No. 25-5940

IN THE
Supreme Court of the United States

STEPHEN ELLIOT POWERS,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

The question presented is whether this Court should review the Mississippi Supreme Court's rejection of petitioner's third post-conviction relief petition, when that decision rests on two adequate and independent state-law grounds, petitioner asks this Court to decide merits issues that were not ruled on below and fail, and the claims raised are fact-bound, involve settled law, and implicate no split of authority.

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The Mississippi Supreme Court's opinion denying petitioner's third petition for post-conviction relief (Petition Appendix (App.) 1a-2a) is reported at 411 So. 3d 165 (Miss. 2024). That court's order denying rehearing (App.3a) is not reported.

JURISDICTION

The Mississippi Supreme Court entered judgment on September 11, 2024, and denied rehearing on June 19, 2024. App.1a, 4a-5a. On August 7, 2025, Justice Alito extended the time to file a petition for certiorari to October 17, 2025. The petition was filed that day. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT

In 1998, petitioner Stephen Elliot Powers murdered Elizabeth Lafferty during an attempted rape. A jury convicted petitioner of capital murder and sentenced him to death. The Mississippi Supreme Court affirmed on direct appeal and has rejected three petitions for post-conviction relief. The present petition for certiorari arises from that court's denial of petitioner's third petition.

1. On June 13, 1998, petitioner, along with his nephew Wilbert Lee Otis, Jr. and friend Eddie Barnes, barbequed and drank beer at Elizabeth Lafferty's home. *Powers v. State*, 883 So. 2d 20, 24 (Miss. 2003). Barnes left Lafferty's house around 7 p.m., and Otis left shortly after, leaving Powers alone with Lafferty. *Ibid.*; App.86a. Lafferty's friends Amanda Parrigin and Kara Aultman had been "hanging out with some friends" and stopped by Lafferty's house "around 1 o'clock in the morning." App.86a. They found her body in the hallway and called 911. *Ibid.* A responding patrol arrived around 1:20 a.m. App.86a-87a. Laferty's "legs were spread open more than

ninety degrees, with a foot in each of the doors of the bedroom and bathroom, which are on opposite sides of the hallway where she was found." 883 So. 2d at 24. She was "nude from the waist down," with her shorts "wadded up" around one ankle, and "[a]lthough [she] was menstruating, no feminine hygiene products were found on or near her body." *Ibid*. Lafferty "had been shot five times," and her body "had several injuries consistent with defensive posturing." *Ibid*.

Officers "canvassed the neighborhood going door-to-door to see if anybody had seen anything unusual." App.87a. Lafferty's neighbor Charles Neese told officers that he last saw Lafferty at 10 a.m. talking to a thin, white male on her porch and later saw three black males with a cooler in Lafferty's front yard at 7 p.m. *Ibid*. Based on Neese's information, officers located Barnes, who told officers about the barbeque at Lafferty's the day before. *Ibid*. Barnes also reported that petitioner had been armed and was left alone with Lafferty "immediately prior to" her murder. 883 So. 2d at 25. Petitioner became a suspect and was taken into custody that night. App.87a.

Petitioner led officers to the "murder weapon." 883 So. 2d at 24. Then, at the police station, he admitted to killing Lafferty and "[leaving] her body in her final position and state of undress." *Ibid*. He claimed that he and Lafferty "struggled with the gun, and the gun went off" while she was "'playing' around with him." *Ibid*. At the station an officer searched petitioner and found hidden, in petitioner's "crotch area," "what appeared to be a blood-stained note to his mother" that said: "I must leave. Everything I do is wrong. So I love you all." *Ibid*.; App.88a.

The next day, petitioner's mother was cleaning petitioner's apartment and "found a used sanitary napkin rolled up in one of [petitioner's] baseball caps." 883

So. 2d at 25. She turned over to police the used sanitary napkin "rolled up and wrapped" in a pink plastic wrapper and a "wad of toilet paper." App.88a.

