No. 25-7162

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD C. LYNCH - PETITIONER

vs.

KENTUCKY - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE KENTUCKY COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF THE CASE)

PETITION FOR WRIT OF CERTIORARI

Donald Christopher Lynch, # 148660, **pro se**

Roederer Correctional Complex

Post Office Box 69

LaGrange, Kentucky 40031

Phone Number: Not applicable

QUESTIONS PRESENTED

This case concerns *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The prosecution's theory of the case was based solely on Petitioner's estranged wife's testimony. Her pretrial police interviews, along with other witnesses, were audio-recorded and supplied to the defense in substantially inaudible condition. The defense complained, and the trial court ordered the prosecution to provide written transcripts of their witnesses' statements. *The prosecutor represented the transcripts as everything comprehensible and known to him from the original tapes in the possession of his lead investigator*. It was ultimately discovered that the detective who made the recordings, and manufactured the transcripts, had possessed perfectly audible recordings, and had suppressed material impeachment evidence through the insertion of false information, false pronouns, and omissions that were unnecessary and unjustified.

1) Is the decision of the Kentucky Court of Appeals in conflict with *Brady v. Maryland*, and its progeny, when the state court shifted to the defense, the duty to learn of favorable impeachment evidence in the possession of the prosecutor's lead investigator?

2) Is the decision of the Kentucky Court of Appeals in conflict with *Brady v. Maryland*, and its progeny, when the state court did a sufficiency of evidence test and failed to distinguish between the guilt and punishment phases of the trial concerning the materiality of the suppressed information?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Hon. Russell Coleman, Attorney General for Kentucky
Hon. Christopher Henry, Assistant Attorney General for Kentucky
1024 Capital Center Drive
Frankfort, Kentucky 40601
(Counsel for Respondents)

RELATED CASES

1) *Lynch v. Commonwealth*, No. 2025-SC-0079-D, Ky. Supreme Court, Order denying discretionary review entered December 10, 2025.

2) *Lynch v. Commonwealth*, No. 2023-CA-1110-MR., Ky. Court of Appeals, Judgment entered November 1, 2024.

3) *Lynch v. Commonwealth*, No. 99-CR-00152, The Pulaski Circuit Court, Judgment entered August 8, 2023.

4) *In re Lynch*, No. 23-5906, 6th Cir. Court of Appeals. Judgment entered March 25, 2024.

5) *Lynch v. Commonwealth*, No. 2020-CA-1311-MR., Ky. Court of Appeals, Judgment entered October 8, 2021.

6) *Lynch v. Commonwealth*, No. 2002-CA-002218, Ky. Court of Appeals, Judgment entered June 4, 2004.

7) *Lynch v. Commonwealth*, No. 2000-SC-1049-MR., Ky. Supreme Court, Judgment entered May 16, 2002.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is
[ ] reported at ____________________N/A_____________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is
[ ] reported at ____________________N/A_____________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] **For cases from state courts**:

The opinion of the highest state court to review the merits appears at **Appendix A** to the petition and is

[X] reported at 2024 Ky.App.Unpub. Lexis 604, 2024 WL 4644865; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Pulaski Circuit Court, appears at **Appendix B** to the petition and is

[ ] reported at ________________N/A__________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was N/A.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] **For cases from state courts**:

The date on which the highest state court decided my case was **December 10, 2025**. A copy of the decision appears at **Appendix C** .

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A , and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just explanation.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On September 30, 1999, Steven Richmond's death occurred at Donald Lynch's home in Pulaski County, Kentucky. Donald (hereinafter "Petitioner"), and Steven had been longtime friends who were residing together at Petitioner's home for one and one half *months* prior to his death. Petitioner and his wife, Teresa Lynch, separated on August 15, 1999, and were in a pending divorce. Teresa had taken their infant child, Christopher, and moved to McCreary County, Kentucky.

On November 11, 1999, Petitioner was the one arrested and charged with intentional murder and tampering with physical evidence concerning the shooting death of Steven Richmond.

On July 26, 2000, after a one and one half day circumstantial trial, Petitioner was convicted of intentional murder, tampering with physical evidence, and sentenced to life and five (5) years imprisonment, based on a jealousy motive and the allegation of a murder confession, which was both solely alleged by Petitioner's estranged wife, Teresa Lynch.

