

OCTOBER TERM 2026

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LAVAR BROWN,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A claim for relief under *Brady v. Maryland*, 373 U.S. 83 (1963), has three components: “The evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

The question presented is:

Does the precedent set by the Pennsylvania Supreme Court below wrongly limit “favorable” evidence under *Brady* to that which definitively proves an exculpatory fact?

LIST OF PARTIES

The petitioner is Lavar Brown, an inmate housed at State Correctional Institution Phoenix in Pennsylvania.

Respondents are the District Attorney of the County of Philadelphia representing the Commonwealth of Pennsylvania, Kristi Richardson and Suzette Crawford who are the victims' family members, and the Attorney General of the Commonwealth of Pennsylvania as amicus below in support of the victims' family members.

RELATED PROCEEDINGS IN FEDERAL COURT

United States District Court for the Eastern District of Pennsylvania, application for a writ of habeas corpus, *Brown v. Ferguson*, No. 2:14-cv-00626 (E.D. Pa.) (stayed and held in abeyance pending resolution of second petition for collateral relief in state court).

RELATED PROCEEDINGS IN STATE COURT

Court of Common Pleas, Philadelphia County, Criminal Division, No. CP-51-CR-0407441-2004 (sentence of life in prison imposed on October 25, 2004; first petition for collateral relief denied on October 7, 2011; second petition for collateral relief granted on June 22, 2023).

Superior Court of Pennsylvania, *Commonwealth v. Brown*, No. 1036 EDA 2005, 911 A.2d 178 (Pa. Super. Sept. 20, 2006) (Table) (affirming judgment and sentence on direct appeal)

Superior Court of Pennsylvania, *Commonwealth v. Brown*, No. 2939 EDA 1022, 75 A.3d 548 (Pa. Super. Apr. 9, 2013) (Table) (affirming denial of first petition for collateral relief).

Supreme Court of Pennsylvania, *Commonwealth v. Brown*, No. 489 EAL (2006), 923 A.2d 1172 (Pa. May 15, 2007) (denying discretionary review from the Superior Court's affirmance of judgment and sentence on direct appeal)

Supreme Court of Pennsylvania, *Commonwealth v. Brown*, No. 32 EM 2023, 358 A.3d 469 (Pa. June 16, 2026) (exercising King's Bench jurisdiction and reversing grant of relief below on petitioner's second petition for collateral relief).

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PETITION FOR A WRIT OF CERTIORARI

Lavar Brown respectfully petitions that a writ of certiorari issue to review the decision of the Supreme Court of Pennsylvania vacating the Philadelphia County Court of Common Pleas' grant of postconviction relief based on the suppression of material impeachment evidence.

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania exercising King's Bench jurisdiction and reversing the grant of relief below is reported at *Commonwealth v. Brown*, 358 A.3d 469 (Pa. June 16, 2026), and appears in the Appendix. A.1-20. The Philadelphia County Court of Common Pleas' order granting a new trial based on Mr. Brown's second petition for state collateral relief and related oral order are not reported and appear in the appendix. A.21-144.

JURISDICTION

The Supreme Court of Pennsylvania, exercising its King's Bench jurisdiction, reversed the grant of postconviction relief on June 16, 2026. *Commonwealth v. Brown*, 358 A.3d 469 (Pa. 2026). Justice Alito granted an extension of time to petition for a writ of certiorari to October 14, 2026. *See Brown v. Pennsylvania*, No. 26A287. This Court has jurisdiction over this petition under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

I. Trial

Lavar Brown was convicted of second-degree murder and related offenses and sentenced to life imprisonment without parole for allegedly participating, along with five other individuals, in the robbery of a Rite Aid on January 19, 2003, during which Christopher Kennedy shot and killed the store manager. The case against Mr. Brown—unlike the other defendants, Kennedy and brothers Jamaar and James Richardson—was predicated solely on the testimony of two accomplices—Ronald Vann and Kiana Lyons. Unlike Kennedy, there was no physical evidence connecting Brown to the robbery-homicide, and there were no eyewitnesses who placed him at the scene. As for the Richardson brothers, they both gave statements to police that were used against them, *see* R.1446-47, 1475-76, and James made additional inculpatory statements to their cousin, Martina Richardson. R.1434-35.¹ Mr. Brown presented an alibi defense. R.1498 *et seq.*

In closing arguments, the prosecutor went to great lengths to defend Vann’s and Lyons’s credibility, insisting that they “told you the truth” and arguing that, even in the absence of “independent supporting evidence,” the jury could convict Mr. Brown “solely on the basis” of their accomplice testimony. RSA.224.

II. Mr. Brown’s Initial State Collateral Proceedings

¹ Citations to the Reproduced Record from the proceedings below at the Supreme Court of Pennsylvania appear as “R.#.” Citations to the Supplemental Appendix filed by District Attorney of the County of Philadelphia representing the Commonwealth in those proceedings appear as “RSA.#.”