Before trial, the State crime lab sent several pieces of evidence to ReliaGene Technologies for forensic testing: Lafferty's fingernail scrapings and cuttings from the used sanitary napkin, the pink plastic wrapper, the wad of toilet paper, and the note hidden in Powers's crotch. App.88a. Before trial, defense counsel acknowledged receiving a report on "five or six" items of biological evidence that had been submitted for testing. App.89a. Trial counsel later clarified that he had ReliaGene's report that showed, in his estimation, that the used sanitary napkin "had nothing to do with Beth Lafferty." *Ibid*. That report showed that DNA test results for the fingernail scrapings, sanitary napkin, and toilet paper "were inconclusive due to insufficient or excessively degraded DNA." *Ibid*. The report also showed that DNA test results for the pink plastic wrapper and handwritten note were "not consistent with each other" or with Lafferty's known profile, thus excluding Lafferty as the DNA donor of those samples. *Ibid*.

2. At petitioner's trial, witnesses "placed [him] at the scene with the gun immediately prior to the shooting" and testified that after Laferty's body was discovered, petitioner was "nervous" and admitted that "something happened" to Lafferty. 883 So. 2d at 25. The jury heard petitioner's statements that he killed Lafferty during a "struggle over the gun," that he "put the gun in the woods," and that police "didn't have a case until [petitioner] got the murder weapon for [them]." *Id*. at 27, 28. An officer also testified that petitioner admitted taking Lafferty's computer, which was later recovered from petitioner's brother's apartment. *Id*. at 24.

The jury found petitioner guilty of capital murder. *Id.* at 25. It then sentenced him to death, finding that the aggravating circumstances—that the killing occurred during an attempted rape and was "especially heinous, atrocious, or cruel"—were not outweighed by any mitigating evidence. *Ibid.*

3. The Mississippi Supreme Court affirmed, rejecting sufficiency-of-the-evidence and other claims. 883 So. 2d at 24, 37. This Court denied certiorari review. *Powers v. Mississippi*, 543 U.S. 1155 (2005). In 2006, the state supreme court denied petitioner's first petition for post-conviction relief, rejecting ineffective-assistance-of-counsel and other claims. *Powers v. State*, 945 So. 2d 386, 391 (Miss. 2006). This Court denied certiorari review. *Powers v. Mississippi*, 551 U.S. 1149 (2007). And in 2023, the state supreme court denied petitioner's second petition for post-conviction relief, ruling that all but one of his claims were procedurally barred (as successive, untimely, or otherwise) and that all his claims lacked merit. *Powers v. State*, 371 So. 3d 629, 659-719 (Miss. 2023). (Petitioner filed a federal habeas petition in 2007; that case has been stayed for years to allow petitioner to "exhaust" state remedies. Stay Order, Dkt. 50, *Powers v. Epps*, 2:07-cv-00020-HTW (S.D. Miss. Mar. 30, 2017)).

4. In 2023, petitioner filed yet another (third) petition for post-conviction relief. He claimed that "newly discovered evidence" established that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by suppressing a police incident report that allegedly suggests Ray Jeffus, Lafferty's ex-boyfriend, was "the original, alternative suspect" and crime-lab "worksheets" that purportedly "disprove the prosecution's attempted-rape theory" and show that Lafferty's DNA was not on the hidden note or hidden used sanitary napkin. App.15a, 29a, 50a, 54a. Petitioner also claimed that the

prosecutor committed misconduct by mischaracterizing blood evidence on the note and by arguing petitioner took the used sanitary napkin as a "souvenir" from the victim. App.57a-62a.

The State argued that the Mississippi Uniform Post-Conviction Collateral Relief Act's time and successive-writ bars apply to petitioner's claims and that he failed to satisfy the "newly discovered evidence" exception to the bars. App.89a-93a, 99a; *see* Miss. Code Ann. §§ 99-39-5(2), 99-39-27(9). That exception required petitioner to show that the incident report and crime lab worksheets were discovered after his trial, that they could not have been discovered before trial by exercising due diligence, and that they were "of such nature that it would be practically conclusive that, if [they] had been introduced at trial, it would have caused a different result in the conviction or sentence." App.91a-93a, 99a; *see* Miss. Code Ann. §§ 99-39-5(2)(a)(i), 99-39-27(9). The State next argued that petitioner's *Brady* claims failed on the merits: he did not show that the incident report or crime lab worksheets were exculpatory or had impeachment value, that trial counsel did not have the report or worksheets, that the State suppressed them, and that the outcome of petitioner's trial would have been different if they had been "disclosed" to trial counsel. App.93a-104a. Last, the State argued that petitioner's barred prosecutorial misconduct claim also failed on the merits because nothing in the allegedly suppressed worksheets contradicted the State's summation. App.104a.