On May 16, 2002, the judgment was affirmed in *Lynch v. Commonwealth*, 74 S.W.3d 711 (Ky. 2002). "*According to Teresa's testimony*... "[Petitioner] *admitted unequivocally*" to her that Steve's death was the result of his jealousy because she "*had sex with Richmond during their past relationship*." Id. 712. (APPENDIX D, page 1 and 2, Ky.Sup.Ct.Opn).

Teresa's exact testimony alleged, "[Petitioner] said I shot him, and told him you'll never lay another eye on *my wife's naked body again*." (VR: 07/25/2000 at 3:18:47 pm).

The defense filed a pretrial motion-in-limine attempting to preclude Teresa from testifying under the marital privilege, which was denied. The defense also filed a motion and affidavit for a continuance arguing the audio-recorded police interviews provided by the prosecution were substantially inaudible.

In 2000: (1) Counsel interviewed Teresa. (2) Reviewed her audio-recorded police interviews and found them substantially inaudible. (3) Submitted an affidavit stating, in part, that most of the audio-recordings supplied by the prosecution were "*incapable of transcription, in whole or in part*," unable to be "*computer enhance[ed]*," and otherwise "*inaudible in whole or in part*." (APPENDIX E, affidavit, paragraphs 6, 7, & 12). (4) In response, the trial court acknowledged, "[t]he Defendant's *complaint* that the audio tapes of the witness statements were similarly difficult to comprehend...," then issued an order stating: "[T]he Commonwealth shall provide to defense counsel...written transcripts of any statement relating to the subject matter of the trial of any witness who will testify at trial." (APPENDIX F, original trial court order). (5) Counsel then reviewed Teresa's 11/11/99 interview transcript and found it continuing to omit information, but containing more information than the audio-recorded interview provided. (6) Counsel then heard the testimony of Teresa Lynch and Detective Doug Nelson where they did not disclose any of the contradictory information at issue herein.

After his conviction, from prison, Petitioner attempted to obtain a copy of his counsel's file, including the inaudible audio-recorded police interview statements taken from Teresa Lynch.

On December 5, 2002, Petitioner received a letter from his counsel stating, "*As I advised you previously*, I have been in contact with the corrections cabinet requesting I be permitted to send the items you requested me to send. *I have been advised that I should not send them*... I will not either break the law or *violate the orders of the corrections cabinet*...." (APPENDIX G, letter from counsel, paragraphs 4 to 6). Although counsel stated, "the tapes are available in my office," the tapes were unavailable to Petitioner regardless of who picked them up at his counsel's office, because he was not allowed to receive the tapes from anyone, including his own counsel, while in the immediate custody of the Kentucky Department of Corrections.

Twenty years later, on July 22, 2022, the Kentucky Department of Corrections transferred Petitioner into the immediate custody of a private prison owned by the Core Civic Corporation.

On October 21, 2022, pursuant to the Kentucky Open Records Act, Petitioner obtained an audio-recorded police interview conducted by lead investigator, Detective Doug Nelson of the Somerset Police Department, titled: "Teresa Lynch, November 11, 1999." The clarity and content contained in this police interview shows that material impeachment evidence favorable for the defense had been suppressed. The relevant evidence contrasts as follows:

DET. NELSON'S ORIGINAL AUDIO RECORDING FOUND IN 2022:

Nelson: ...Did you tell me earlier about something he said, *he would never look at your naked body again...* (Officer suggests the "naked body" confession statement).
...

Teresa: ...Those were not the exact words. Remember I told you I couldn't remember word for word. But it was something.
...

Teresa: But like *you* told me, you know, nobody had ever said anything to me until *you* told me that day that, you know, we need to know what happened.
...

Teresa: I never been pregnant in my life...Steve had Ronnie Shelly, a buddy of his calling ...I knew that night that Ronnie Shelly had called asking if I was pregnant and when I was due...I knew immediately that Steve had put him up to calling. He probably thought it was his kid. I was pregnant by him... you see what I am saying?

