

No. 26-_____

CAPITAL CASE

FEBRUARY 2027 EXECUTION DATE ANTICIPATED¹

IN THE

Supreme Court of the United States

CLARANCE ROZELL GOODE, JR., PETITIONER,

V.

STATE OF OKLAHOMA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

PETITION FOR A WRIT OF CERTIORARI

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¹See Order, *In re: Setting of Execution Dates*, D-2008-43 (Okla. Crim. App. July 9, 2010) (ordering executions in 90-day intervals, absent legal impediments). Mr. Goode is listed after James Pavatt (Nov. 12, 2026 execution scheduled), and those preceding him have either been executed, are no longer on death row, or are subject to legal impediments to execution.

CAPITAL CASE QUESTION PRESENTED

Time and again this Court has rejected noncumulative and sufficiency-of-the-evidence tests of materiality under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), which the court below applied to deny Petitioner Clarence Goode’s newly discovered due process claims. *E.g.*, *Kyles v. Whitley*, 514 U.S. 419, 434–35 (1995); *Glossip v. Oklahoma*, 145 S. Ct. 612, 626–27 (2025).

The State built its case against Mr. Goode on testimony from: co-defendant Ronald “Bunny” Thompson, whose deal allowed him to avoid the death penalty by pointing the finger at Mr. Goode; disgraced Tulsa Police Officer Jeff Henderson, a convicted felon about whom the Tenth Circuit has said, “There is no doubt that Henderson was a bad cop[]”; and disgraced Owasso Police Officer Michael Denton, who, like Henderson and unbeknownst to Mr. Goode’s trial counsel, the police department had disciplined for misconduct that included participating in a “cover up” either by “los[ing], or intentionally misplac[ing] or destroy[ing]” evidence. Also unbeknownst to trial counsel, within 24 hours of the crime, an informant told Denton that Thompson admitted he “was planning to kill” a witness believed to be at the site of the murders “before the evening of the . . . homicides.” Yet Denton omitted this information (which would have impeached Denton and directly contradicted Thompson’s trial testimony) from his reports. The State also never informed trial counsel that Henderson had been disciplined for misusing his authority as a police officer, was investigated for entering false information into a probable cause affidavit, and that Denton had likewise been disciplined for official misconduct.

Based on this new suppressed evidence, Mr. Goode timely raised *Brady/Napue* claims before the court below which refused to consider the evidence related to Denton; failed to cumulate the prejudice stemming from the totality of the suppressed evidence; applied materiality tests trained on the evidence of guilt; and placed the burden on Mr. Goode to prove prejudice under *Napue* in contravention of *Glossip*.

The questions presented are:

1. Whether the Fourteenth Amendment and the Supremacy Clause prohibit a state that opens its collateral review forum to claims under *Brady* and *Napue* from refusing to: (i) conduct a cumulative prejudice analysis in assessing the materiality of suppressed evidence; (ii) applying materiality standards that are more demanding than required under *Brady* and *Napue*; and (iii) relieving the state of its burden to prove a *Napue* violation harmless beyond a reasonable doubt.
2. Whether the State of Oklahoma’s *Brady* and *Napue* violations entitle Mr. Goode to a new trial and/or capital sentencing proceeding.

PARTIES TO THE PROCEEDING

In the proceedings below, Clarence Rozell Goode, Jr. was the defendant/petitioner and the State of Oklahoma was the plaintiff/respondent.

RELATED PROCEEDINGS

Tulsa County District Court:

State v. Goode, No. CF-05-3904, Tulsa County District Court for the State of Oklahoma. Judgment of conviction and sentence entered Jan. 7, 2008.

Oklahoma Court of Criminal Appeals:

Goode v. State, No. D-2008-43, Okla. Crim. App. Judgment entered June 9, 2010.

Goode v. State, No. PCD-2008-211, Okla. Crim. App. Judgment entered Sept. 7, 2010 (unpub.).

Goode v. State, No. PCD-2010-661, Okla. Crim. App. Judgment entered Sept. 28, 2010 (unpub.).

Goode v. State, No.: PCD-2012-261, Okla. Crim. App. Judgment entered May 2, 2012 (unpub.).

Goode v. State, No.: PCD-2020-333, Okla. Crim. App. Dismissed June 9, 2020.

Goode v. State, No.: PCD-2020-530, Okla. Crim. App. Judgment entered Oct. 14, 2021 (unpub.).

Goode v. State, No.: PCD-2025-572, Okla. Crim. App. Judgment entered June 11, 2026 (unpub.).

United States District Court, Western District of Oklahoma:

Goode v. Workman, No. 11-CV-150, N.D. Okla. Judgment entered July 11, 2016.

RELATED PROCEEDINGS—Continued

United States Court of Appeals for the Tenth Circuit:

Goode v. Carpenter, No. 16-5124, U.S. Court of Appeals for the Tenth Circuit. Judgment entered Apr. 29, 2019.

United States Supreme Court:

Goode v. Oklahoma, No. 10-7994, U.S. Supreme Court. Cert. denied Feb. 22, 2011.

Goode v. Sharp, No. 19-6857, U.S. Supreme Court. Cert. denied Feb. 24, 2020.

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Appendix B—*Goode v. State*, No. PCD-2010-661, Opinion Denying Petitioner’s Subsequent Application for Post-Conviction Relief and Denying Petitioner’s Motion for an Evidentiary Hearing (Okla. Crim. App. Sept. 13, 2010)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Clarence Rozell Goode, Jr. respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals.

INTRODUCTION

This is a Tulsa County death penalty case where, for over two decades, police and prosecutors succeeded in suppressing favorable, material evidence which allowed them to win Petitioner Clarence Rozell Goode, Jr.'s convictions and death sentences. Despite Mr. Goode's diligent attempts to vindicate his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), Pet. App. 26a-35a, ahead of his 2007 death penalty trial and throughout subsequent collateral review proceedings, only on July 9, 2025 did Mr. Goode discover that the State suppressed evidence that would have impeached the credibility of its star witness, Ronald "Bunny" Thompson, and dismantled the credibility of police officers Jeff Henderson, Michael Denton, and their entire investigation on which the State's case against Mr. Goode depended.¹

The suppressed evidence shows, first, that Bunny told a confidential police informant that he planned to kill a resident of Mitch and Tara Thompson's home the evening he entered their house the night they and their daughter were killed. Pet. App. 219a. Bunny's suppressed, incriminating admission squarely contradicted his testimony at Mr. Goode's death penalty trial wherein he adamantly denied any

¹ At all relevant times, Henderson and Denton were officers with the Tulsa and Owasso Police Departments, respectively. The crimes were investigated by both police agencies. *See Goode v. Carpenter*, 922 F.3d 1136, 1149, 1152 (10th Cir. 2019).

motive, advance knowledge, or intent to carry out the killings, placed the blame squarely on Mr. Goode, and claimed that he had been forced to participate against his will. Pet. App. 36a-46a. The suppressed evidence and ensuing investigation also show that the confidential informant was, in fact, Bunny's estranged wife, Brandy Thompson ("Brandy"), who reported his incriminating admission to Denton within the first 24 hours of the investigation, giving police their first lead identifying a perpetrator and prompting their interview with Bunny later that same day. Pet. App. 219a-220a; Pet. App. 253a; Pet. App. 243a. However, Denton sanitized his reports to conceal this information, classified Brandy as a confidential informant, and disposed of all documentation of her statement and formal interview. Pet. App. 243a, 252a. And finally, the suppressed evidence shows that in April 2000, the Owasso Police Department ("OPD") fired² Denton for participating in a "cover up" by "either los[ing], or intentionally misplac[ing] or destroy[ing]" evidence. Pet. App. 259a-262a.

Based on his discovery of this long-suppressed evidence, on July 21, 2025, Mr. Goode timely petitioned the Oklahoma Court of Criminal Appeals ("OCCA") for postconviction relief raising claims under *Brady*, *Napue*, and requesting evidentiary

² OPD has, to date, fired Denton four times and reinstated him three times per binding arbitration orders in accordance with Fraternal Order of Police Collective Bargaining Agreements. Pet. App. 258a-264a, 269a-272a, 276a-285a. The newly disclosed evidence also shows that his misconduct history extends well past Mr. Goode's case. In 2014, for example, Denton was disciplined for using the n-word while at work (Pet. App. 275a); a year later, he was criminally prosecuted for assault and battery with a deadly weapon, *State v. Michael Denton*, No. CF-2015-126 (Nowata Cnty. Dist. Ct.); in January 2025, Denton was terminated because he lied about killing his neighbor's dog, Pet. App. 278a-285a; and in July 2025, Denton was charged with Lewd or Indecent Proposal to a Child, *State v. Michael Denton*, No. CF-2025-2380 (Tulsa Cnty. Dist. Ct.) (pending).

development of any material and disputed issues of fact. Pet. App. 138a, 200a, 208a. There, he also asked the OCCA to consider the cumulative prejudice stemming from the totality of the State's due process violations in his case, including suppressed evidence that the Tulsa County Police Department ("TPD") had disciplined Henderson³ for misusing his authority as a police officer and he was investigated by internal affairs for entering false information into a probable cause affidavit.⁴ Pet.

