No. 25-5191

IN THE

Supreme Court of the United States

STEVEN EDWARD STEIN,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

CAPITAL CASE

Dawn B. Macready
Counsel of Record

Drew A. Sena
Felicia Tabachnick
Office of the Capital Collateral Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
Dawn.Macready@ccrc-north.org
Drew.Sena@ccrc-north.org
Felicia.Tabachnick@ccrc-north.org

Counsel for Petitioner

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REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

This case presents two recurring *Brady* questions set out in the petition. First, whether the Florida Supreme Court's determination that "equally accessible" evidence has not been suppressed by the State is contrary to *Brady* and its progeny because it places an onerous burden on the defense to uncover evidence that the prosecution has suppressed. Second, whether a court's materiality determination must take into account the whole record which includes the evidence the jury heard.

The decision below misapplied *Brady* at each step. It credited a bias impeachment that never occurred; misallocated *Brady*'s disclosure duty as a defense-diligence problem under an "equal-access" theory; and treated materiality as sufficiency by emphasizing that the case was "strong" and included Steven Stein's admission to robbery—while overlooking that Kyle White supplied the planning and witness-elimination narrative that elevated robbery to premeditation at guilt and underwrote the cold, calculated, and premeditated (CCP) and avoid-arrest aggravators at penalty. On summary denial, these errors present clean federal questions without fact-bound detours.

I. Suppression (QP1): The State cannot shift *Brady*'s duty to the defense.

A. What was suppressed—and why it is chargeable to the State.

First, the State's "equal-access" argument reflects a misunderstanding of the protections established by *Brady v. Maryland*, 373 U.S. 83 (1963). The State argues there was no suppression because Sandra Sidas's 2021 statement "did not exist at the time of trial" (BIO 11, 18). That conflates when the suppressed evidence surfaced with the underlying suppressed fact. The suppressed evidence is not the 2021

interview; it is the trial-era fact that the prosecution's key witness, Kyle White, expected a deal for his testimony against Stein. The 2021 interview with Sidas simply disclosed that expectation to the defense for the first time (Pet. 9–10). The State cannot avoid suppression by mischaracterizing the later interview as the evidence itself or by shifting *Brady*'s disclosure duty onto the defense. *Brady* and *Kyles* assess suppression by what the prosecution team knew or reasonably should have known, not by when the defense later uncovers it. *See Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995); *Banks v. Dretke*, 540 U.S. 668, 696 (2004); *Strickler v. Greene*, 527 U.S. 263, 283 n.23 (1999).

Under *Kyles*, the prosecution has an affirmative duty to learn favorable evidence known to those acting on the government's behalf. *Kyles*, 514 U.S. at 437–38. That duty attached through repeated, firsthand interactions with White and its agents, including the search of White's trailer (PC-R4.306, 738, 961–62, 1168–69, 1219–22),[1] his sworn statement (PC-R4.1178–79), his provision of physical evidence including casings and keys (PC-R4.1222, 1172–73), his deposition (PC-R4.1178), and his meetings with and testimony for the prosecution (PC-R4.1140–83)—through which any expectation of non-prosecution was known or reasonably knowable to the prosecution team. An undisclosed expectation or hope of leniency is classic *Brady Giglio* material because it reveals bias and motive to curry favor, whether or not a formal promise existed. *See Giglio v. United States*, 405 U.S. 150, 154–55 (1972);

[1] Record citations to the appeal from the summary denial of Stein's successive Rule 3.851 motion—affirmed in *Stein v. State*, 406 So. 3d 171 (Fla. 2024)—appear as "PC-R4.__." Other citations are self-explanatory.

Napue v. Illinois, 360 U.S. 264, 269 (1959); *Wearry v. Cain*, 577 U.S. 385, 392 (2016). This Court has rejected any regime in which "prosecutor may hide, defendant must seek." *Banks*, 540 U.S. at 695–96; *see also Strickler*, 527 U.S. at 283–85. Because that expectation was chargeable to the State, it had to be disclosed regardless of defense diligence.