Teresa: We moved back...so after then, you know, [Steve] called after Christopher was born[1].

Teresa: I'm sorry, I never told anyone about Steve's suspicions.

Teresa: I was scared to death, you know. That Steve would say something to Don about it. I was terrified about it, you know. [Steve] didn't look at him as Don's baby[2]. I mean Christopher may not look like Don now, but you know, if you look at baby pictures.

---

[1] The Ky. Court of Appeals transcribed this statement as, "...he called [unintelligible] [Child] was born..." In the audio she clearly states, "...he [meaning Steve] called after Christopher was born." (Ky. App. Opn. pgs. 26 & 27).

[2] The Ky. Court of Appeals transcribed this statement as, "Don, I mean, he didn't look at Don's baby." In the audio she clearly states, "Steve, I mean, he didn't look at him as Don's baby." (Ky. App. Opn., page 28).

Teresa: ...I just can't get it out of my mind that maybe Steve said something to him about Christopher.

Teresa: ... It had to have something to do with Christopher...

Teresa: I can see Steve being brave enough to taunt him in that manner if they got into it...then be brave enough to say something like that. It has to have been.

(Detective's Audio, Teresa Lynch, 11/11/99 at 1 min 37 sec. to 16 min. 34 sec.)

DET. NELSON'S TRANSCRIPT, AS PROVIDED TO DEFENSE IN 2000[3] (*exact same excerpts, false content in bold*):

Nelson: Did you tell me earlier about something he said, *he would never look at your naked body again*... (APPENDIX H, actual transcript provided, page 1, line15)

Teresa: **He** --- something to that. **He added that** --- remember word for word but it was something, you know. But, then again --- I may have --- **shot for even telling that**. (Page 1 and 2, line 16).

...

Teresa: But **he** told me --- you know, nobody had ever --- **He** told me that day... We need to know what happened. (Page 2, line 20)

...

Teresa: (omitted)

Teresa: --(static) thereafter, you know, thereafter he called-Christopher- (Page 4, line 46).

Teresa: I'm sorry. **He** never told anyone about Steve --- (Page 4, line 52).

Teresa: And you know, --- say something to Don about it --- (static). (Page 4, line 60)

Teresa: (omitted)

Teresa: (omitted)

Teresa: (omitted)

The audio tape represents the information possessed by the detective. The transcript represents that information as the prosecutor provided it to the defense. (See also APPENDIX A, pages 21 to 30, Kentucky Court of Appeals contrasting this information, in pertinent part).

[3] The Respondent's brief in state court described Detective Nelson's purposeful technical editing as follows: "Detective Nelson may have inserted a word into what he remembered her statement to be...(Appellee brief).

On January 10, 2023, Petitioner filed a pro se CR 60.02 (f) motion raising a claim pursuant to *Brady v. Maryland*, and its progeny. Based on the altered and omitted information, he argued: 1) When Det. Nelson altered Teresa's immediate response, "*...Those were not the exact words. Remember I told you I couldn't remember word for word, but it was something,*" he suppressed material evidence to impeach Teresa's specific "*naked body*" murder confession allegation. 2) When Det. Nelson switched the pronouns from "you, you" to "he, he, in her statement, "*But like <u>you</u> told me, you know, nobody had ever said anything to me until <u>you</u> told me that day that, you know,*" he suppressed material evidence to impeach her confession allegation, and show that the detective was the original source of that allegation. 3) When Det. Nelson inserted the false statement, "*shot for even telling that,*" into Teresa's response, he negatively affected counsel's strategic decisions by precluding the use of other existing impeachment evidence. He argued that false statement would have opened the door for the prosecutor to explain to the jury that Teresa's reluctance to timely provide incriminating evidence against her estranged husband was due to the fear of being shot by him. 4) When Det. Nelson omitted Teresa's disclosures about Steven Richmond's secreted belief that he had fathered Petitioner's child, he deprived Petitioner of material evidence to impeach Teresa's motive based on sex during the guilt phase. As well as evidence that, under Kentucky law, could have been used to reduce Petitioner's initial charge to a lesser-included offense; or, upon conviction, would have been used as evidence for leniency to reduce his punishment to a sentence less than the life sentence imposed, (APPENDIX I, J, K, Brief, Reply Brief, and Motion containing pro se arguments concerning *Brady,* in full).