³ Two years before Mr. Goode's capital trial (and five months before he happened to recover evidence needed to corroborate Bunny), Henderson fabricated evidence against Tony Becknell Jr. who was charged, convicted, and sentenced to 189 months in federal prison despite Becknell's insistence that Henderson and his colleagues falsified the March 2005 search warrant and planted crack cocaine in excess of 50 grams in his exterior garbage bin. *United States v. Becknell*, No. 05-CR-84, Def.'s Mot. to Suppress & Quash, ECF No. 15 (N.D. Okla. June 2, 2005). Only in 2012 did it come to light that Henderson committed misconduct in Becknell's case. *Id.*, Order of Contempt, ECF No. 189 (N.D. Okla. Feb. 27, 2013). In 2010, a federal district court noted that "Henderson was the subject of 29 complaints in 14 years, including 6 complaints in 2004," and, without specifying the year, that "Henderson was charged with planting evidence on one occasion." *Haley v. City of Tulsa*, No. 10-CV-361-TDL-FHM, Order, Doc. 125 at 10–11 (N.D. Okla. June 4, 2013). This lawsuit settled in favor of the plaintiff. *Id.*, Journal Entry of Judgment Upon Agreed Settlement, Doc. 153 (N.D. Okla. Dec. 8, 2014). Thus, by the time of Mr. Goode's 2007 death penalty trial, Henderson had an established but undisclosed pattern of framing people by fabricating and planting evidence.

Meanwhile, just a few years after his testimony helped the State secure Mr. Goode's convictions and death sentences, the United States charged Henderson in a 62-count indictment with offenses dating back to May 2004 that included falsifying search warrants, committing perjury, and engaging in witness tampering. U.S. Dep't of Justice, Office of Inspector General, *One Retired and Four Current Tulsa Police Department Officers Indicted in Federal Corruption Probe* (July 20, 2010), <https://oig.justice.gov/news/press-release/one-retired-and-four-current-tulsa-police-department-officers-indicted-federal>. Ultimately, a federal jury convicted Henderson of six counts of perjury and two counts of violating a person's civil rights. *See United States v. Henderson*, 564 F. App'x 352, 354 (10th Cir. 2014).

⁴ After discovering the suppressed evidence of Henderson's misconduct in 2010, Mr. Goode raised a *Brady* claim before the OCCA which denied relief on the merits by deploying the same unconstitutional sufficiency-of-the-evidence materiality test

App. 167a-168a, 177a; Pet. App. 47a-137a. Mr. Goode’s postconviction petition pended in the OCCA for 11 months before that court denied his *Brady* and *Napue* claims on the merits on June 11, 2026. Pet. App. 1a. The court also denied his requests for evidentiary development. Pet. App. 17a.

The OCCA refused to consider the suppressed evidence pertaining to Denton, ignored the suppressed evidence pertaining to Henderson, and assumed as true the allegations pertaining to Bunny but determined that Mr. Goode suffered no prejudice. Pet. App. 12a. The OCCA reached the latter conclusion by defying this Court’s established precedent in three ways.

First, in assessing the materiality of the State’s due process violations under *Brady* and *Napue*, the OCCA refused to consider the totality of the evidence suppressed by the State. *Compare* Pet. App. 10a-15a (considering only the suppressed evidence pertaining to Bunny in assessing Mr. Goode’s *Brady* and *Napue* claims and ignoring the suppressed evidence pertaining to Denton and Henderson), *with Kyles v. Whitley*, 514 U.S. 419, 421 (1995) (referring to the “established rule that the state’s obligation under *Brady*[], to disclose evidence favorable to the defense turns on the cumulative effect of all such evidence suppressed by the government”), *and Glossip v. Oklahoma*, 604 U.S. 226, 251 (2025) (holding that *Napue*’s “prejudice analysis requires a ‘cumulative evaluation’ of all the evidence, whether or not that evidence is before the Court in the form of an independent claim for relief[]”).

that it applied below, concluding that “sufficient evidence existed, . . . to prove beyond a reasonable doubt that Goode was guilty of these crimes.” Pet. App. 47a-137a; Pet. App. 24a.

Second, in direct contravention of *Napue*, the OCCA placed the burden on Mr. Goode to prove the prejudice stemming from the State’s *Napue* violation. *Compare* Pet. App. 12a (“As with all claims, an appellant must show error plus injury. *The injury that Petitioner must show here* is whether the undisclosed evidence or the false testimony was material as to guilt or punishment, i.e., may have affected the outcome of the trial” (citing *Brady*, 373 U.S. at 87, and *Napue*, 360 U.S. at 272) (emphasis added)), *with Glossip*, 604 U.S. at 246 (holding that *Napue*’s “materiality standard requires the beneficiary of the constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained” (quoting *United States v. Bagley*, 473 U.S. 667, 680, n.9 (1985), and *Chapman v. California*, 386 U.S. 18, 24 (1967))); *Chapman*, 386 U.S. at 25–26 (burden is on the state to demonstrate beyond a reasonable doubt that a federal constitutional error is harmless).

Third, while acknowledging that *Brady*’s materiality inquiry asks whether a reasonable probability exists that the due process “error did not contribute to the verdict,” the OCCA proceeded to discard it in application to Mr. Goode’s claims, finding that they necessarily failed because “[e]vidence of Petitioner’s guilt was overwhelming.” Pet. App. 12a-14a; *cf. Kyles*, 514 U.S. at 434–35 (1995) (explaining that materiality “is not a sufficiency of the evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict.”); *Glossip*, 604 U.S. at 246 (*Napue* error requires “a new trial . . . so long as the false testimony

may have had an effect on the outcome of the trial[] . . . that is, if it in any reasonable likelihood could have affected the judgment of the jury” (cleaned up)); *Giglio v. United States*, 405 U.S. 150, 154 (1972) (“A new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury[.]”).

While Oklahoma is under no obligation to provide a collateral review forum for the vindication of federal rights, see *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987), because it elected to provide such a forum for the adjudication of Mr. Goode’s newly discovered *Brady/Napue* claims, “it ha[d] the duty to grant the relief that federal law requires[.]” *Yates v. Aiken*, 484 U.S. 211, 218 (1988); *Montgomery v. Louisiana*, 577 U.S. 190, 204–05 (2016). And although “[i]n adjudicating [Mr. Goode’s *Brady/Napue*] claims under its collateral review procedures [the] State may not deny a controlling right asserted under the Constitution,” that is precisely what the OCCA below did in the three distinct ways discussed *supra*. *Montgomery*, 577 U.S. at 205.

The questions presented here couldn’t be more important. Mr. Goode is a Black man⁵ who was capitally prosecuted during one of the most corrupt eras in Tulsa County by officers known to frame people and fabricate evidence, and whose

⁵ A 2012 lawsuit filed pursuant to 42 U.S.C. § 1985(3) alleged that Henderson’s conduct was motivated by racially discriminatory animus and that he “frequently utilized ‘John Doe Black Male,’” as his “boiler plate language,” in the many search warrants he falsified. *Barber v. Henderson*, No. 12-CV-239-JED-PJC, Complaint, Doc. 2 at 8 (N.D. Okla. Apr. 27, 2012). This fact was noted by the federal district court as a “common, routine practice,” it found a “large majority” of those “subjected to [Henderson’s] conduct were ‘racial or ethnic minorities,’” and it concluded that “[a]t the pleading stage, . . . enough facts to state a plausible claim under § 1985(3)” existed. *Id.*, Opinion and Order, Doc. 49 at 10–11 (N.D. Okla. Aug. 15, 2014). This lawsuit settled in favor of the plaintiffs. *Id.*, Journal Entry of Judgment Upon Agreed Settlement, Doc. 69 (N.D. Okla. June 12, 2015).

misconduct landed at least one in federal prison.⁶ The prosecutors who won Mr. Goode's death sentences did so by suppressing evidence that would have dismantled the State's case against him, and that his jury was entitled to consider. When Mr. Goode diligently attempted to vindicate the Due Process Clause's promise in Oklahoma's postconviction forum which opened its doors to his federal claims, rather than "grant the relief that federal law requires," *Yates*, 484 U.S. at 218, Oklahoma instead "disregard[ed] a controlling constitutional command in [its] own courts[.]" *Montgomery*, 577 U.S. at 198.