Moreover, before trial, the defense obtained orders compelling disclosure of any inducements, promises, rewards, immunity, or other benefits for State witnesses—including White—so the burden remained exactly where *Brady* places it: on the State to learn and disclose.[2] The State cannot avoid *Brady* by not asking its own witness or agents—or by declining to memorialize an understanding in writing. *See Kyles*, 514 U.S. at 437–38.

B. "Equal access" inverts *Brady* on this record.

The State's "equal-access" fallback misallocates the burden: *Brady* turns on the government's knowledge, not on the defense's success in uncovering impeachment material from unlisted civilian witnesses, however diligent the defense. *See Kyles*, 514 U.S. at 437–38; *Banks*, 540 U.S. at 696; *Strickler*, 527 U.S. at 283–85.

Here, court orders required disclosure of inducements as to White; yet the State produced nothing disclosing any agreement, promise, understanding, or expectation of favorable treatment or non-prosecution in exchange for his

[2] *See* Motion and Orders to Reveal Inducements, Promises, Rewards or Other Enticements PC-R4.171–72, 290–96, 349, 362, 3928–39 (identifying White at PC-R4.3939); *see also* State Responses to Demands for Discovery ("State's Responses") PC-R4.298–99, 307–08, 315–16.

cooperation. PC-R4.171–72, 3928–39; State Responses PC-R4.298–99, 307–08, 315–16.

Stein's brief co-residence with Sidas at the shared trailer did not put the defense on notice that she possessed impeachment about White's expectation of favorable treatment: she had moved out before the homicides, did not live there that night, was never listed by the State, and nothing in discovery pointed to her (Pet. 9). PC-R4.59–61; State Responses PC-R4.298–99, 307–08, 315–16. Any relevant information she later possessed arose weeks after Stein's arrest—while he remained incarcerated—when White called her and said he feared being charged and had made or would make a deal to cooperate in exchange for non-prosecution; the State never disclosed that information (Pet. 10). PC-R4.59–61.[3]

On this record, "equal access" cannot defeat suppression: *Brady* places the duty to learn and disclose on the prosecution team, and the State's non-disclosure of White's expectation of leniency cannot be excused by recasting Sidas as a defense lead.

C. *Brady*'s duty cannot be displaced by an "equal-access" rationale built on a nonexistent bias cross.

The Florida Supreme Court rejected suppression by invoking "equal accessibility" and asserting that Stein cross-examined White about his fear of prosecution, and that the State did not limit that line of inquiry. *Stein v. State*, 406 So. 3d 171, 174–75 (Fla. 2024) (citing *Morris v. State*, 317 So. 3d 1054, 1071 (Fla.

[3] About three months after the crimes, someone Sidas believed from the State Attorney's Office called about White, there was no follow-up, and that contact was also never disclosed to the defense. Pet. 9–10; PC-R4.59–61.

2021)). The trial transcript shows no such questioning. *See generally* PC-R4.1140–82 (White's testimony); *see also* Mot. for Reh'g at 5. Although Stein cross-examined White, the questioning was limited to inconsistencies between White's deposition and his trial testimony. PC-R4.1173–83. He was not questioned about bias, motive, or fear of prosecution.

That error is dispositive. It undercuts both the suppression and materiality rulings: once the premise of a "bias cross" falls away, *id.* at 175, the Court's reliance on *Morris*—which involved information genuinely known and available to the defense—cannot stand.

II. Materiality (QP2): On the record the jury actually heard—at both phases—disclosure would have "put the whole case in a different light."