The critical point being that Petitioner had been denied a fair trial and a reasonable probability of a different result concerning both the guilt and punishment phases of his trial.

The Pulaski Circuit Court ignored Det. Nelson's willful actions in concealing impeachment evidence, ignored Petitioner's requests for an evidentiary hearing, did a sufficiency-of-evidence test, and looked to Petitioner's ill-conceived actions *after* Steve's death. They concluded, "[t[he evidence at issue is not material...If the defense had the "complete" transcript of Teresa Lynch's interview and had used it to impeach her testimony during the trial, in this Court's view there is no reasonable probability that, had the evidence been disclosed, the result of the trial would have changed." (APPENDIX B, page 4, Cir.Ct.Order). They also concluded "[t]he Commonwealth did not suppress the impeachment evidence...Defendant and the Commonwealth possessed the same information, Defendant's due process rights were not violated." (APPENDIX B, page 6).

The Kentucky Court of Appeals concluded the same, and then proceeded, sua sponte, to fault the defense for not discovering the concealed information in the detective's possession. They also expressly rejected the affidavit filed by the defense, and rejected the trial court's order, believing it only concerned to the quality of the "Commonwealth's recorded interviews of *Donald and no one else*. [And further stated] it is mere speculation to infer the circuit court's July 10, 2000 order assessed the quality of the recording of Teresa Lynch's November 11, 1999 interview that the Commonwealth supplied Donald's counsel." (APPENDIX A, pages 7 to 16, Ky.App.Opn.)

However, clearly, during those proceedings, the defense had also complained to the trial court that the inaudible condition of the tapes had also applied to the Commonwealth's witnesses, because the trial court put that "complaint" into its Order, stating:

> "The Defendant's *complaint* that audio tapes of *witness statements* were similarly difficult to comprehend is of no consequence...The Commonwealth shall provide to defense counsel...written transcripts of any statement relating to the subject of the trial of any witness who will testify at trial." (Emphasis added).

This ruling by the trial court required transcripts to be provided to the defense concerning the police interviews taken from the Commonwealth's witnesses. Det. Nelson then expended time and resources to manufacture, among other transcripts, the transcript titled "Teresa Lynch 11/11/99," pursuant to this Order. (APPENDIX A, page 9, Ky.App.Opn.).

The Kentucky Court of Appeals also, sua sponte, rejected the transcript as inadmissible, stating, "[Petitioner] could only demonstrate the recording of Teresa's November 11, 1999 interview that he received from the Somerset Police Department in 2022 qualifies as *new evidence* by contrasting it with the recording of that interview the Commonwealth originally provided him in 2000." They stated that, "If Donald had demonstrated the original recording supplied to his counsel was *unavailable*, then other evidence of the recording might be admissible. KRE 1004. However, his CR 60.02 motion included no such showing or assertion." (APPENDIX A, page 12, Ky.App.Opn.). The Court further concluded that the omitted impeachment evidence between the 2022 recording and the 2000 transcript was not "new evidence" for *Brady* purposes. (APPENDIX A, page 13, Ky.App.Opn).

Petitioner had to argue for the first time on appeal, with exhibits, that he could demonstrate all three provisions of the Kentucky Rule of Evidence, "KRE 1004", to show unavailability, making the transcript admissible as "*other evidence*" to show the inaudible condition of the tape that the detective's transcript was intended to represent. He showed that, "(1) Original was destroyed (by office policy of trial counsel); (2) Original not obtainable by judicial process (denied repeated requests for evidentiary hearings for fact development); and (3) Original in possession of opponent. (Prosecutor's office ignored pro se subpoena duces tecum requesting their copy of the tape supplied by Det. Nelson.)" (APPENDIX K, pages 6, 7, 8, Discretionary Review and Exhibits).