Oklahoma is not unique in this regard. It joins at least two states (Arkansas and Wisconsin) which open their postconviction forums to *Brady* claims only to apply heightened sufficiency-of-the-evidence tests of materiality to the adjudication of those claims. *E.g.*, *Davis v. State*, 574 S.W.3d 666, 670 (Ark. 2019); *State v. Wayerski*, 922 N.W.2d 468, 483 (Wis. 2019). It also joins Montana, Pennsylvania, and Utah in misallocating *Napue*'s materiality burden to the petitioner, rather than to the State. *Temple v. State*, 573 P.3d 1200, 1212 (Mont. 2025); *Commonwealth v. Perez*, 362 A.3d 1108, 1149-1152 & n.71 (Pa. 2026); *Carter v. State*, 570 P.3d 315, 328 (Utah 2025). And it stands apart from at least six states (Florida, Georgia, Iowa, Missouri,

⁶ The National Registry of Exonerations maintains a dedicated group-exoneration page for the Tulsa Police Department corruption scandal, in which Henderson played a central role. The scandal contributed to Tulsa County's nineteenth-place national ranking per capita for individual exonerations, including seven murder convictions, since 1989. See National Registry of Exonerations, *Oklahoma 2009*, <https://exonerationregistry.org/groups/4232>; *Exonerations by County*, <https://exonerationregistry.org/exonerations-county> (last visited Oct. 7, 2026).

Michigan, and Nevada) which follow this Court’s settled tests of materiality on collateral review in both word and application. *E.g.*, *Jones v. State*, 709 So.2d 512, 521 (Fla. 1998); *Schofield v. Palmer*, 621 S.E.2d 726, 731 (Ga. 2005); *Harrington v. State*, 659 N.W.2d 509, 523–25 (Iowa 2003); *People v. Christian*, 987 N.W.2d 29, 43–48 (Mi. 2022); *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 128 (Mo. 2010); *State v. Bennett*, 81 P.3d 1, 7–11 (Nev. 2003).

The Due Process Clause should—but currently does not—apply similarly everywhere. *See* Brandon L. Garrett & Adam M. Gershowitz, *The Brady Materiality Standard*, 78 Stanford L. Rev. 303, 308–10, 353 (2026) (analyzing state and federal *Brady* materiality rulings, finding that “there were significant differences in the type and quality of the analysis that courts utilized,” and attributing this widespread divergence to the fact that “the Supreme Court has failed to issue corrective rulings to cement the appropriate reasoning courts should engage in when evaluating the materiality of withheld evidence[]”).

This Court has long recognized “the importance of reviewing convictions where solid doubt is raised whether the requirements of due process have been observed.” *Foster v. People of State of Illinois*, 332 U.S. 134, 135 (1947). Never is this Court’s intervention more important than in a capital case where, as here, the overwhelming evidence demonstrates that Oklahoma state actors won—and have since upheld—Mr. Goode’s convictions and death sentences in flagrant defiance of the Due Process and Supremacy Clause’s guarantees.

The Court should grant the petition and reverse.

OPINIONS BELOW

The Oklahoma Court of Criminal Appeals’ decision denying Mr. Goode’s subsequent application for postconviction relief is unreported. Pet. App. 1a.

JURISDICTION

The Oklahoma Court of Criminal Appeals denied Mr. Goode’s claims under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959) on June 11, 2026. Pet. App. 1a. On September 1, 2026, the Honorable Justice Neil Gorsuch granted Mr. Goode’s request to extend the time for filing this petition to October 9, 2026. Docket, *Goode v. State of Oklahoma*, No. 26A277 (U.S. Sept. 1, 2026). This petition is timely. This Court’s jurisdiction is invoked under 28 U.S.C. § 1257(a). *Wearry v. Cain*, 577 U.S. 385, 396 (2016) (“This Court, of course, has jurisdiction over the final judgments of state postconviction courts, . . . and exercises that jurisdiction in appropriate circumstances.”).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. amend. XIV:

. . . nor shall any State deprive any person of life, liberty, or property without due process of law[.]

STATEMENT

I. Legal Background

While “[s]tate collateral proceedings are not constitutionally required as an adjunct to [] state criminal proceedings,” *Murray v. Giarratano*, 492 U.S. 1, 10 (1989), this Court reaffirmed in *Montgomery v. Louisiana*, 577 U.S. 190, 204 (2016), the familiar rule that “[i]f a state collateral proceeding is open to a claim controlled by federal law, the state court ‘has a duty to grant the relief that federal law requires[.]’” *id.* (quoting *Yates v. Aiken*, 484 U.S. 211, 218 (1988)). The Supremacy Clause dictates this rule and under it, “state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution.” *Montgomery*, 577 U.S. at 204. Thus, while states “may grant its citizens broader protection than the Federal Constitution requires,” *Danforth v. Minnesota*, 552 U.S. 264, 288 (2008), “under no circumstances may it confine petitioners to a lesser remedy[.]” *Harper v. Virginia Dep’t of Taxation*, 509 U.S. 86, 102 (1993) (internal citation omitted).

So established is this rule that the majority and dissenters in *Montgomery* did not disagree over it. *Compare Montgomery*, 577 U.S. at 198 (“States may not disregard a controlling, constitutional command in their own courts.”), *with id.* at 219 (Scalia, J., joined by Thomas & Alito, JJ., dissenting) (“[W]hen state courts provide a forum for postconviction relief, they need to play by the ‘old rules’ announced *before* the date on which a defendant’s conviction and sentences became final.”), *and id.* at 235 (Thomas, J., dissenting) (“As the Court explains, States must enforce a

constitutional right to remedies on collateral review only if such proceedings are ‘open to a claim controlled by federal law.’”); *id.* at 235–36 (“Only when state courts have chosen to entertain a federal claim can the Supremacy Clause conceivably command a state court to apply federal law.”). Instead, they disagreed over whether states that elect to provide a collateral review forum for federal constitutional claims are required to apply *new* substantive rules retroactively to the adjudication of those claims.

The petitioner, Henry Montgomery, was initially sentenced to death as a juvenile and subsequently resentenced to mandatory life without parole. *Id.* at 194. Fifty years elapsed before Mr. Montgomery sought postconviction relief challenging the constitutionality of his automatic life without parole sentence under *Miller v. Alabama*, 567 U.S. 460 (2012)—an Eighth Amendment claim to which Louisiana had elected to open its collateral review forum. *Id.* at 196, 205 (“The State’s collateral review procedures are open to claims that a decision of this Court has rendered certain sentences illegal, as a substantive matter, under the Eighth Amendment.”). The Louisiana postconviction courts denied Mr. Montgomery’s *Miller* claim finding that the decision did not apply retroactively to a sentence like Mr. Montgomery’s that had long been final. *Id.* at 196–97. The question before this Court on review of the Louisiana courts’ nonretroactivity determination was whether Louisiana was required to apply *Miller* when it elected to review Mr. Montgomery’s Eighth Amendment claim on collateral review. *Id.* at 205. The majority answered this question with a “yes,” the dissenters with a “no.”

The *Montgomery* majority held that because *Miller* announced a new, substantive rule of constitutional law, the Supremacy Clause required Louisiana to apply it retroactively on collateral review of Mr. Montgomery’s Eighth Amendment claim. *Id.* at 204–14. In dissent, Justice Scalia disagreed that federal retroactivity principles are constitutionally grounded, *id.* at 220–21, 224 (Scalia, J., dissenting), and, even if they are, that *Miller* qualifies as a new substantive constitutional rule to which Louisiana’s courts had to give retroactive effect, *id.* at 224–27. But Justice Scalia, importantly, did not quibble over whether the Supremacy Clause required states to “play by the ‘old rules’” whenever they chose to “provide a forum for postconviction relief[.]” *Id.* at 219. That they must do. *Id.* Neither did Justice Thomas disagree with this constitutional principle in his separate *Montgomery* dissent. Recognizing that “the Constitution leaves the initial choice to entertain federal claims up to the state courts[.]” Justice Thomas observed that it is “[o]nly when state courts have chosen to entertain a federal claim can the Supremacy Clause conceivably command a state court to apply federal law.” *Id.* at 235–36.