The Mississippi Supreme Court denied the petition, ruling that the "*Brady* and *Brady*-related prosecutorial-misconduct claims" were "time and successive-writ barred" and did not meet the UPCCRA's "newly-discovered evidence exception."

App.4a (citing Miss. Code Ann. §§ 99-39-5(2)(a)(i), 99-39-27(9)). The court did not reach the merits. The court denied rehearing. App.1a-2a.

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to resolve two merits questions concerning whether the State committed *Brady* violations. This Court lacks jurisdiction to review those questions. Petitioner's *Brady* claims are also meritless, and this case meets none of the traditional cert criteria. The petition should be denied.

I. This Court Lacks Jurisdiction To Review The Decision Below.

This Court lacks jurisdiction to consider petitioner's *Brady* claims because the Mississippi Supreme Court rejected those claims on grounds independent of federal law and adequate to support the judgment.

A. This Court "will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). "This rule applies whether the state law ground is substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). And where, as here, this Court is asked to directly review a state-court judgment, "the independent and adequate state ground doctrine is jurisdictional." *Ibid.*

That rule bars this Court's review. The Mississippi Supreme Court's resolution of petitioner's *Brady* claims rests on two adequate and independent "state law ground[s]." *Ibid.* First, as that court ruled, petitioner's claim is barred by the Mississippi Uniform Post-Conviction Collateral Relief Act's one-year limitations period. App.4a; *see* Miss. Code Ann. § 99-39-5(2)(b). Petitioner's conviction became final in 2005, and he filed his present petition for post-conviction relief in 2023—well

beyond the one-year limitations period. Second, as the state supreme court also ruled, petitioner's *Brady* claims are independently barred by the UPCCRA's successive-writ prohibition. App.4a; *see* Miss. Code Ann. § 99-39-27(9). Under Mississippi Code Annotated section 99-39-27(9), "[t]he dismissal or denial" of a prior "application" for post-conviction relief "is a final judgment and shall be a bar to a second or successive application." The supreme court denied petitioner's first two petitions for post-conviction relief. 945 So. 2d 386 (Miss. 2006); 371 So. 3d 629 (Miss. 2023). So his third petition for post-conviction relief is successive and barred. State law thus required that the court deny all the claims asserted in his successive petition. Miss. Code Ann. § 99-39-27(5).

Those state-law grounds are "independent of" federal law and "adequate to support the judgment" below. *Coleman*, 501 U.S. at 729. Start with independence. A state-law ground is "independent of federal law" if its resolution does not "depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002) (per curiam). The UPCCRA's time and successive-writ bars satisfy that standard because both apply without regard for federal law. Because the decision below was not "entirely dependent on" federal law, did not "rest[ ] primarily on" federal law, and was not even "influenced by" federal law, it is "independent of federal law." *Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016). Now take adequacy. A state-law ground is "adequate to foreclose review" of a "federal claim" when the ground is "firmly established and regularly followed." *Lee v. Kemna*, 534 U.S. 362, 376 (2002). Mississippi's time and successive-writ bars satisfy that standard. Longstanding precedent holds that those time and successive-writ bars are firmly established and

regularly followed. *E.g.*, *Moawad v. Anderson*, 143 F. 3d 942, 947 (5th Cir. 1998) (finding the UPCCRA's successive-writ bar is an "adequate state procedural rule"); *Lott v. Hargett*, 80 F. 3d 161, 164-65 (5th Cir. 1996) (finding UPCCRA's time and successive-writ bars "adequate" to support a judgment because they are "consistently or regularly applied"); *Sones v. Hargett*, 61 F. 3d 410, 417-18 (5th Cir. 1995) (holding that the Mississippi Supreme Court "regularly" and "consistently" applies the UPCCRA's time bar). Because this Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights," *Herb*, 324 U.S. at 125-26, and because the Mississippi Supreme Court's decision denying petitioner's post-conviction-relief motion was based on state-law rules that are independent of federal law and are consistently followed, this Court lacks jurisdiction and should deny review on that basis alone.