A. The governing lens is confidence, not sufficiency.

Having misstated the record, the court then misapplied the governing *Brady* standard. The court cited the right test—invoking *Sweet v. State*, 293 So. 3d 448, 452 (Fla. 2020), Florida's restatement of the "different-light" formulation from *Kyles*—but immediately departed from it. *Stein*, 406 So. 3d at 175. Rather than asking whether nondisclosure, viewed cumulatively, undermines confidence in the outcome, the court concluded it "unlikely that further impeachment on this related subject would have alter[ed] the result in this case." *Id.* That rests on two legal errors. First, the false premise that Stein had already cross-examined White about bias. Second, a sufficiency-style view of materiality, emphasizing that "the State's case was strong and included Stein's own confession." *Id.* (citing *Stein v. State*, 995 So. 2d 329, 338 (Fla. 2008)). Both conflict with *Bagley* and *Kyles*, and *Cone* requires a distinct

penalty-phase analysis. *See Kyles*, 514 U.S. at 434–36; *United States v. Bagley*, 473 U.S. 667, 682 (1985); *Cone v. Bell*, 556 U.S. 449, 475–76 (2009). With disclosure, the jury would have assessed White's planning narrative as self-protective; without disclosure, the court weighed a record that appeared to include bias impeachment and overstated the case's strength. The State repeats the same analytical error by focusing on Stein's robbery admission.

B. Contextualizing the confession.

The State minimizes the impact of the suppressed impeachment by focusing on Stein's admission to a "robbery gone bad." (BIO 22 24, 26). That framing fails twice. First, White's testimony uniquely supplied the planning and witness-elimination narrative that transformed a robbery admission into premeditated murder and supported the CCP and avoid-arrest aggravators. Second, the defense affirmatively used Stein's admission to argue lack of intent at both phases. PC-R4.1343–47, 1449–50.

From the outset, Stein told police the victims were shot when the robbery "went bad." *Stein v. State*, 632 So. 2d 1361, 1364 (Fla. 1994); PC-R4.1264, 1278. He never admitted being the shooter. *Id.* Trial counsel embraced that narrative, conceding robbery to demonstrate lack of intent at guilt and mitigation at penalty. PC-R4.1343–47, 1449–50. By contrast, White's testimony was the State's only direct source of planning and witness-elimination, which the prosecutor highlighted in closing to establish intent at guilt and aggravation at penalty. PC-R4.1306, 1320–21; 1426–27, 1433–36. Had the jury known of White's undisclosed expectation of favorable treatment, his account would read as self-serving rather than neutral—undermining

the State's theory while reinforcing the defense narrative. That is classic *Kyles*/*Bagley* materiality: considered cumulatively and on the record the jury actually heard, the credibility reweighting "puts the whole case in a different light," undermining confidence in the verdict and sentence. *Kyles*, 514 U.S. at 435; *Bagley*, 473 U.S. at 682.

C. Guilt: White's credibility is the hinge between a robbery "gone bad" and premeditation.

At guilt phase, the State anchored premeditation in White. In closing, the prosecutor told jurors to "recall Kyle White's testimony" and argued that, a week before the crimes, Stein and Christmas "planned to rob a Pizza Hut . . . and . . . specifically planned to kill any witness to the robbery," insisting the killings were "an intended consequence" rather than a "robbery [that] went bad." PC-R4.1306, 1320–21. The jury then convicted Stein of premeditated and felony first-degree murder. PC-R4.1386–87.

Disclosure of White's expectation of favorable treatment would have weakened that narrative—the credibility shift *Kyles* and *Bagley* recognize as material. *See Kyles*, 514 U.S. at 434–36; *Bagley*, 473 U.S. at 682.

D. Penalty: White's credibility underwrote the avoid-arrest and CCP aggravators.

At penalty phase, the State again relied on White's planning/witness-elimination account to prove the avoid-arrest and CCP aggravators. The prosecutor told the jury those White-dependent aggravators "call[] out for" and "cr[y] out for" justification of the death penalty. PC-R4.1426–27, 1433–36. The trial court adopted

that view, relying on White to find both aggravators. PC-R4.85–86, 1479; PC-R4.89–90, 1483; PC-R4.91, 1485.