It follows from this that when Oklahoma chose to open its collateral review forum to Mr. Goode’s due process claims under *Brady* and *Napue*, the Supremacy Clause required it to “play by the ‘old rules’” that those cases established long before Mr. Goode’s convictions and death sentences became final. *Id.* at 219 (Scalia, J., dissenting). Under those old rules, the court below was required to cumulate the prejudice stemming from the totality of the evidence suppressed by the State, *Kyles*, 514 U.S. at 421 (“[W]e follow the established rule that the state’s obligation under

Brady] to disclose evidence favorable to the defense, turns on the cumulative effect of all such evidence suppressed by the government[.]”); *Glossip*, 604 U.S. at 251 (holding that *Napue*’s “prejudice analysis requires a ‘cumulative evaluation’ of all the evidence, whether or not that evidence is before the Court in the form of an independent claim for relief[.]”); was required to hold the State to its burden to prove beyond a reasonable doubt that its *Napue* violation in Mr. Goode’s case was harmless at both phases of his capital trial, *Glossip*, 604 U.S. at 246 (holding that *Napue*’s materiality standard “requires the beneficiary of the constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained[.]” (cleaned up) (quoting *Chapman*, 386 U.S. at 24)); and was prohibited from applying a sufficiency-of-the-evidence test of materiality to reject Mr. Goode’s *Brady* and *Napue* claims because the evidence against him was “overwhelming” and therefore sufficient to convict and sentence him to death anyway, *Kyles*, 514 U.S. at 435 n.8 (“[N]one of the *Brady* cases has ever suggested that sufficiency of the evidence (or insufficiency) is the touchstone.”); *Wearry*, 577 U.S. at 392 & n.6 (concluding that since materiality under *Brady* requires showing only that suppressed evidence “is sufficient to ‘undermine confidence’ in the verdict[.]” under this standard a petitioner “can prevail even if, . . . the undisclosed information may not have affected the jury’s verdict[.]”); *United States v. Bagley*, 473 U.S. 667, 679 n.9 (1985) (“It is therefore clear, as indeed the Government concedes, that this Court’s precedents indicate that the standard of review applicable to the knowing use of

perjured testimony is equivalent to the *Chapman* harmless-error standard.” (internal citation omitted)).

“In adjudicating claims under its collateral review procedures a State may not deny a controlling right asserted under the Constitution, assuming the claim is properly presented in the case.” *Montgomery*, 577 U.S. at 205. Yet that is precisely what the court below did after it chose to open its collateral review forum to and adjudicate the merits of Mr. Goode’s *Brady/Napue* claims.

II. Factual Background

1. Pre-trial and Trial Proceedings

Sergeant Mike Denton was the first officer to respond to a triple homicide in Owasso, Oklahoma. Tr. III 573, 579-80. Denton was a proactive sergeant and, at the time of the crime, was known to be “one of the most productive supervisors in the department[.]” Pet. App. 268a. He applied that same work ethic to the investigation of Mr. Goode’s case, meeting the victim’s family, interviewing witnesses, and ultimately becoming one of the State’s most important witnesses at Mr. Goode’s capital trial.

As part of his investigation, Denton drafted a report documenting his conversation with a “confidential informant.” Pet. App. 244a. According to this report, Bunny “made a full confession to C.I. on Friday, August 26, 2005[.]” Pet. App. 244a. Discovery receipts show that this report was given to the defense on September 29, 2005. O.R. 100. On July 5, 2006, about a year after the report was disclosed and two years before trial, defense counsel filed a discovery motion specifically requesting:

“Any and all oral, written or recorded statements of any other persons interviewed by the State or its agents which [sic] inconsistent with earlier statements or which are inconsistent with the statement made by another person interviewed by the State or its agents, including law enforcement agencies.” O.R. 229. That same day, defense counsel also filed a Motion for the State to Divulge Confidential Informant based on the informant’s potential relevance to impeaching Bunny. O.R. 191, 192.

Nearly another year later, on March 28, 2007, defense counsel asked again for the identity of the confidential informant at a pre-trial hearing. Pet. App. 247a-248a. Despite the State’s assurances that it would disclose the confidential informant’s identity, defense counsel was still seeking the identity of the confidential informant at another hearing almost three months later. Pet. App. 250a-251a. There is nothing further in the record, either in transcripts or discovery receipts,⁷ demonstrating that the State fulfilled its obligation to divulge the confidential informant’s identity to the defense. In fact, the only evidence in the record establishes that the confidential informant’s identity was never disclosed. Pet. App. 228a; Pet. App. 225a.

2. Subsequent State Postconviction Proceedings

In July 2010, Mr. Goode discovered that the Tulsa County District Attorney’s Office suppressed evidence that the Tulsa Police Department had disciplined Henderson for misusing his authority as a police officer and he was investigated by

⁷ Discovery was provided in 24 productions, as documented by receipts in the record, O.R. 99–100, 104, 109, 113–14, 122–23, 132–33, 141, 172, 177, 401, 504–05, 512, 514, 576 (Thompson’s duplicate of Goode’s receipt, which was inadvertently not filed), 577, 589, 608, 632, 727. Each receipt identifies the specific Bates range and form of the materials produced.

internal affairs for entering false information into a probable cause affidavit. Called by the prosecution to corroborate Bunny's testimony, Henderson testified to finding a bullet and shell casings introduced during Mr. Goode's trial and to which Bunny had directed police. Tr. IV 836. Based on the discovery of this suppressed evidence, Mr. Goode filed a Second Application for Post-Conviction Relief raising a claim under *Brady*. Pet. App. 47a.

The OCCA denied Mr. Goode's *Brady* claim on the merits by deploying the same unconstitutional sufficiency-of-the-evidence materiality test that it applied below, concluding that "sufficient evidence existed, . . . to prove beyond a reasonable doubt that Goode was guilty of these crimes." Pet. App. 24a-25a.

3. The Proceedings Below

Only in 2025 did the Owasso Police Department turn over its case file to Mr. Goode's attorneys. That file included documents that had never been disclosed, including Denton's Supplemental Report No. 0087, dated November 19, 2007. Pet. App. 253a. The report identified the confidential informant as Brandy L. Thompson, Bunny's wife at the time of the crimes. According to Brandy, she told Denton shortly after the crimes that, "While [Bunny] and I were together August 26, 2005, until the following morning, he spoke to me about the events of the prior evening and his role in the Owasso homicides." Pet. App. 219a-220a. She stated further that she told Denton, "[Bunny] indicated to me that he was planning to kill JR Hoffman before the evening of the Owasso homicides[]" and that "his preplanned intention when he arrived at and entered the home of Mitch and Tara Thompson on the night of the

crimes was to kill JR Hoffman in retaliation for being beaten so severely by Mitch Thompson (at Hoffman's behest) on July 26, 2005." Pet. App. 219a-220a. And despite Brandy's attestation that she was interviewed extensively by Denton about Bunny and the crimes, no report from Denton documenting those interviews has ever been turned over to Mr. Goode's defense. Pet. App. 241a-242a, 228a, 225a.

Based on the discovery of this new suppressed evidence, Mr. Goode timely initiated the proceedings below raising claims under *Brady*, *Napue*, and requesting further evidentiary development. The OCCA denied Mr. Goode's *Brady/Napue* claims on the merits by refusing to consider the evidence related to Denton; failing to cumulate the prejudice stemming from the totality of the suppressed evidence including pertaining to Henderson; applying materiality tests trained on the evidence of guilt; and placing the burden on Mr. Goode to prove prejudice under *Napue* in contravention of *Glossip*. Pet. App. 14a-15a.

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

- I. **This Court's well-established tests of materiality under *Brady* and *Napue* require a cumulative assessment of the evidence suppressed or falsely elicited by the State and ask whether confidence in the jury's verdicts is undermined, not whether the evidence is sufficient to convict and condemn.**

It is by now an "established rule that the state's obligation under *Brady* to disclose evidence favorable to the defense turns on the cumulative effect of all such evidence suppressed by the government." *Kyles v. Whitley*, 514 U.S. 419, 421 (1995). Materiality under *Napue* likewise requires "a cumulative evaluation of all the

evidence, whether or not that evidence is before the Court in the form of an independent claim for relief.” *Glossip v. Oklahoma*, 604 U.S. 226, 251 (2025).