B. Petitioner gives three reasons why he contends that the Mississippi Supreme Court's judgment does not rest on adequate and independent state-law grounds, which would give this Court jurisdiction to review the judgment. Pet. 10-14. None of those reasons withstands scrutiny.

1. Petitioner first invokes the "presumption against adequacy and independence" to claim that the Mississippi Supreme Court's ruling "was undoubtedly interwoven with the merits of the federal *Brady* claims." Pet. 10; *see id.* 10-11. That is wrong.

No presumption against adequacy and independence applies here. *Contra* Pet. 10-11. This Court would presume that the Mississippi Supreme Court's decision relied on federal law only if the "adequacy and independence" of the time and

successive writ bars was "not clear from the face of the opinion." *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983); *see id.* at 1041 (this Court "will not undertake to review [a] decision" that "indicates clearly and expressly" that it rests on "bona fide separate, adequate, and independent grounds"). The Mississippi Supreme Court's two-page order denying post-conviction relief clearly relied only on state law. The supreme court ruled "that the *Brady* and *Brady*-related prosecutorial-misconduct claims are time and successive-writ barred" and that "the newly-discovered-evidence exception is unmet." App.4a (citing Miss. Code Ann. §§ 99-39-5(2)(a)(i), 99-39-27(9)). The court gave no other reasons for denying the third petition. Because that court stated its holding only in the words of the UPCCRA and not in the words of *Brady* or any other federal holding, the "*Long* presumption" does not apply here, and "the independent and adequate state ground doctrine" is a "jurisdictional" bar to this Court's review. *See Coleman*, 501 U.S. at 729, 733 (explaining that *Long*'s presumption does not apply if the state court "clearly and expressly" stated that its decision was based on state law even if the state court decision "look[ed] to federal law for guidance or as an alternative holding").

Nor was the state supreme court's ruling "undoubtedly interwoven" with the "merits" of petitioner's federal claims. *Contra* Pet. 10-11. As explained, the UPCCRA's time and successive-writ bars apply without regard for federal law. *See supra* pp. 7-8. Yet petitioner argues that the state supreme court rejected his reliance on the "newly discovered evidence" exception to those bars, so it "had to determine that [his] *Brady* claims fail on the merits." Pet. 10. Even focusing on that exception, the state supreme court's ruling was still necessarily "independent of federal law," and not

"influenced by" it. *Foster*, 578 U.S. at 499 n. 4. Petitioner cites nothing that shows that *Brady* authorities inform the state supreme court's application of the UPCCRA's statutory exception. And the two cases he does cite are inapposite. Pet. 11; *see Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng'g, P.C.*, 467 U.S. 138, 152 (1984) (state court's disclaimer of jurisdiction below was tied to its interpretation of a federal Act); *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985) (application of the state court's procedural bar "depend[ed] on an antecedent ruling on federal law"). The state supreme court did not interpret or depend on federal law to rule that petitioner's untimely and successive state-court petition is barred—it applied a state statute. Federal law played no part in its ruling.

2. Petitioner next claims that the UPCCRA's "newly discovered evidence" exception is "contrary to" this Court's pre-AEDPA decision in *Banks v. Dretke*, 540 U.S. 668 (2004), to the extent that it "incorporates a due-diligence requirement to preclude a *Brady* claim." Pet. 11. That argument fails.