On direct appeal, HAC was struck, leaving felony-murder (during a robbery) and prior-violent-felony (the contemporaneous homicide)—both consistent with a "robbery gone bad" theory while avoid-arrest and CCP rested on White's account. *Stein*, 632 So. 2d at 1367. Stein's "robbery gone bad" admission adds nothing at penalty: it admits neither intent nor CCP/avoid-arrest. PC-R4.1449–50.

Neither the court nor the State undertook the distinct penalty-phase materiality analysis *Cone* requires. 556 U.S. at 475–76. If White is discounted, the weight of avoid-arrest and CCP diminishes and the statutory weighing changes. Disclosure of White's expectation of favorable treatment creates a reasonable probability of a different sentence. *See Kyles*, 514 U.S. at 434–36; *Bagley*, 473 U.S. at 682; *Cone*, 556 U.S. at 475–76.

E. *Wearry* supports materiality; the State's distinctions fail.

The State's attempt to distinguish *Wearry v. Cain*, 577 U.S. 385 (2016), because White was not incarcerated or seeking a sentence reduction is fundamentally flawed. *Brady* materiality turns on incentives and undisclosed expectations, not custody status or formal charges. *Wearry* confirms benefit-seeking impeachment is material even without a binding promise; what matters is perceived exposure that changes credibility and the case narrative. *Id.* (citing *Napue*, 360 U.S. at 270).

Applied here, White's expectation of favorable treatment is classic benefit-seeking impeachment that had to be disclosed and weighed under the

Kyles/*Bagley*/*Wearry* confidence-in-the-verdict standard. *See Kyles*, 514 U.S. at 434–36; *Bagley*, 473 U.S. at 682–83; *Wearry*, 577 U.S. at 392–94.

Even if "chargeability" mattered (it does not), the record shows White's involvement and potential exposure (Pet. 4–7; PC-R4.62 64). He sat in the alleged planning and witness-elimination conversation (PC-R4.376–77, 4150–51, 1140–1183); drew on his former Pizza Hut employment to explain alarm and authorization procedures and the time needed to open a safe (PC-R4.1145–47, 1153–55, 1159–60); handled and test-fired the Marlin .22 later tied to the murders and provided expended .22 casings to police (PC-R4.964, 1171–73); and disclosed what he knew only after police conducted a search of the trailer he shared with Stein and Marc Christmas (PC-R4.306, 738, 961–62, 964, 1168–69, 1219–22). Those record facts reasonably suggest a self-protective incentive to curry favor. Sidas's 2021 account—that White expected he would not be charged if he cooperated—thus rests on concrete trial-era facts, not speculation. PC-R4.60–61. *See Wearry*, 577 U.S. at 394 (a witness's mere attempt to obtain a deal before testifying is material because a jury "might well have concluded that [the witness] had fabricated testimony in order to curry the [prosecution's] favor").

Disclosing White's involvement is not disclosing his motive for testifying. Under *Brady*, the State had a duty to learn and disclose that incentive particularly where the court had already ordered disclosure of inducements as to White and the State produced nothing. *See Kyles*, 514 U.S. at 437–38; *Banks*, 540 U.S. at 696; *Giglio*, 405 U.S. at 154–55; *Napue*, 360 U.S. at 269.

Finally, *Turner v. United States*, 582 U.S. 313 (2017), is inapposite. *Turner* addressed peripheral, duplicative items that did not reweigh a linchpin witness. Here, the withheld impeachment targets White—the witness on whom intent at guilt and avoid-arrest/CCP at penalty turned.

F. The cumulative view controls.

Materiality is judged cumulatively because "the net effect of the evidence withheld by the State" determines whether confidence in the verdict is undermined. *Kyles*, 514 U.S. at 436. Taken together the undisclosed expectation of non-prosecution; the absence of any bias cross in the record the jury heard; the confession-in-context; the striking of HAC on direct appeal, *Stein*, 632 So. 2d at 1367; the later life sentences imposed on co-defendant Marc Christmas;[4] and the prosecution's reliance on White to carry premeditation and avoid-arrest/CCP—"put the case in a different light" and undermine confidence in both phases. *Kyles*, 514 U.S. at 435; *Bagley*, 473 U.S. at 682.

