 2022) (stating that evidence already known to the defense cannot support a *Brady* suppression allegation); *Camm v. Faith*, 937 F.3d 1096, 1110 (7th Cir. 2019) (stating that "evidence cannot be said to have been suppressed in violation of *Brady* if it was already known to the defendant" quoting *Avery v. City of Milwaukee*, 847 F.3d 433, 443 (7th Cir. 2017)); *Hooks v. Workman*, 689 F.3d 1148, 1179-80 (10th Cir. 2012) (explaining that evidence is not suppressed within the meaning of *Brady* if it is known and available to the defense prior to trial); *Rossell v. Macon SP Warden*, No. 21-13525, 2023 WL 34103, at *3 (11th Cir. Jan. 4, 2023) (stating that there is no suppression of the information if the defendant knows of the information citing *United States v. Griggs*, 713 F.2d 672, 674 (11th Cir. 1983); *Downs v. Sec'y, Fla. Dep't of Corr.*, 738 F.3d 240, 259-60 (11th Cir. 2013)).

Huts and other details of his roommates' planning the crime to avoid any suspicion on the part of law enforcement that he was involved in any manner. But if Stein or his trial attorneys were curious regarding White's motive, the defense could have asked Sidas before the trial. The defense could have deposed Sidas or White himself and inquired as to his motive and then cross-examined White on his motive at trial. The prosecution has no duty to investigate the motives of its witnesses for the benefit of the defense. *Brady* does not reach that far.

No Conflict with this Court's Jurisprudence

There is no conflict between this Court and the Florida Supreme Court's decision. Sup. Ct. R. 10(c) (listing conflict with this Court as consideration in the decision to grant review). There is no conflict between this Court's *Brady* jurisprudence and the Florida Supreme Court's conclusion that the identity of the ex-fiancée Sidas was not suppressed by the prosecution.

Sidas' statement regarding White's possible motive for testifying being to avoid prosecution was made in July of 2021, which was over 30 years after the trial was conducted in June of 1991. Thus, Sidas' statement was not in the prosecution's possession at the time of the trial because it did not even exist at the time of the trial. So, Sidas' statement itself was <u>not</u> available to the prosecution at the time of the trial and could not possibly have been "suppressed."

Opposing counsel points to no decision from this Court holding, or even hinting, that the prosecution must investigate, for the benefit of the defense, the motive of its key witnesses in coming forward as a matter of federal due process. There is no

conflict between this Court and the Florida Supreme Court regarding the suppression prong of *Brady*.

No Conflict with the Lower Appellate Courts

As this Court has observed, one of the principal reasons for certiorari jurisdiction is to "resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). Issues that have not divided courts or are not important questions of federal law do not merit this Court's attention. *Rockford Life Ins. Co. v. Illinois Dep't of Revenue,* 482 U.S. 182, 184, n. 3 (1987).

There is no conflict between the Florida Supreme Court's decision and any other federal circuit court or state court of last resort regarding the suppression prong of *Brady*. Stein points to no case from any federal circuit court or state courts of last resort holding that *Brady* requires the prosecution to investigate, for the benefit of the defense, the motive of its key witnesses in coming forward as a matter of federal due process. Nor does he cite any case from any court holding that statements made decades after the trial regarding a prosecution witness' motive for testifying can possibly be suppressed. There is no conflict between the Florida Supreme Court and the federal circuit courts or the state courts of last resort.

For these reasons, review of the first question should be denied.

ISSUE II

Whether this Court should grant review of a decision of the Florida Supreme Court concluding the witness' expectation of a deal to not be charged with a crime in exchange for his testimony, who was not involved in the crime, was not material under *Brady v. Maryland*, 373 U.S. 83 (1963)?

Petitioner Stein also seeks review of the Florida Supreme Court's conclusion that the witness' expectation of a deal to not be charged with a crime in exchange for his testimony, who was not involved in the crime, was not material under *Brady v. Maryland*, 373 U.S. 83 (1963). Pet. at 14. Stein asserts that the Florida Supreme Court improperly relied on cross-examination of the prosecution's witness regarding his bias that did not, in fact, occur, to conclude that the impeachment was not material. Stein is again requesting that this Court review a question that is purely theoretical because the cross-examination was not critical to the materiality determination. Regardless of any cross-examination, the impeachment was not material to the conviction because, as the Florida Supreme Court noted in its materiality determination, Stein confessed to the crime to law enforcement. Alternatively, the Florida Supreme Court's conclusion that the impeachment was not material does not conflict with this Court's *Brady* jurisprudence regarding the materiality prong. The proposed impeachment is simply "too little" and "too weak" compared to Stein's confession to be material to the conviction or sentence. Nor does the Florida Supreme Court's conclusion regarding the materiality prong conflict with any decision from any federal circuit courts or state court of last resort. There is no conflict regarding the materiality prong of *Brady*. For these reasons, this Court should deny review of the second question.