Banks holds that a federal habeas petitioner may overcome a procedural bar to certain *Brady* claims that were inadequately developed on state review by "succeed[ing] in establishing the elements" of his claim on the merits. 540 U.S. at 691. The habeas petitioner in *Banks* had "failed to produce evidence" on his *Brady* claim in state court, so he was barred from presenting that evidence for the first time in federal habeas absent "cause" and "actual prejudice." 540 U.S. at 690-91. This Court determined that the State's proven suppression of *Brady* material established "cause" for the habeas petitioner's "fail[ure] to present evidence in state court capable of substantiating his … *Brady* claim." *Id.* at 698. That federal habeas ruling does not

show that the Mississippi Supreme Court's application here of the UPCCRA's bars was not independent and adequate. It just shows that a different cause-and-prejudice inquiry in federal habeas can lead to different results on different facts, not that a merits ruling on petitioner's *Brady* claims factored in application of the UPCCRA's bars to his petition for state-postconviction review.

3. Last, petitioner claims that the UPCCRA's bars are not "firmly established and regularly followed." Pet. 13-14. He maintains that is so because the Mississippi Supreme Court has "allowed similarly situated petitions to proceed." Pet. 14 (citing *Bell v. State*, 66 So. 3d 90 (Miss. 2011); *Howard v. State*, 300 So. 3d 1011 (Miss. 2020)). But petitioner's examples do not help him—his petition is not "similarly situated" to those in the cases he cites. *See Bell*, 66 So. 3d at 93 (holding *Atkins v. Virginia*, 536 U.S. 304 (2002), met the "intervening decision" exception to the bars); *Howard*, 300 So. 3d at 1019 (finding a change in the forensic odontology community's views on bite-mark identification qualified under the "newly discovered evidence" exception to the bars); *Havard v. State*, 312 So. 3d 326, 330-31 (Miss. 2020) (new views in the medical community on shaken-baby syndrome warranted leave to proceed with a petition under the "newly discovered evidence" exception to the bars); Order at 1, *Shelby v. State*, No. 2015-M-01145 (Miss. Oct. 16, 2023) (rejecting petition under the time and successive-writ bars, and for lack of merit). That the Mississippi Supreme Court applies the UPCCRA's exceptions to the time and successive writ bars on a case-by-case basis fails to show that the UPCCRA's underlying procedural bars are not firmly established and regularly followed. It merely demonstrates that the exceptions are precisely that—exceptions, which require an assessment based on the circumstances

of a particular case. Indeed, a "state procedural rule" can be "firmly established" and "regularly followed" "even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Beard v. Kindler*, 558 U.S. 53, 61 (2009). The UPCCRA's time and successive-writ bars are independent and adequate to support the decision below.

II. Petitioner's *Brady* Claims Are Meritless and Do Not Warrant Review.

Even if this Court had jurisdiction to review petitioner's procedurally barred *Brady* claims, it should still deny the petition because those claims are meritless and because the petition does not satisfy any of the traditional certiorari criteria.

A. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), this Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The "three components" of a "*Brady* violation" are (1) "favorable" evidence ("exculpatory" or "impeaching"), (2) "suppressed by the State," and (3) resulting "prejudice"—"a reasonable probability that the suppressed evidence would have produced a different verdict." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Petitioner claims that the State "failed to disclose evidence of the original, alternative suspect" in the form of a police incident report and "suppressed material DNA evidence" supposedly contained in crime lab "worksheets." Pet. 16-27. His claims fail on each component necessary to establish a *Brady* violation.

1. Petitioner's claim on the police incident report is meritless. *Contra* Pet. 16-23. First, the incident report is not "favorable" because it is neither exculpatory nor

impeaching. Petitioner claims that the incident report is "exculpatory" because it shows police had "an alternate, original suspect that matche[d] the description of the person last seen with the victim" which "tends to establish Powers' innocence." Pet. 17-18. But it is simply not true that petitioner's victim (Lafferty) was last seen alive with a thin, white male. Pet. 18. Although one person last saw Lafferty around 10 a.m. on the day of the murder talking to a thin, white male—petitioner, Barnes, Otis, and Jennifer Hale (another neighbor) gave statements that they all saw Lafferty very much alive later that afternoon and evening with petitioner, Barnes, and Otis. App.96a.