The Kentucky Court of Appeals also stated that, "The "incorrect transcript" that the Commonwealth provided to Donald's trial counsel cannot serve as a basis for a *Brady* violation…" (APPENDIX A, page 13, Ky.App.Opn.). The Court then stated, "Donald contends that even if the 2000 and 2022 audio recordings were in fact the same, his counsel, in preparing Donald's defense, was nevertheless entitled to rely – and perhaps did so rely – entirely upon the Commonwealth's transcript of that interview without undertaking the minimal investigative step of reviewing the transcript in conjunction with the audio recording." (APPENDIX A, page 14, Ky.App.Opn.)

On this point, Petitioner pleaded that the "Court of Appeals had greatly misconstrued the facts of his [*Brady*] claim," and shifted the duty to learn of favorable impeachment evidence in the possession of the police, to the defense. (APPENDIX K, pages 9, 10, Discretionary Review).

The Kentucky Court of Appeals also concluded, "There is no reasonable probability that the "new evidence" Lynch has uncovered regarding what Teresa said during her interview would have materially altered the outcome of his trial, or that Lynch was otherwise prejudiced." (APPENDIX A, page 16, Ky.App.Opn.) This determination was made after a sufficiency-of-evidence test relying heavily on Teresa's allegations and Petitioner's ill-conceived actions *after* Steven's death. (APPENDIX A, page 34 Ky.App.Opn.).

In addition, after contrasting the detective's 2000 transcript to the recording found in 2022, the Kentucky Court of Appeals concluded, "nothing in the audio recording of Teresa's interview reasonably suggests that Donald's purported murder confession was something that Teresa adopted from Det. Nelson." (APPENDIX A, page 30, Ky.App.Opn.). They did this while ignoring Det. Nelson had suggested the murder confession statement to her. Then he altered her immediate response, "*…Those were not the exact words. Remember I told you I couldn't remember word for word. But it was something.*" Then he proceeded to change the pronouns in her final comment

concerning the "naked body" statement, "*But like* <u>*you*</u> *told me, you know, nobody had ever said anything to me until* <u>*you*</u> *told me that day that, you know...*"(APPENDIX H, page 2, line 20).

The Kentucky Court of Appeals then belittled Petitioner's claim about Det. Nelson inserting the false statement, "*shot for even telling that,*" into Teresa's statements, and it's negative effect on defense counsel's strategic decisions. (APPENDIX A, page 30 to 33, Ky.App.Opn.)

Moreover, the Kentucky Court of Appeals found it insignificant that Det. Nelson had omitted Teresa's disclosures about "the paternity of the child she shared with Donald, rather than sexually jealousy, might possibly have motivated Donald to kill Richmond." (APPENDIX A, page 33, Ky.App.Opn.). On this point, the Court said that, "Teresa's *belief* was also irrelevant speculation on her part..." And, "Donald does not explain what advantage, if any, he would have obtained if his counsel had pursued that line of 'impeachment.'" (Emphasis in original). (APPENDIX A, page 33 and 34, Ky.App.Opn.)

Importantly, Teresa's statements were not, "irrelevant speculation on her part," as stated by the Court of Appeals. Teresa's statements, identified in bold, are statements of fact based on her personal knowledge of real occurrences.

> Teresa: Well, immediately word got out, you know, that I was pregnant...I had never been pregnant in my life...Anyway, **Steve had Ronnie Shelly [sic] a buddy of his start calling** *[our home in Georgia]*...(APPENDIX A, pages 25, 26; Audio, 11/11/99 at 5 minutes 47 seconds).

> Teresa: ... then, you know, thereafter, uh, **[Steve] called after [Child] was born.** (Pages 26 and 27; Audio, 11/11/99 at 6 minutes 55 seconds).

> Teresa: I am sorry, **I have never told anyone this, about Steve's suspicions**. (Page 27).

> Teresa: And, uh, you know I told [my sister] that I was scared to death that, you know, that Steve would say something to Don about it. I was terrified that, you know, but **[Steve], I mean, he didn't look at him as Don's baby...**(Page 28; Audio, 11/11/99 at 8 minutes 10 seconds).

Moreover, it is worth repeating that in this circumstantial case, and under Kentucky law, the nature of her concealed statements involving the paternity of Petitioner's child would have warranted an instruction on the lesser-included degrees of homicide, would have been used to impeach her alleged "*naked body*" confession allegation based on sex, and would have been substantial evidence during the punishment phase, in a request for leniency and a lesser sentence than life sentence imposed. (Cf. APPENDIX K, page 13 and 17, Motion, Discretionary Review).