The Florida Supreme Court's Decision

The Florida Supreme Court held that Stein's claim failed both "the second and third prongs" of *Brady*. *Stein*, 406 So. 3d at 175. The state supreme court observed that at trial, "Stein cross-examined White and asked him whether he was concerned that he might be prosecuted for the murders." *Id.* at 175. Regarding the third prong of materiality, the Florida Supreme Court then concluded that White's alleged expectation was not material because impeaching White with this information "would not put the case in a 'different light.'" *Id.* The Florida Supreme Court reasoned that the "State's case was strong and included Stein's own confession to the robbery." *Id.* (citing *Stein v. State*, 995 So. 2d 329, 338 (Fla. 2008)). The Court then added that, "given that Stein already cross-examined White about possible bias, it is unlikely that further impeachment on this related subject would alter the result in this case." *Id.* And therefore, the *Brady* claim did "not warrant relief." *Id.* at 175.

Matter of State Law

This Court does not review matters of state law. *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (citing *Harris v. Reed*, 489 U.S. 255, 260 (1989)); *Johnson v. Williams*, 568 U.S. 289, 309 (2013) (Scalia, J., concurring); *Wolf v. Weinstein*, 372 U.S. 633, 636 (1963).

The Florida Supreme Court denied the *Brady* claim as untimely as a matter of state law relying on a state rule of court. Fla. R. Crim. P. 3.851(d)(2)(A). The *Brady* claim was untimely due to Stein's lack of diligence in speaking with Sidas years earlier. Stein never attempted to establish his diligence in the state courts. There was

no explanation given as to why Sidas was not interviewed prior to July of 2021. On this basis alone, review of the second question should be denied.

Theoretical Question

Again, this Court typically does not grant review of questions that are not outcome determinative. *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). Stein is requesting that this Court grant review of a question that is not outcome determinative even of the materiality prong alone, much less of the *Brady* claim as a whole.

When a Court gives multiple reasons for its conclusion, but one of the reasons is not supported by the record, the conclusion can still be valid, if the other more critical reasons are supported by the record. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1035 (11th Cir. 2022) (en banc) (explaining that a "decision might still be reasonable, even if some of the individual factual findings were erroneous," if the decision "as a whole" does not "constitute an unreasonable determination of the facts"); *see also Lizcano v. Guerrero*, No. 24-10124, 2025 WL 2623432, at *10 (5th Cir. Sept. 11, 2025) (quoting *Pye*, 50 F.4th at 1035).

Stein takes issue with the Florida Supreme Court's statement that White was cross-examined regarding his concern "that he might be prosecuted for the murders" as being unsupported by the record of the cross-examination. *Stein*, 406 So. 3d at 175. But the Florida Supreme Court's materiality determination was based mainly on the fact the prosecution's case was "strong" and included "Stein's own confession to the robbery." *Stein*, 406 So. 3d at 175 (quoting *Stein v. State*, 995 So. 2d 329, 338 (Fla.

2008)). The Florida Supreme Court's materiality determination was not based on the details of the cross-examination of White in any significant way.

This Court has observed that a "confession is like no other evidence" because of its source being the defendant himself and for that reason, confessions have a "profound impact on the jury." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). Confessions are "probably the most probative and damaging evidence that can be admitted" against a defendant. *Id.* at 296. Regardless of the exact scope of the cross-examination of White regarding his possible bias, the Florida Supreme Court's materiality determination was correct based on the confession alone. So, even if this Court agreed with petitioner that the cross-examination of White regarding his possible bias did not include the same type of bias as this type of impeachment, the impeachment of White would remain immaterial to the conviction of a defendant who confessed. Stein confessed explicitly to the robbery and implicitly confessed to both murders as well when he admitted to the investigators that the "victims were shot because the robbery 'went bad.'" *Stein*, 632 So. 2d at 1364.

Regardless of the exact scope of the cross-examination of White, the *Brady* claim would still be properly denied on the materiality prong alone, based on the strength of the prosecution's case, due to Stein's confession. Thus, the second question is purely academic.

No Conflict with this Court's Jurisprudence

There is no conflict with this Court. Sup. Ct. R. 10(c) (listing conflict with this Court as consideration in the decision to grant review). There is no conflict between

this Court's *Brady* jurisprudence and the Florida Supreme Court's conclusion that the proposed impeachment was not material.

There certainly is no conflict with this Court's observation that the "overriding concern" of this Court's *Brady* jurisprudence is "the justice of the finding of guilt." *Turner v. United States*, 582 U.S. 313, 324 (2017) (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985), and *United States v. Agurs*, 427 U.S. 97, 112 (1976)). Given Stein's confession to a robbery that went "bad," which was his excuse for his execution of the two shift supervisors, who he repeatedly shot while they were sitting on the floor, there is little doubt of the justice of his conviction for the robbery and the two murders.