Petitioner also argues that the incident report "would have been impeachment evidence for Detective [Mark] Berry," whom petitioner says "testified the police had only 'one suspect.'" Pet. 18. But Detective Berry did not testify at trial that police only had one suspect. *See* Tr. 452-513. Instead, he was asked on direct examination, "[w]as a suspect developed in connection with Ms. Lafferty's murder," and Berry explained how petitioner became a suspect after Neese's statement led detectives to Barnes and then to Powers. App.29a; Tr. 453-55. Nothing in the incident report could have impeached Detective Berry's testimony. Petitioner's *Brady* claim thus fails at the first prong.

Second, petitioner cannot establish that the State suppressed the incident report. He provided no affidavit from trial counsel claiming he was not given the incident report in discovery. Instead, he presented an affidavit from direct appeal counsel stating that more than twenty years earlier he "received all files from trial counsel" and he had "not seen the incident report recently provided … by CPCC

counsel that lists Raymon D. Jeffus as the original and only suspect." Adelman Affidavit at 1, Ex. H to First Supplement to Successor Petition for Post-Conviction Relief, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023). Whether petitioner's appellate counsel remembers seeing the incident report twenty years earlier is not proof that the State did not provide trial counsel with the incident report. Petitioner thus fails to satisfy *Brady*'s second prong.

Third, petitioner cannot prove materiality. Evidence is "material" under *Brady* "only if 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). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Ibid.*

Petitioner fails that test. He inflates the incident report's significance by emphasizing its notation that Ray Jeffus was a "poss[ible] susp[ect]," and claiming that "the last person the victim was seen with was a thin white male matching her ex-boyfriend's description." Pet. 19. Again, only one person last saw the victim on the morning of the murder talking to a thin, white male, but four others saw her later that evening with petitioner. *Supra* p. 13. And petitioner's characterization of Jeffus as the "original and only suspect in the murder" is a stretch. Pet. 2. Lafferty's body was discovered around 1 am. 883 So. 2d at 24. Around 1:20am, patrol officer Gerald Essary responded to the scene. App.92a. Upon arrival, Officer Essary spoke with the reporting parties, Amanda Parrigin and Kara Aultman. App.86a-87a, 93a. The incident report, far from an investigative report, only lists the basic information the responding officer collected in the short time he was on the scene before turning the

scene over to detectives. App.30a; Tr. 413. That information suggests that Parrigin and Aultman mentioned to Essary on the scene that Lafferty had an ex-boyfriend named Jeffus. But it is clear why Jeffus was not actually developed as a suspect: around twenty-four hours after Lafferty's body was discovered, petitioner was identified as the last person seen with Lafferty alive, confessed to killing her, and led officers to the murder weapon. 883 So. 2d at 24-25; App.93a. Further, the detective who would have known who was and was not a suspect in the case testified at the suppression hearing that he had spoken with petitioner's male roommate (who stayed at his parents' house on the night of the murder) and "Lafferty's ex-boyfriend, Ray Jeffus," who both "gave alibis of where they were the night that she was murdered." Tr. 28-29. It is not reasonably probable that the incident report, or its notation about Jeffus on which petitioner's *Brady* claim heavily relies, would have changed the result at trial.

Petitioner invokes court of appeals and district court cases he says hold that the *Brady* materiality prong is met if the suppressed evidence concerns an "alternative suspect" and there is "some plausible nexus linking the other suspect to the crime." Pet. 18; *see also* Pet. 19, 22-23. Even if that is true, there is no proof that Jeffus was an actual suspect, as petitioner points only to a patrol officer's note on an incident report created before the investigation was even underway. Pet. 6-7. And petitioner has identified no proof linking Jeffus to Lafferty's murder.