On December 10, 2025, the Kentucky Supreme Court denied discretionary review. (APPENDIX C, Ky.Sup.Ct.).

(Please note: On March 25, 2024, a request to file a second writ of habeas corpus was denied by the Sixth Circuit Court of Appeals. In this pro se attempt, Petitioner erred, and argued the lesser standard for Brady materiality. As a result, he was denied on the much higher standard, for failing to show that, "no reasonable factfinder would have found [him] guilty for the underlying offense." 28 U.S.C. § 2244 (b) (2), (b) (3) (C)." (APPENDIX L, Sixth Circuit Order)).

REASONS FOR GRANTING THE PETITION

1) Is the decision of the Kentucky Court of Appeals in conflict with *Brady v. Maryland*, and its progeny, when the state court shifted to the defense, the duty to learn of any favorable impeachment evidence in the possession of the prosecutor's lead investigator?

In *Strickler v. Greene*, 527 U.S. 263, 280 (1999), it states: "In *Brady*, 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." [*Brady v. Maryland*] 373 U.S. [83], at 87. We have since held that the duty to disclose... encompasses impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985). Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., at 682; see also *Kyles v. Whitley*, 514 U.S. 419, 433-434 (1995). Moreover, the rule encompasses evidence, *"known only to police investigators and not to the prosecutor."* Id., at 438. In order to comply with *Brady,* therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police. Kyles, 514 U.S. at 437." (Emphasis added).

Petitioner consistently relied on this clearly established law while pursuing his *Brady* claim in the Kentucky courts. (Cf. APPENDIX I, J, and K, in full).

The Kentucky courts proceeded to ignore the spirit and substance of this law. They took the position that because the defense was provided with a tape and a transcript (albeit inaudible, incomplete, and misleading), that the, "Defendant and the Commonwealth possessed the same information." (APPENDIX B, page 6, Cir.Ct.Order). The Kentucky courts are concluding that as long as the defense was provided with *notice* that Teresa had given a police interview statement on November 11, 1999, that the burden shifts to the defense to investigate and uncover favorable evidence that had willfully been withheld from that interview by the prosecutor's lead investigator.

Importantly, the Kentucky courts are in conflict with the *Brady* doctrine that firmly holds otherwise, stating that it is the prosecutor's, "*duty to learn any favorable evidence known to the others acting on the government's behalf in this case, including the police.*" *Kyles*, 514 U.S., at 437.

In this case, the trial court ordered transcripts. A police detective made the transcripts and submitted them to the prosecutor, who then supplied them to the defense. The prosecutor then failed to alert the defense that the transcript at issue was an inaccurate representation of the detective's original audio-recorded interview that the transcript *was intended to represent.* Clearly, at this point in the chain of evidence, the transcript was then being represented by the prosecutor as everything *comprehensible* and known to him from the original audio-recorded interview in his lead investigator's possession. On these facts, the Kentucky courts concluded there was no due process violation for *Brady* purposes, by faulting the defense for not discovering the secreted impeachment information in the detective's possession. (APPENDIX A, page 13 to 16, Ky.App.Opn).

The Supreme Court, and many other courts, has rejected Kentucky's reasoning under *Brady*, and its progeny. See, e.g. *Barton v. Warden*, 786 F.3d 540, 468 (6th Cir. 2015), stating:

> "At no point have we or the Supreme Court offered any 'support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed.' *Banks* [*v. Dretke*] 540 U.S. 668, 695; see also *Strickler*, 527 U.S. at 282-89" ... "*Brady* requires the State to turn over *all* material exculpatory and impeachment evidence to the defense. It does not require the State simply to turn over *some* evidence, on the assumption that defense counsel will find the cookie from the trail of crumbs."

See also *Banks v. Dretke*, 540 U.S. at 696, "A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process."

According to the prosecution's theory of the case Petitioner killed Steve Richmond due to jealousy based on sex, and then confessed this to his estranged wife, during a pending divorce, and Petitioner's ill-conceived actions *after* having found Steven Richmond already dead in the residence.