The Florida Supreme Court's reasoning regarding the strength of the prosecution's case as part of the materiality prong certainly does not conflict with this Court's view of the powerful impact of a voluntary confession on a jury. *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (stating that a "confession is like no other evidence" with a "profound impact on the jury.").

Furthermore, this is a particularly weak impeachment. The proposed cross-examination, "in the context of the entire record," is simply "too little" and "too weak" to be material to either the conviction or the sentences. *Turner*, 582 U.S. at 326. The evidence against Stein was significantly stronger than the evidence against Turner which this Court rejected a *Brady* claim solely on the materiality prong. *Turner*, 582 U.S. at 316 ("The only question before us here is whether that withheld evidence was 'material' under *Brady*.").

White could not be seriously impeached with a desire to avoid prosecution because the other evidence established that White, in fact, was not involved in the robbery or murders. It was not just White's own testimony that established that he was not even present at the Pizza Hut at closing time on the night of the murders. An eyewitness, another employee of the Pizza Hut, corroborated that White was not a co-perpetrator. Ronald Burroughs testified that Stein and Christmas were the only remaining customers when he left the Pizza Hut at 11:15 p.m. that night shortly before the murders. *Stein*, 632 So. 2d at 1363. And it was Christmas' fingerprint that was on the guest check on the table inside the Pizza Hut, not White's fingerprint. *Id*. at 1363. Both the eyewitness testimony and the scientific evidence corroborate the fact that White was not involved in these crimes.

Stein never identifies what crime White could have been charged with committing and based on what evidence, despite the State repeatedly pointing that fatal flaw in his theory of bias in the state courts. Stein never answered that basic question and does not do so in this Court either. Indeed, it is doubtful that such impeachment would have any impact whatsoever on either the conviction or the sentence in the absence of an answer to that basic question.

Stein invokes *Wearry v. Cain*, 577 U.S. 385 (2016). Pet. at 16. The testifying witness at issue in *Wearry*, Brown, "had twice sought a deal to reduce his existing sentence in exchange for testifying against Wearry" making his testimony "suspect." *Wearry*, 577 U.S. at 390, 393. But White was not serving a sentence and therefore, could not benefit from any sentence reduction. There is a significant difference

between White and a typical witness for the prosecution who is seeking a reduction in his sentence in exchange for his testimony. Indeed, White could not be charged with any crime due to the evidence showing he was not involved in committing this crime. Consequentially, White's testimony is not similarly "suspect" to witnesses who testify to avoid prosecution of crimes they actually committed.

The proposed impeachment is not material to the conviction or the sentence given the weak nature of the proposed impeachment to the strength of the evidence due to Stein's confession. The jury would have convicted Stein and recommended a death sentence, regardless of the proposed impeachment of White with his not being charged with a crime that he did not commit.

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's conclusion that the proposed impeachment of White was not material.

No Conflict with the Lower Appellate Courts

As this Court has observed, one of the principal reasons for certiorari jurisdiction is to "resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). Issues that have not divided courts or are not important questions of federal law do not merit this Court's attention. *Rockford Life Ins. Co. v. Illinois Dep't of Revenue,* 482 U.S. 182, 184, n. 3 (1987).

There is no conflict between the Florida Supreme Court and any other federal circuit court or state court of last resort regarding the materiality prong of *Brady*. Stein cites no decision from any lower appellate court finding such weak impeachment to be material in a case with a confession, much less a case holding impeachment of a witness who could not be charged with any crime because he was not involved in the murders was material. There is no conflict between the Florida Supreme Court and the federal circuit courts or the state courts of last resort. For these reasons, review of the second question should also be denied.

Needless Delay

The litigation regarding this untimely and meritless *Brady* claim has needlessly prolonged the federal habeas litigation. *Shoop v. Twyford*, 596 U.S. 811, 820 (2022) (stating a "federal court may *never* needlessly prolong a habeas case, particularly given the essential need to promote the finality of state convictions" quoting *Shinn v. Ramirez*, 596 U.S. 366, 390 (2022)) (emphasis in original). The original briefing in the district court has been complete since 2010. This Court should not permit the district court to violate *Twyford* by repeatedly and needlessly staying a habeas case to permit exhaustion of untimely amendments, such as the current *Brady* claim. *Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring) (observing that, while lower courts are free to disagree with this Court's decisions, "they are never free to defy them."); *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (observing that to prevent "anarchy" within the

federal judicial system, this Court's precedent must be followed by the lower federal courts).

Accordingly, the petition should be denied.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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