Disclosure also would have reshaped defense strategy: counsel could have framed White as a self-interested cooperator, oriented cross and summation around bias, and reinforced the "robbery gone bad" theory to contest intent at guilt and mitigate at penalty (PC-R4.1343–47, 1449–50). That strategic shift is precisely the credibility reweighing that triggers relief under *Kyles* and *Bagley* and underscores why *Turner* is no bar. Unlike the peripheral impeachment in *Turner*, the suppression

[4] PC-R4.57–58, 67. Christmas's sentencing court deemed Christmas the planner and gunman and overrode the jury's life recommendation; the Florida Supreme Court later imposed life—facts unknown to Stein's sentencer. *Christmas v. State*, 632 So. 2d 1368 (Fla. 1994); PC-R4.57 58, 67.

here concerns the State's linchpin witness. *See Turner*, 582 U.S. at 326–27 (finding no materiality where the withheld items offered only weak, duplicative impeachment). Assessed cumulatively—and without assuming a bias cross-examination that never occurred—the suppression of White's motive for testifying undermines confidence in the outcome. *See Kyles*, 514 U.S. at 434–36; *Bagley*, 473 U.S. at 682; *see also Cone*, 556 U.S. at 475–76.

III. Timeliness: No independent and adequate state ground; the alternative merits ruling rests on a record mistake.

The timeliness ruling repeats the same federal errors—"equal-access" and the nonexistent bias-cross premise—and thus is not independent of the federal question. *Stein*, 406 So. 3d at 174–75. Nor is it adequate: the court applied timeliness "exorbitantly" by imposing on the defense the very disclosure burden *Brady* places on the prosecution. *See Lee v. Kemna*, 534 U.S. 362, 376 (2002). Treating Stein's past acquaintance with Sidas as a duty to discover her undisclosed knowledge of the State's witness's expectation inverts *Brady*. Nothing in discovery or the witness lists pointed to Sidas as a source of White's expectation. PC-R4.59–61; PC-R4.171 72; PC-R4.3928–39; State Responses PC-R4.298–99, 307–08, 315–16.

The court's "alternative" merits discussion likewise rests on a false record: it assumes a bias/inducement cross that never occurred. *See generally* PC-R4.1140–82; *see also* Mot. for Reh'g at 5. The transcript shows only inconsistency impeachment; no bias questioning appears. PC-R4.1173–83. A merits ruling built on impeachment the jury never heard is no merits ruling at all.

With no independent and adequate state ground, the federal *Brady* questions are squarely presented for review.

CONCLUSION

The decision below rests on a mistaken record and a misapplication of *Brady* and its progeny. The Florida Supreme Court denied relief by crediting an impeachment that never occurred, by faulting the defense for not discovering what the prosecution failed to disclose, and by treating sufficiency as materiality. Its timeliness rationale repeats the same record and legal errors, offering no independent or adequate state ground.

Because the judgment conflicts with *Bagley*, *Kyles*, and *Cone* and presents a recurring question whether "equal access" can excuse suppression, the petition for a writ of certiorari to review the decision of the Florida Supreme Court should be granted. At a minimum, the Court should grant, vacate, and remand for reconsideration under the correct *Brady* standard on a correct record.

/s/ *Dawn Macready*
Dawn B. Macready
Counsel of Record
Drew A. Sena
Felicia Tabachnick
Office of the Capital Collateral Regional Counsel Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
Dawn.Macready@ccrc-north.org
Drew.Sena@ccrc-north.org
Felicia.Tabachnick@ccrc-north.org

Counsel for Petitioner

Dated: October 16, 2025