Undisclosed investigation notes do not prove a *Brady* violation, even when, unlike here, the notes may be favorable to the defense. For example, in *Turner v. United States*, this Court denied a *Brady* claim where the government admittedly

suppressed favorable evidence of (1) the identity of a man (James McMillan) spotted running from the murder scene "when an officer approached," and who was later "arrested for beating and robbing two women in the neighborhood," (2) an alleged eyewitness's statement that she had "seen another individual, James Blue, beat [the victim] to death in the alley," but who later claimed "she only saw Blue grab [the victim] and push her into the alley," and (3) impeachment concerning four other witnesses. 582 U.S. 313, 321-23 (2017). The *Turner* petitioners (a group of men convicted of beating the victim to death) argued that had they known about the suppressed evidence, they would have presented an "alternative theory" that McMillan, "alone or with an accomplice," murdered the victim. *Id.* at 325. "The problem for petitioners," this Court ruled, was that their "alternative theory would have had to persuade the jury" that the abundant incriminating evidence presented at trial was not true. *Id.* at 326. "Evaluating the withheld evidence in the context of the entire record," the Court found no "reasonable probability that the withheld evidence would have changed the outcome of petitioners' trial." *Id.* at 325, 328 (cleaned up).

Here, petitioner presents comparatively innocuous evidence—a patrol officer's notation of a "possible" but undeveloped suspect—that would not have persuaded the jury that petitioner's confession was false. The value of the notation, if any, is negligible compared to Barnes's testimony, petitioner's confession, the incriminating note, and the fact that petitioner led officers to the murder weapon. At trial, the incident report would not have "put the whole case in such a different light as to

undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419, 435 (1995). Petitioner's *Brady* claim on the incident report thus fails.

2. Petitioner's *Brady* claim on the allegedly suppressed crime lab worksheets fares no better. Pet. 23-27. Those worksheets show the portions of the goodbye note, used sanitary napkin, pink plastic wrapper, and toilet paper wad that cuttings were taken from and sent ReliaGene Technologies for DNA testing. Bioscience Worksheets, Ex. Q to First Supplement to Successor Petition for PCR, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023). The DNA test results for those cuttings are in the ReliaGene report. ReliaGene Report, Ex. R. to First Supplement to Successor Petition for PCR, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023); App.89a, 100a. That report showed that the victim (Lafferty) was "excluded as the DNA donor" of the note and pink plastic wrapper and that "DNA test results" from the used sanitary napkin, the victim's fingernail scrapings, and the wad of toilet paper were "inconclusive due to insufficient or excessively degraded DNA." *Id*. at 3. Trial counsel had the ReliaGene report showing the DNA test results, App.89a, 100a, but petitioner claims the crime lab worksheets that only showed what was sent to ReliaGene for DNA testing are "newly disclosed." Pet. 2, 8, 23. But that fails to establish a *Brady* claim.

Again, to prevail under *Brady*, petitioner must establish the "three components" of such a claim: (1) "favorable" evidence ("exculpatory" or "impeaching"), (2) "suppressed by the State," and (3) resulting "prejudice"—"a reasonable probability that the suppressed evidence would have produced a different verdict." *Strickler*, 527 U.S. at 280-82. He cannot establish a *Brady* claim based on the crime lab worksheets.

First, the worksheets are not exculpatory or impeaching. Petitioner argues that they show "where blood stains were found on certain pieces of evidence," and "which portions of the discovered blood were tested," which somehow "both helps disprove the prosecution's attempted rape theory" and "show[s] that the prosecution's statements to the jury were false, misleading, and prejudicial." Pet. 23. But nothing in the worksheets could help "disprove" the attempted rape. The State did not rely on the note or the used sanitary napkin to prove the underlying crime of attempted rape. *See*, *e.g.*, App.101a-02a. The State's proof of attempted rape was that the victim was "stripped naked from the waist down, her shorts around her ankle" in a "spread eagle" position, had "defense wounds," and that petitioner admitted to killing Lafferty and "[leaving] her body in her final position and state of undress." App.101a-102a (quoting Tr. 640); 883 So. 2d at 24. And in rejecting petitioner's direct-appeal challenge to the sufficiency of the State's proof of attempted rape, the state supreme court focused on the condition and positioning of the victim's body—it never mentioned the note or sanitary napkin. *See* 883 So. 2d at 27. Nothing in the crime lab worksheets "disprove[s] the prosecution's attempted rape theory." Pet. 23. The worksheets are neither exculpatory nor impeaching, so petitioner's claim fails under the first *Brady* prong.