Whereas under *Brady* it is the petitioner who bears the burden to demonstrate (by less than a preponderance) a reasonable probability that the state’s suppression of favorable evidence undermines confidence in the fundamental fairness of his trial, under *Napue* the state must demonstrate beyond a reasonable doubt that its knowing presentation of false evidence was harmless at both phases of a capital trial. *Kyles*, 514 U.S. at 434 (“[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 . . . The question is not whether the defendant would more likely than not have received a different verdict with the evidence[.]”); *Glossip*, 604 U.S. at 251 (materiality under *Napue* “requires the beneficiary of the constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (cleaned up)). In this way, *Brady*’s and *Napue*’s materiality standards represent two sides of the same due process coin: the reasonable probability of a different trial or sentencing result but for a due process violation is equivalent to a due process violation *not* being harmless beyond a reasonable doubt. See *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993) (defining harmless-beyond-a-reasonable-doubt standard as “no ‘reasonable possibility’ that trial error contributed to the verdict”); *Chapman v. California*, 386 U.S. 18, 24 (1967) (“There is little, if any, difference between . . . whether there is a reasonable possibility that the evidence complained of might have contributed to a conviction

and requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (internal quotation marks omitted)).

It is also by now well-settled that “none of the *Brady* cases has ever suggested that sufficiency of the evidence (or insufficiency) is the touchstone” of the materiality inquiry. *Kyles*, 514 U.S. at 435 n.8; *Wearry*, 577 U.S. at 392 & n.6; *Giglio*, 405 U.S. at 154. This is perhaps best illustrated by this Court’s materiality analysis in *Kyles* itself. There, although “[t]he State presented to the jury a massive core of evidence (including four eyewitnesses) showing that petitioner was guilty of murder, and that he lied about his guilt,” *id.* at 475 (Scalia, J., dissenting), this Court nevertheless held that the state’s suppression of favorable evidence (much like the evidence suppressed by the State in Mr. Goode’s case) impeaching the police investigation and a key prosecution witness was material. *Id.* at 441.

Kyles was indicted for the first-degree murder of a woman in a grocery store parking lot. *Id.* at 423. The state’s evidence against him consisted of six eyewitnesses (three of whom identified Kyles as the perpetrator in a photo lineup) and a tip from an informant named “Beanie” who, much like Bunny in Mr. Goode’s case, identified Kyles as the perpetrator; “was essential to [the police] investigation and, indeed, ‘made the case’ against Kyles”; supplied details of the crime and its aftermath; directed police to physical evidence located in Kyles’ home and garbage bins; and “seemed eager to cast suspicion on Kyles” and away from himself. *Id.* at 423–29, 445. Only after Kyles was convicted and sentenced to death did it emerge that the state

suppressed evidence that would have impeached the credibility of the eyewitness identifications, the police investigation, and Beanie. *Id.* at 428–29.

To determine whether this suppressed evidence was material under *Brady*, this Court evaluated “the tendency and force of the undisclosed evidence” individually and cumulatively in the context of everything that the jury considered at the guilt and penalty phases. *Id.* at 436 n.10. In doing so, it concluded that the state’s suppression made “its case [] much stronger, and the defense much weaker, than the full facts would have suggested.” *Id.* at 429. First, the Court found that “the essence of the State’s case was the testimony of eyewitnesses, who identified Kyles as [the victim’s] killer[,]” and “[d]isclosure of their statements would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense.” *Id.* at 441–43. Had defense counsel been equipped with these witness statements, “[a] jury would reasonably have been troubled by the adjustments” to one witness’s original story, and “the defense would have had a compelling argument that [the other witness’s] description pointed to Beanie but not to Kyles.” *Id.* at 441–43 (footnote omitted).

Second, this Court found that the suppressed evidence prevented the defense from “further underscore[ing] the possibility that Beanie was [the victim’s] killer through cross-examination of police on their failure to direct any investigation against Beanie.” *Id.* at n.13 (“There was a considerable amount of such *Brady* evidence on which the defense could have attacked the investigation as shoddy.”). Disclosure of this evidence “would have raised opportunities to attack not only the

probative value of the crucial physical evidence and the circumstances in which it was found, but the thoroughness and even the good faith of the investigation, as well.” *Id.* at 445. Moreover, the suppressed evidence of Beanie’s statements to police “would have allowed the jury to infer that Beanie was anxious to see Kyles arrested for [the victim’s] murder[]” and “would have revealed a remarkably uncritical attitude on the part of the police.” *Id.* at 445–46.

“[E]valuating the weight of all these evidentiary items,” including “[t]heir combined force in attacking the process by which the police gathered evidence and assembled the case” against Kyles, this Court determined that “disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable.” *Id.* at 441, 449 n.19; *id.* at 421–22 (determining that where “the net effect of the evidence withheld by the State . . . raises a reasonable probability that its disclosure would have produced a different result” a new trial is warranted). The fact that “not every item of the State’s case would have been directly undercut if the *Brady* evidence had been disclosed[,]” didn’t alter this Court’s cumulative materiality analysis. *Id.* at 451–52. After all, “the question is not whether the State would have had a case to go to the jury if it had disclosed the favorable evidence, but whether we can be confident that the jury’s verdict would have been the same.” *Id.* at 453. Considering the findings the jury would have been entitled to make (but were prevented from making) on the totality of the suppressed evidence—i.e., discrediting the state’s witnesses and the entire police investigation, while also crediting the defense theory that Beanie was the true perpetrator, planted evidence against Kyles,

and steered the police investigation away from himself—this Court concluded that “[c]onfidence that [the jury’s verdicts] would have been [the same] cannot survive a recap of the suppressed evidence and its significance for the prosecution.” *Id.* at 453–54.

With respect to materiality under *Napue*, this Court’s decision in *Glossip* illustrates well its concern over: (1) the cumulative prejudice stemming from the totality of the evidence suppressed (and falsely elicited) by the State in the context of everything the jury heard (and didn’t hear owing to the State’s due process violation), 604 U.S. at 251; and (2) whether the State carries its burden to prove beyond a reasonable doubt that a proved due process violation was harmless at both phases of a capital trial, *id.* at 248–52. Notwithstanding the other considerable evidence incriminating Glossip, including his own statements to the police, *id.* at 263–68 (Thomas, J., dissenting) (cataloging evidence), this Court vacated his death sentence and ordered a new trial after finding that the State failed to prove beyond a reasonable doubt that its elicitation of false testimony from a key witness, Justin Sneed, denying a psychiatric disorder was harmless. *Id.* at 246–52.

This Court reached that result in view of how Sneed’s false testimony, together with other favorable evidence suppressed or destroyed by the State, impacted all that the jury heard. *Id.* First, Sneed’s testimony “was the only direct evidence of Glossip’s guilt of capital murder,” rendering his “credibility necessarily determinative here.” *Id.* at 248. Second, the revelation that Sneed was willing to lie to the jury under oath “would be significant in any case, and was especially so here where Sneed was already

‘nobody’s idea of a strong witness.’” *Id.* at 248–49. Third, that Sneed was lying about his psychiatric disorder would have undermined the State’s entire theory of the case—which was predicated on portraying Sneed as a benign, compliant, “puppy” beholden to Glossip’s control—and would have bolstered Glossip’s defense. *Id.* at 249. As the *Glossip* dissent illustrates, had the majority focused its materiality inquiry on whether there was “overwhelming evidence” sufficient to convict and condemn Glossip without Sneed, rather than on whether the State proved beyond a reasonable doubt that Sneed’s false testimony did not impact the jury’s verdicts, it could never have arrived at the result it reached. *See id.* at 263–68 (Thomas, J., dissenting).

II. The OCCA’s decision below defies this Court’s precedents requiring states that open their collateral review forums to claims controlled by federal law to grant the relief that federal law requires.

“If a state collateral proceeding is open to a claim controlled by federal law, the state court ‘has a duty to grant the relief that federal law requires.’” *Montgomery v. Louisiana*, 577 U.S. 190, 204–05 (2016) (quoting *Yates v. Aiken*, 484 U.S. 211, 218 (1988)). “Under the Supremacy Clause of the Constitution, state collateral courts have no greater power than federal courts to mandate that a prisoner continue to suffer punishment barred by the Constitution.” *Id.* at 204. Simply put, “States may not disregard a controlling, constitutional command in their own courts.” *Id.* at 198. That is especially true when “an *old rule*, settled at the time of [the defendant’s] trial,” is at issue. *Id.* at 219 (Scalia, J., dissenting) (emphasis in original). When “state courts provide a forum for postconviction relief, they need to play by the ‘old rules’ announced before the date on which a defendant’s conviction and sentence became

final.” *Id.* *Brady* and *Napue* are old rules, and both were announced decades before Mr. Goode’s trial.