Teresa's suppressed verbatim statements were therefore material impeachment evidence favorable for the defense, because her statements go to, and *contradict*, the heart of the prosecution's theory of the case. Petitioner was deprived of a reasonable doubt that did not otherwise exist, because he was deprived of her conflicting verbatim police interview statements.

When the prosecutor neglected to discover and disclose Teresa Lynch's verbatim statements in the possession of his lead investigator, and the Kentucky Court of Appeals shifted that duty to the defense, Petitioner's rights pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution were violated, and the Kentucky Court of Appeals rendered a decision that is contrary to, and an unreasonable application of, clearly established law pursuant to *Brady v. Maryland*, and it progeny.

2) Is the decision of the Kentucky Court of Appeals in conflict with *Brady v. Maryland*, and its progeny, when the state court did a sufficiency of evidence test and failed to distinguish between the guilt and punishment phases of the trial concerning the materiality of the suppressed information?

(A)

In *Cone v. Bell*, 556 U.S. 449, 451 (2009), it states, "[W]e have held that when the State withholds from a criminal defendant evidence that is material to his *guilt or punishment*, it violates his right to due process of law in violation of the Fourteenth Amendment. See *Brady,* 373 U.S., at 87. In *United States v. Bagley*, 473 U.S. 667, 682 , we explained that evidence is "material" within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. In other words, favorable evidence is subject to constitutionally mandated disclosure when it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. *Kyles*, 514 U.S. 419, 435 ; accord *Banks*, 540 U.S. 668, 698-699 ; *Strickler*, 527 U.S. 263, 290 ."

In addition, and importantly, Brady materiality "*is not a sufficiency of evidence test.*" And, "A showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles*, 515 U.S. 419, at 434-435.

The Kentucky Court of Appeals, like the Pulaski Circuit Court, did a sufficiency of evidence test in concluding the suppressed information was not material. They relied heavily on Teresa Lynch's jealousy allegations[4], in conjunction with Petitioner's conduct "*after claiming that he found Steven Richmond already dead in the residence.*" (APPENDIX A, page 34; Ky.App.Opn.). 1) He moved Steve's body from the residence and lied to investigators about knowing anything[5]. 2) Shaved and dyed his hair. 3) Fled to California[6] after a murder warrant was issued[7]; and 5) according to Steve's girlfriend, the last time she saw Steve was on the night before while partying at Petitioner's residence, and when she left, Petitioner was sleeping on the couch.

Therefore, had Teresa's highly condemning allegations been impeached, all of the Petitioner's actions occurred – according to the prosecutor – *after* "claiming that he found Steven Richmond already dead in the residence." (APPENDIX A, page 34, Ky.App.Opn.).

In this regard, this case has relevant similarities to *Wearry v. Cain*, 577 U.S. 385, 393 (2016), stating, "But all the evidence the dissent cites suggests, at most, is that someone in Wearry's group of friends may have committed the crime, and that Wearry may have been involved in the events related to the murder *after* it occurred. Perhaps, on the basis of this evidence, [The state] might have charged Wearry as an accessary after the fact. [] (Providing for a maximum

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[4] Please see APPENDIX J, pages 3 to 6, including exhibit A1, showing protection order request signed by Steven Richmond and Petitioner *against* Teresa Lynch two weeks *after* Petitioner and Teresa separated.

[5] Petitioner received a disability for a severe panic attack disorder, (APPENDIX I, page 22).

[6] Petitioner was arrested in McCreary County, Kentucky.

[7] Allegation that a police report proves patently false, (APPENDIX J, pg. 4, section B, Reply Brief exhibit A5).

prison term of five years for accessories after the fact)." (Emphasis in original). **(Importantly, please see APPENDIX J, page 3, section A, Reply Brief).**

Had Teresa's contradictory statements not been suppressed, there is a reasonable probability that, on the facts of this case, at least one juror would have lost confidence in the trustworthiness of Teresa's jealousy and confession allegations, concluded that Petitioner's unlawful actions occurred *after* finding Steve laying shot in the residence, and voted to acquit on the charge of intentional murder; finding that Petitioner committed the act of tampering with physical evidence in the aftermath of the shooting. See *United States v. Bagley*, 473 U.S. 667, 676 (1985), "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence."