Second, petitioner cannot show that the State suppressed the worksheets. He calls them "newly disclosed" throughout the petition, explaining that successive post-conviction counsel obtained the them when the crime lab "agreed to allow [petitioner] access its file" in 2023. Pet. 2, 8, 23, 24. But the only proof of suppression that petitioner offered was an affidavit from his direct-appeal counsel, executed more than

two decades after he represented petitioner, stating that he "received all files from trial counsel" but had not seen any crime lab worksheets until "CPCC counsel" "provided" them. Adelman Affidavit at 1-2, Ex. H to First Supplement to Successor Petition for PCR, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023); *see* Pet. 24. Whether petitioner's appellate counsel remembers seeing the crime lab worksheets over twenty years ago is not proof that the State did not provide them to trial counsel.

Third, petitioner fails to establish the materiality of the worksheets under *Brady*. Petitioner inflates the evidentiary value of the worksheets by misinterpreting what they show about the used sanitary napkin and the note. He claims that the worksheets show that the "blood on the note came back belonging to a male," and that "results" from testing the "blood from the sanitary napkin" "exclude the victim." Pet. 24. That is inaccurate. While the worksheets show that the note and sanitary napkin "screened positive for blood," they contain no information about donor results. Bioscience Worksheets at 24-25, Ex. Q to First Supplement to Successor Petition for PCR, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023). Instead, the ReliaGene report *that trial counsel had* gives that information. And the ReliaGene report did not show that Lafferty was "excluded … as a donor" of the blood on the used sanitary napkin. Instead, the report showed that the DNA results for the used sanitary napkin sample "were inconclusive due to insufficient or excessively degraded DNA." ReliaGene Reports at 3, Ex. R to First Supplement to Successor Petition for PCR, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023). As for the note, the ReliaGene report that trial counsel had, not the allegedly suppressed worksheets,

"show that the 'Amelogenin' or chromosome came back as XY." *Id.* at 2; *contra* Pet. 24 n.5. Powers fails to establish any of the required components of a *Brady* violation.

Finally, there is no merit to the prosecutorial misconduct allegations that petitioner lumps in with his *Brady* claim on the crime lab worksheets. Pet. 25-27. Nothing in the worksheets shows that the prosecution lied to or mislead the jury. Petitioner argues that because Lafferty was excluded as the donor of the blood on the note and sanitary napkin wrapper, the prosecution misled the jury in closing argument by stating: "We do know that he had that [note] in his crotch; we do know that a sanitary napkin was found in his cap, and he tried to be evasive with the police when he showed them where the murder weapon was." Pet. 26 (quoting Tr. 734). It is true that Lafferty was excluded as the donor of DNA on the note and sanitary napkin wrapper. But that information was in the ReliaGene report that trial counsel had, not the allegedly suppressed worksheet. *Compare* ReliaGene Report, Exhibit R to First Supplement to Successor Petition for PCR, *Powers v. State*, No. 2023-DR-00895-SCT (Miss. Aug. 18, 2023) *with* New Bioscience Worksheets, Exhibit Q to *ibid.* Nothing about Lafferty's DNA not being found on the note reduced its probative value (consciousness of guilt) that the State argued to the jury. And petitioner does not explain how Lafferty's DNA not being on the wrapper, as opposed to the used sanitary napkin itself, has anything to do with the truthfulness of the prosecutor's closing argument. In short, nothing the prosecutor said during closing argument is contradicted by the allegedly suppressed worksheets. And if petitioner believes that the ReliaGene report contradicts any part of the State's closing argument, trial counsel had all he needed to object at trial (but he did not).

B. Last, this case does not satisfy any traditional certiorari criteria. The petition does not seek review of a recurring legal question—let alone one of national importance or one that has divided the lower courts—but instead asks this Court to address petitioner's fact-bound disagreement with the Mississippi Supreme Court's rejection of claims implicating well-settled legal standards. This case does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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December 22, 2025