Under those old rules, once Mr. Goode proved (as the OCCA assumed without deciding he did, *see* Pet. App. 11a-12a, 14a-15a) that the State suppressed evidence favorable to his defense, *Brady*’s materiality standard required him to demonstrate only “a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different[.]” *Cone v. Bell*, 556 U.S. 449, 469–70 (2009). That standard is less demanding than having to show a “more likely than not” probability of a different trial result, or that the likelihood of a different verdict exists by a “preponderance of the evidence.” *Kyles*, 514 U.S. at 434; *Wearry*, 577 U.S. at 392 & n.6 (materiality under *Brady* requires showing only that suppressed evidence “is sufficient to ‘undermine confidence’ in the verdict[.]”). And yet, that is the elevated standard the OCCA ultimately determined that Mr. Goode failed to fulfill even as it recited *Brady*’s correct materiality rule. *Compare* Pet. App. 12a (recognizing that *Brady*’s materiality standard requires asking whether the suppressed evidence “may have affected the outcome of the trial[.]”), *with* Pet. App. 13a-15a (discussing State’s theory of the crimes and, after cataloguing only the evidence supporting Mr. Goode’s guilt, concluding that it was “overwhelming” and therefore “the jury would have found Petitioner guilty and would have sentenced him to death” anyway); *cf.* *Wearry*, 577 U.S. at 392 & n.6 (2016) (concluding that since materiality under *Brady* requires showing only that suppressed evidence “is sufficient to ‘undermine confidence’ in the verdict[.]” under this standard a petitioner “can prevail even if, . . . the undisclosed

information may not have affected the jury's verdict[]"); *Giglio*, 405 U.S. at 154 ("A new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury[.]").

Moreover, the faithful application of *Brady*'s materiality standard required the OCCA to evaluate the cumulative effect of *all* favorable evidence suppressed by the State, *Kyles*, 514 U.S. at 421, which Mr. Goode argued included three categories of newly uncovered evidence showing that: (1) Bunny told a confidential police informant that he planned to kill a resident of the victims' home the evening he entered their house on the night they were killed, Pet. App. 219a; (2) that confidential informant was Bunny's estranged wife Brandy who reported his incriminating admission to Denton within the first 24 hours of the investigation; however Denton sanitized his reports to conceal this information and Brandy's identity, Pet. App. 219a-220a; Pet. App. 253a; Pet. App. 241a-244a; and (3) seven years before Mr. Goode's trial, OPD fired Denton for participating in a "cover up" by "either los[ing], or intentionally misplac[ing] or destroy[ing]" evidence, Pet. App. 259a-262a. Mr. Goode also argued below that *Brady*'s cumulative materiality analysis required the OCCA to evaluate the evidence he previously presented to that court demonstrating that the State suppressed evidence that TPD had disciplined Henderson for misusing his authority as a police officer, and that Henderson was investigated by internal affairs for entering false information into a probable cause affidavit. Pet. App. 167a-168a, 177a; Pet. App. 47a-137a.

But rather than cumulating this body of evidence suppressed by the State in assessing whether Mr. Goode proved that he did not receive “a fair trial, understood as a trial resulting in a verdict worthy of confidence[.]” *Kyles*, 514 U.S. at 434, the OCCA instead considered *only* the suppressed evidence of Bunny’s homicidal admission to his wife. Pet. App. 10a-11a. And on that myopic evidentiary record, the OCCA concluded that Mr. Goode failed to prove that he was prejudiced by the State’s suppression because “the jury would have found [him] guilty and would have sentenced him to death” in any event.⁸ Pet. App. 14a-15a.

Under *Napue*’s long-established test, meanwhile, once Mr. Goode established that the State knowingly solicited or failed to correct Bunny’s false testimony (as the OCCA assumed he did, Pet. App. 12a, 14a), the OCCA was required to hold the State to its burden “to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Glossip*, 604 U.S. at 246 (placing this burden

⁸ The OCCA’s unconstitutional analysis was flawed in other critical ways. For example, the OCCA stated that “[t]he State presented evidence that the plan of the three home invaders was that [Bunny] was to enter the home and shoot [one of the residents].” Pet. App. 13a. But, no evidence of this was presented at trial. The OCCA also stated that “[t]he State presented evidence that [Bunny] was beaten by Mitch Thompson and Hoffman, and he told Detective Muelenberg he would take care of it himself.” Pet. App. 13a. But the State did not present this evidence—the defense did. *Goode v. State*, No. PCD-2025-572, Notice of Erratum in State’s Response (Jan. 20, 2026). The OCCA stated further that “the State did not present a theory that [Bunny] had no premeditated intent to kill [one of the residents] when he entered the Mitch Thompson home.” Pet. App. 13a. This latest finding squarely contradicts the OCCA’s 2010 finding during Mr. Goode’s direct appeal that “[Bunny] said he thought they were there to scare Mitch.” *Goode v. State*, 236 P.3d 671, 675 (Okla. Crim. App. 2010). Moreover, the record shows the State consistently endorsed Bunny’s testimony, including his denial of any homicidal intent, and urged the jury to believe his story minimizing his role and portraying himself as an unwilling participant and victim of Mr. Goode’s duress. (See Tr. V 983–84; Tr. VIII 1642–49, 1707–08; Tr. IX 1840.)

of proof on “the beneficiary of the constitutional error” and citing *Chapman*, 386 U.S. at 24). That would have been a tall order for the State. See *In re Winship*, 397 U.S. 358, 361 (1970) (recognizing that “proof beyond a reasonable doubt” reflects a “demand for a higher degree of persuasion”). “To say that an error did not contribute to the verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.” *Yates v. Evatt*, 500 U.S. 391, 403 (1991), *disapproved of in part on other grounds by Estelle v. McGuire*, 502 U.S. 62 (1991). And so long as the *Napue* violation “may have had an effect on the outcome of the trial[,]” or where it “in any reasonable likelihood could have affected the judgment of the jury[,]” the State could not carry its hefty burden to prove harmlessness beyond a reasonable doubt. *Glossip*, 604 U.S. at 626–27 (brackets and quotation marks omitted).

On the merits of Mr. Goode’s *Napue* claim, the OCCA never required the State to discharge its burden to prove harmlessness beyond a reasonable doubt before concluding Mr. Goode wasn’t entitled to relief. Instead, the OCCA misallocated that burden *by placing it on Mr. Goode to shoulder*. Pet. App. 12a (“The injury that Petitioner must show here is whether . . . the false testimony was material as to guilt or punishment, i.e., may have affected the outcome of the trial” and citing “*Napue*, 360 U.S. at 272”). After surveying the evidence supporting Mr. Goode’s guilt and characterizing it as “overwhelming,” the OCCA concluded “[w]e find beyond a reasonable doubt, even if . . . the State, in fact, failed to correct Ronald Thompson’s culpability claims, the jury would have found Petitioner guilty and sentenced him to

death.” Pet. App. 13a-15a. Nor, in reaching this conclusion, did the OCCA follow *Napue*’s command to cumulate the prejudice to Mr. Goode stemming from the totality of the evidence suppressed by the State. *See Glossip*, 604 U.S. at 251 (*Napue*’s “prejudice analysis requires a cumulative evaluation of all the evidence, whether or not that evidence is before the Court in the form of an independent claim for relief[]”).

At bottom, the decision below demonstrates that Oklahoma does not play by the old rules when it chooses to open its collateral review forum to newly discovered *Brady/Napue* claims, thus denying to diligent death sentenced petitioners like Mr. Goode the benefit of the materiality standards (and burden allocations) that those cases and this Court’s precedent since have long established. *Cf. Montgomery*, 577 U.S. at 205 (“In adjudicating claims under its collateral review procedures a State may not deny a controlling right asserted under the Constitution, assuming the claim is properly presented in the case.”).

III. The OCCA’s application of erroneous materiality standards to Mr. Goode’s *Brady/Napue* claims highlights a sharp conflict among lower courts that open their collateral review forums to such claims. Mr. Goode would be entitled to relief had he brought his *Brady/Napue* claims in a state that follows federal law.

As discussed *supra*, this Court has refused to allow states that choose to open their postconviction forums to federal constitutional claims to refuse to apply settled constitutional rules of decision to the adjudication of those claims. The OCCA’s decision below—in which it denied Mr. Goode’s *Brady/Napue* claims after refusing to consider the totality of the evidence suppressed by the State, placed the burden on Mr. Goode to prove that he was prejudiced by the State’s *Napue* violation, and applied

sufficiency-of-the-evidence materiality tests—exacerbates a division among lower courts in applying the long-established due process command under *Brady* and *Napue*. See Garrett & Gershowitz, *supra* at 308–10, 353 (2026).