(B)

Moreover, although it was asked for, the decision of the Kentucky courts did not distinguish between the materiality of evidence with respect to guilt, and the materiality of the evidence with respect to punishment. (APPENDIX A, page 33 and 34, Ky.App.Opn., and APPENDIX K, page 13 to 17, section C, Motion, Discretionary Review).

It is the nature of Teresa's suppressed contradictory motive involving Petitioner's infant child that drives this argument. Under Kentucky law, the nature of her concealed statements involving the paternity of Petitioner's infant child would have warranted an instruction on the lesser-included degrees of homicide, in this circumstantial case. *Osborne v. Commonwealth*, 43 S.W. 3d 234, 244 (Ky.2001). In addition, Petitioner had a right under Kentucky law to present a defense of not guilty during the guilt phase; then once convicted, to present *existing evidence* as to why he might have caused Steven's death in support of leniency during the penalty phase. See

Kentucky Revised Statute 532.055 (2) and *Beard v. Commonwealth*, 581 S.W. 3d 537 (Ky.2019), where the Kentucky Supreme Court cited this statute and said there is "no authority for the argument that a defendant cannot offer mitigation incongruent with his guilt-phase defense." Id. at 548. Moreover, pursuant to *Kentucky Revised Statute* 507.020 (1) A person is guilty of murder when:

> (a) With intent to cause the death of another person he causes the death of such person or of a third person; *except that in any prosecution a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse* ... However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of manslaughter in the first degree. (Emphasis added).

Kentucky Revised Statute 507.030 (2): Manslaughter in the first degree is a Class B felony and carries a minimum sentence of 10 years and a maximum sentence of 20 years.

Moreover, in *Beard,* the Kentucky Supreme Court states that even if the "evidence of EED may be insufficient to warrant an EED guilt-phase instruction...evidence can still be sufficient...as a mitigating circumstance," and "society has recognized that defendants who commit criminal acts that are attributable to...emotional and mental problems, may be less culpable than defendants who have no such excuse." 581 S.W. 3d. at 548.

Teresa's sexually based jealousy allegations served as the jury's basis for the life sentence imposed. In contrast, her concealed statements to the prosecutor's lead investigator about Steven's secreted belief that Petitioner's child was his, lends substantial weight for the proposition that, once convicted, at least one juror could have found her conflicting motives material, and voted for a lesser offense or a lesser punishment than the maximum life sentence imposed. Thus, providing a reasonable probability of different result because the suppressed evidence involving Petitioner's

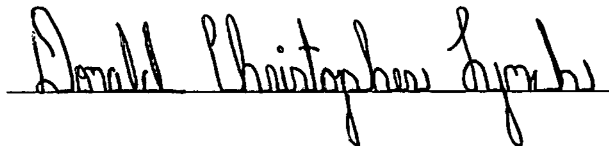
child "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [life sentence imposed]. *Kyles*, 514 U.S. 419, 435; accord *Banks*, 540 U.S. 668, 698-699 ; *Strickler*, 527 U.S. 263, 290 ."

When the Kentucky Court of Appeals did a sufficiency of evidence test concerning Brady materiality, and did not conduct a materiality inquiry concerning the suppressed information as it related to Petitioner's punishment, Petitioner's rights pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution were violated, and the Kentucky Court of Appeals rendered a decision that is contrary to, and an unreasonable application of, clearly established law pursuant to *Brady v. Maryland*, and it progeny. Specifically, because in *Brady*, it states that when the State withholds from a criminal defendant evidence that is material to his ***guilt or punishment***, it violates his right to due process of law in violation of the Fourteenth Amendment." See *Brady,* 373 U.S., at 87 . In *Kyles,* it states, Brady materiality "is not a sufficiency of evidence test." *Kyles*, 515 U.S. 419, at 434-435, and in Cone v. Bell, it states, "the State court did not distinguish between the materiality of evidence with respect to guilt and the materiality of the evidence with respect to punishment – an omission we find significant." 556 U.S. 449, at 472.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



DATE: **February 27, 2026**

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