On the one hand, Arkansas and Wisconsin join Oklahoma in deploying, as a practical matter, an erroneous (and heightened) sufficiency-of-the-evidence materiality analysis under *Brady* that turns on the prosecution’s evidence of guilt, rather than on whether “in [the absence of the suppressed evidence] [the defendant] received a fair trial, understood as a trial resulting in a verdict worthy of confidence[,]” *Strickler v. Greene*, 527 U.S. 263, 289–90 (1999). *E.g.*, *Davis v. State*, 574 S.W.3d 666, 670 (Ark. 2019) (assuming favorability of suppressed evidence of prosecution deal with testifying witness, but finding it immaterial “in light of the additional evidence presented at trial” demonstrating defendant’s guilt even without witness’s testimony); *State v. Wayerski*, 922 N.W.2d 468, 483 (Wis. 2019) (finding no reasonable probability of a different trial result had prosecutors disclosed favorable evidence because “the State provided compelling evidence of [petitioner’s] guilt”). In *Strickler*, this Court condemned this oft-used approach and reiterated that:

[T]he materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury’s conclusions. Rather, the question is whether the favorable evidence could reasonably be taken to put the case in such a different light as to undermine confidence in the verdict.

Strickler, 527 U.S. at 290 (cleaned up); see also *id.* at 298, 300–01 (Souter, J., concurring and dissenting in part) (recognizing *Brady*’s materiality standard “raises an unjustifiable risk of misleading courts into treating it as akin to the more

demanding standard, ‘more likely than not[.]’” and agreeing with the majority that “the touchstone of the enquiry must remain whether the evidentiary suppression ‘undermines our confidence’ that the factfinder would have reached the same result[.]”).

Montana, Pennsylvania, and Utah meanwhile, also join Oklahoma by erroneously placing the burden on a postconviction petitioner to satisfy a heightened materiality standard under *Napue*. *Temple v. State*, 573 P.3d 1200, 1212 (Mont. 2025) (“[T]o succeed on a *Napue* claim, ‘the defendant must show . . . that the false testimony or evidence was material.’”); *Commonwealth v. Perez*, 362 A.3d 1108, 1149–1152 & n.71 (Pa. 2026); *id.* at 1171–72 (McCaffery, Wecht, & Donahue, JJ., concurring and dissenting) (“The Majority refuses to apply the correct (*Napue*) prejudice standard and relieves the Commonwealth of its burden of proving a lack of prejudice.”); *see also id.* at 1161 (Wecht, J., concurring and dissenting) (“Prejudice may be established even in a case involving substantial or overwhelming evidence of guilt.”); *Carter v. State*, 570 P.3d 315, 328 (Utah 2025) (“To establish a *Napue* violation, [petitioner] must show that . . . the testimony was material[.]”).

Pennsylvania and Utah nevertheless part ways with Oklahoma in their adherence to the familiar rule that materiality under *Brady* must be assessed cumulatively. *See, e.g., Commonwealth v. Johnson*, 353 A.3d 609, 631 (Pa. 2026) (“A reasonable probability does not mean that the defendant would more likely than not have received a different verdict with the evidence; it means only that the likelihood of a different result is great enough to undermine confidence in the outcome of the

trial. . . . as a matter of law, a court reviewing multiple pieces of exculpatory evidence that the prosecution failed to disclose is required to view the effect of the non-disclosures cumulatively”); *Carter*, 570 P.3d at 329 (considering “the cumulative effect of the [*Brady*] violations”).

On the other hand, Florida, Georgia, Iowa, Michigan, Missouri and Nevada follow this Court’s settled tests of materiality under *Brady* in both word and application on collateral review. *E.g.*, *Jones v. State*, 709 So.2d 512, 521 (Fla. 1998) (assessing *Brady* materiality based on “the net effect of the evidence” and finding after “evaluation of all the admissible evidence, that . . . [the allegedly suppressed evidence] could not reasonably be taken to put the whole case in a different light as to undermine confidence in the verdict[]”); *Schofield v. Palmer*, 621 S.E.2d 726, 731 (Ga. 2005) (finding *Brady* materiality proved where it deprived petitioner of means of impeaching key witness with evidence of payment for testimony, and despite “considerable amount of evidence incriminating petitioner,” where suppression “corrupt[ed] [] the truth-seeking process, . . . and especially in a death penalty case[]”); *Harrington v. State*, 659 N.W.2d 509, 523–25 (Iowa 2003) (assessing materiality of suppressed evidence in light of the entire trial record, including how it would have impacted the defense investigation and trial strategy); *People v. Christian*, 987 N.W.2d 29, 43–48 (Mi. 2022) (evaluating materiality of suppressed evidence in the context of the entire trial, including how it would have impacted the prosecution theory, undermined prosecution evidence, witness testimony, and the integrity of the police investigation, and supported the defense); *State ex rel. Engel v.*

Dormire, 304 S.W.3d 120, 128 (Mo. 2010) (evaluating *Brady* materiality based on how suppressed evidence “could have led the jury to a different assessment of [the chief prosecution witness’s] credibility[]”); *State v. Bennett*, 81 P.3d 1, 7–11 (Nev. 2003) (finding “under *Brady* these three instances of undisclosed evidence were collectively material to [petitioner’s] case in mitigation[]”).

As Garrett and Gershowitz explain:

Under a correct application of the materiality standard, courts do not ignore the evidence actually presented at trial suggesting the defendant was guilty. But they must think counterfactually about the withheld evidence that was not introduced. If the favorable withheld evidence had been part of the trial, what would have happened? How would it have landed with the jury?

Garrett & Gershowitz, *supra* at 314. Their survey documents the widespread misapplication of *Brady*’s materiality analysis—as evidenced in Oklahoma, Arkansas, and Wisconsin—through surface analysis and reliance on conclusory labels such as “overwhelming evidence” of guilt supporting the jury’s verdict. *Id.* at 334–43. Nowhere is this misapplication through resort to conclusory labels more apparent than in the decision below. *E.g.*, Pet. App. 14a (rejecting materiality because “[e]vidence of Petitioner’s guilt was overwhelming.”); *see also* Pet. App. 23a (rejecting materiality after deeming other evidence against Mr. Goode “compelling”).

Garrett and Gershowitz attribute the widespread divergence over the application of *Brady*’s materiality standard to this Court’s “lack of firm guidance to lower courts on how to apply it.” Garrett & Gershowitz, *supra* at 353. Their study revealed that:

Most courts properly apply evidence-based reasoning that considers how the withheld evidence would have affected the evidence presented at trial. That is what the doctrine requires. However, as noted, some courts employ guilt-based reasoning that focuses on whether the evidence at trial was sufficient to support a conviction, such that the withheld evidence ‘doesn’t matter.’ . . . [T]he use of guilt-based reasoning sometimes results in courts using sloppy and perfunctory reasoning. And, unfortunately, the Supreme Court has failed to issue corrective rulings to cement the appropriate reasoning courts should engage in when evaluating the materiality of withheld evidence.

Id.

That the OCCA discarded the materiality analysis compelled by this Court’s precedents matters here: Were Mr. Goode bringing his *Brady/Napue* claims in Florida, Georgia, Iowa, Michigan, Missouri, or Nevada, he would be entitled to relief based only on a showing that the totality of the evidence suppressed by the State undermines confidence in the fundamental fairness of his capital trial. *Wearry*, 577 U.S. at 392 & n.6 (“Given [*Brady*’s] legal standard, [petitioner] can prevail even if, as the dissent suggests, the undisclosed information may not have affected the jury’s verdict.”); see Section IV, *infra*. But because he brought his *Brady/Napue* claims in Oklahoma, he was denied “a controlling right asserted under the Constitution,” which warrants this Court’s intervention to remedy. *Montgomery*, 577 U.S. at 205.

IV. This case presents a clean vehicle for this Court to clarify the materiality analysis that states which elect to open their collateral review forums to *Brady/Napue* claims must apply and according to which Mr. Goode is entitled to relief.

Because the OCCA assumed the facts Mr. Goode alleged to be true and denied his *Brady/Napue* claims on the merits, Pet. App. 11a-12a, 14a-15a, this case is a clean vehicle through which this Court can enforce the constitutional command that

states which choose to open their collateral review forums to *Brady/Napue* claims must “play by the old rules” in adjudicating them. *Montgomery*, 577 U.S. at 219 (Scalia, J., joined by Thomas & Alito, JJ., dissenting); *id.* at 198, 204–05; *Yates*, 484 U.S. at 218; *see also Wearry*, 577 U.S. at 395 (“[T]he Court has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law.”). This Court should thus grant the petition, vacate the decision below, and remand with instructions to apply *Brady’s* and *Napue’s* materiality standards in accordance with federal law.

Alternatively, this Court should (as it did in *Kyles*, *Wearry*, and *Glossip*) grant the petition, reach the merits of Mr. Goode’s *Brady/Napue* claims, and order the relief which the materiality standards under those cases compel. Here, as in *Wearry*, “[t]he State’s trial evidence resembles a house of cards, built on the jury crediting” the integrity of the police investigation and the self-serving accounts of Bunny and the victim Mitch Thompson’s sister, Michelle Chastain (who the defense argued perpetrated the crimes out of revenge only to later point the finger at Mr. Goode to save themselves), “rather than [Mr. Goode’s] alibi.” 577 U.S. at 392–93; *Goode v. State*, 236 P.3d 671, 675–80 (Okla. Crim. App. 2010) (discussing trial evidence against Mr. Goode, consisting of testimony from Bunny, Chastain, physical evidence to which Bunny steered police, and incentivized jailhouse informant Fred Clemons); *id.* at 676 (recognizing Mr. Goode’s alibi defense); *see also Goode v. Carpenter*, 922 F.3d 1136, 1142–44 (10th Cir. 2019) (noting that at Mr. Goode’s trial, the “two

witnesses [who] gave accounts of the murders” were “Bunny Thompson” and “Michelle Chastain”).

Bunny was the only eyewitness to the crimes rendering the credibility of his account—denying that he entered the victims’ home intending to kill, minimizing his role, and depicting himself as an unwilling participant coerced by Mr. Goode into going along—vital to the State’s case. *See* Tr. V 983–84; Pet. App. 299a, 302a (trial prosecutor and judge recognizing importance of Bunny’s testimony to the State’s prosecution of Mr. Goode). In fact, the trial prosecutors’ first stage closing arguments emphasized the importance of Bunny’s testimony, underscored the credibility of the story he told the jury, and spanned a full seven pages of transcript. *See* Tr. VIII 1642–49, 1707–08. Meanwhile Chastain, as an alleged accomplice who, like Bunny, the defense argued and evidence showed had a strong motive to want her brother dead, was also a suspect. *See* Tr. VIII 1673, 1682, 1684–85, 1693. And like Bunny, her self-serving testimony required corroboration that was supplied by Denton and Henderson. *See* O.R. 673 (jury instruction on Chastain testimony requiring corroboration if she was deemed an accomplice).

Apart from the evidence supplied by Bunny’s and Chastain’s testimony, the State’s evidence against Mr. Goode was circumstantial and consisted of: Wal-Mart security footage showing Mr. Goode and his co-defendants together on the evening before the crime; an approximately one-hour gap in Mr. Goode’s activity via a cellphone to which Chastain had access the evening before and morning of the crimes, including a call to Damos “Peanut” Joseph who Bunny testified disposed of physical

evidence; a partial footprint on the door from the victims' garage into their home corroborating Chastain's and Bunny's accounts of the forced entry; bullet holes in the wall of the victims' bedroom consistent with Bunny's account that he fired a .22 into the wall; physical evidence to which Bunny directed police (including twenty-four gloves in the area Bunny reported the three suspects discarded only the gloves they were wearing from the windows of a moving car, *see* Tr. V 926, Tr. VI 1288–89, as well as .22-caliber casings and a live round found by Henderson); Mr. Goode's conflicting police statements; Henderson's testimony "corroborating Bunny's account[,]” Clemons' prior statements (retracted by the time of trial) about Mr. Goode's alleged confession, and Denton's testimony corroborating Chastain. *See Goode*, 922 F.3d at 1145–47; *see also Goode*, 236 P.3d at 677–78.

Henderson's testimony corroborated Bunny's minimization of his role in the crimes and claimed use of a .22 caliber weapon that inflicted a non-lethal wound on the child victim under pressure from Mr. Goode. *See* Tr. IV 1840; Pet. App. 23a. Denton's testimony, meanwhile, bolstered Chastain's credibility and portrayed defense witness Penny Avans (whose testimony incriminated Chastain by recounting her repeated threats to kill her brother) as a liar. *See* Tr. VIII 1584; *see also* Tr. VIII 1663 (trial prosecutor urging jury to discredit Avans' testimony because Denton's report did not include the details incriminating Chastain about which Avans testified); *see also* Pet. App. 235a (Ms. Avans' 2025 declaration). Had Mr. Goode's jury been aware of the suppressed evidence that: (1) the day after the murders, Bunny told his ex-wife, Brandy Thompson, that it was his pre-planned intention to kill a

resident of the victims' home before entering on the night of the crimes; (2) Brandy reported Bunny's incriminating admission to Denton within 24 hours of the crime; (3) Denton sanitized his report to conceal this information and classified Brandy as a confidential informant to conceal her identity; (4) Denton had been fired for engaging in a "cover up" including by "either los[ing], or intentionally misplacing or destroy[ing]" evidence; and (4) Henderson had also previously been disciplined for misusing his authority as a police officer and was investigated by internal affairs for entering false information into a probable cause affidavit, this evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" at both phases of Mr. Goode's trial. *Kyles*, 514 U.S. at 435. Equipped with this evidence, Mr. Goode's "defense could have examined the police to good effect on their knowledge of [Bunny's] statements and so have attacked the reliability of the investigation in failing to even consider [Bunny's] possible guilt[.]" certainly of more than he was willing to admit, "and in tolerating (if not countenancing) serious possibilities that evidence had been planted." *Id.* at 446. And "[b]y demonstrating the detectives' knowledge of [Bunny's] affirmatively self-incriminating statements, the defense could have laid the foundation for a vigorous argument that the police had been guilty of negligence." *Id.* at 447.

Mr. Goode's jury would have thus been entitled to credit the defense theory that Bunny and his cousin Chastain were the crimes' perpetrators but were displacing blame onto Mr. Goode to save themselves. *See* Tr. 1678–79 (defense urging jury to discredit Bunny's story); *see also* Tr. VIII 1672–73, 1682–83, 1693. The jury

would have also been entitled to find that Denton and Henderson, as crooked cops with documented histories of falsifying, fabricating, omitting, and destroying evidence, steered the investigation away from Bunny and Chastain and towards Mr. Goode as the crimes' ringleader. Mr. Goode's culpability relative to Bunny's and Chastain's was a consideration relevant to the jury's assessment of not only his first-stage culpability, but also to his deservingness of the death penalty. *See Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) (a mitigating factor includes "any of the circumstances of the offense"); *see also Giglio*, 405 U.S. at 154 ("A new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury[.]").

With Bunny's, Chastain's, Henderson's, and Denton's credibility damaged and the integrity of the entire police investigation dismantled, it's reasonably probable that at least one juror would have harbored residual doubt about Mr. Goode's guilt, his culpability relative to Bunny's and Chastain's, and the appropriateness of a death sentence given such doubts. *See generally Lockhart v. McCree*, 476 U.S. 162, 181 (1986) (noting "residual doubts" by a jury during guilt phase are effective grounds for argument in capital-sentencing phase and finding "in most, if not all, capital cases, much of the evidence adduced at the guilt phase of the trial will also have a bearing on the penalty phase[.]"); Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What do Jurors Think?*, 98 Colum. L. Rev. 1538, 1563 (Oct. 1998). Moreover, the suppressed evidence would have prevented the State from arguing in penalty phase closing that Mr. Goode deserved the death penalty because Bunny was among

his victims. *See* Tr. IX 1840 (trial prosecutor arguing that Bunny “had a duress argument”).

For the same reasons that the suppressed evidence, considered cumulatively, gives rise to a reasonable probability of a different result sufficient to undermine this Court’s confidence in Mr. Goode’s convictions and death sentences, *Kyles*, 514 U.S. at 434, the State cannot carry its burden to prove beyond a reasonable doubt that its knowing presentation of Bunny’s false testimony, along with the totality of the evidence suppressed by the State, was harmless at both phases of Mr. Goode’s capital trial, *Glossip*, 604 U.S. at 251; *Chapman*, 386 U.S. at 24 (“There is little, if any, difference between . . . whether there is a reasonable possibility that the evidence complained of might have contributed to a conviction and requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (internal quotation marks omitted)).

CONCLUSION

The petition for a writ of certiorari should be granted. “The alternative to granting review, after all, is forcing [Mr. Goode] to endure yet more time on [Oklahoma’s] death row in service of a conviction that is constitutionally flawed.” *Wearry*, 577 U.S. at 396.

Respectfully submitted,

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