After his convictions were affirmed on direct appeal, *Commonwealth v. Brown*, 911 A.2d 178 (Pa. Super. 2006), Mr. Brown filed a petition for collateral relief under the Pennsylvania Post Conviction Relief Act (PCRA). The petition alleged, *inter alia*, the prosecution violated due process by failing to disclose a December 2003 proffer session with Lyons. Having failed to disclose the proffer, the prosecution elicited false and misleading testimony from Lyons and Detective David Baker suggesting that a subsequent proffer session held in January 2004 was Lyons’s “first.” Mr. Brown also alleged that the prosecution failed to disclose promises made to Vann prior to trial, Vann’s cooperation in other cases, and benefits Vann received in exchange. *See* RSA.348-49. A subsequent amendment alleged additional false testimony from Lyons and Detective Baker denying that police provided Lyons or her attorney with any information about the case before her January 2004 statement. RSA.667-68. The PCRA court denied relief, holding that “petitioner has failed to prove the existence of any suppressed evidence,” RSA.731, and that awareness of any alleged earlier undisclosed proffer session would not have affected the jury’s verdict. R.732. The Superior Court affirmed, relying entirely on the lower court’s opinion. *Commonwealth v. Brown*, No. 2939 EDA 2011, 2013 WL 11267531 (Pa. Super. Apr. 9, 2013).

III. Mr. Brown’s Second (and Instant) Collateral Proceedings

On June 23, 2020, Mr. Brown filed a successive PCRA petition based on disclosures by the Philadelphia District Attorney’s Office (DAO) concerning Detective Baker’s coercive interrogation techniques and his lack of credibility as a testifying witness. R.1-24. On October 1, 2020, the DAO adopted a policy of open-file discovery

and granted defense counsel access to review its files in this case. R.444. This review uncovered extensive undisclosed evidence that Mr. Brown pled in a supplement and amendment filed on June 28, 2021, raising claims pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959). R.27-99.

A. The Hidden Proffer with Kiana Lyons

With respect to Lyons, Mr. Brown pled claims based on previously undisclosed documents in the Commonwealth's files that contradicted the trial testimony of both Lyons and Detective Baker, contradicted assertions made by the trial prosecutor that the trial court relied on when deciding to admit Lyons's later proffer as a prior consistent statement, and contradicted averments made by the Commonwealth in initial PCRA proceedings. These documents showed that Lyons indeed had an initial proffer session on December 12, 2003, that at this proffer she "gave an inconsistent version of events that police knew not to be true," and that the proffer was terminated by Lyons's attorney when the prosecutor showed him Vann's last statement and told him what police "already knew." R.206, 222.

Other documents showed that the PCRA prosecutors during initial postconviction proceedings believed that the undisclosed proffer session was material, could have been used to impeach Lyons, and should have been disclosed. R.358. The PCRA prosecutors even directed detectives to obtain a new statement from Lyons, which she signed on November 29, 2020. In that statement Lyons affirmed that in December 2003, she had given an oral statement to detectives in which she "wasn't telling all the truth" but Detective Baker had not recorded her

statement because “he told [Lyons] that he didn’t believe [her].” R.352-53. PCRA prosecutors suppressed this statement. Deputy Chief of Homicide Edward Cameron argued that documents regarding Lyons’s hidden proffer should not be disclosed. He even suggested that Lyons’s attorney—whom he characterized as “saying things to hurt” the prosecution—should be punished by “not giv[ing] him deals in the future,” and perhaps prosecutors “should send a detective to go interview him.” R.250. When a PCRA prosecutor told her supervisor Ronald Eisenberg that she was “disturbed and offended” by these suggestions and that the evidence “should have [been] disclosed,” Eisenberg defended Cameron’s approach as “not completely irrational” and directed that they “better resolve the conflict.” R.258.

B. Suppressed Promise to Vann, Undisclosed Additional Cooperation, and False Implication of Kennisha Paige

Regarding Vann, Mr. Brown pled claims based on previously undisclosed police reports, memoranda, statements, handwritten notes, and email exchanges all discovered in the Commonwealth’s files, which showed that:

1) Contrary to Vann’s trial testimony that he received no promises, R.1351-53, 1391, 1401, Mr. Brown’s prosecutor promised Vann, before he testified, that he would tell Vann’s sentencing judge the “quality and nature” of his cooperation, R.112; and the PCRA prosecutor concealed the timing of this promise from the court during Mr. Brown’s initial postconviction proceedings. RSA.493.

2) Vann gave a statement asserting he knew nothing about the January 18, 2003 attempted robbery, in sharp contrast to his subsequent trial testimony, R.60, 194-200.

3) At the time of trial, the Commonwealth was aware, but did not disclose, that Vann had cooperated with police in many gunpoint robbery cases. R.162-63. A PCRA prosecutor characterized this failure to disclose as “bad!” and suggested the need to avoid an evidentiary hearing on the issue, R.204, but her supervisors, including Ronald Eisenberg, authorized disclosing next to none of Vann’s cooperation. R.206, 208. Deputy Chief of Homicide Ed Cameron asserted that redactions of this nature were “routinely done” and “Your only issue is the Federal PDs were unfortunately told about this in your case.” R.250.

4) Vann falsely implicated an individual named Kennisha Paige in the January 19th Rite Aid robbery-homicide, and subsequent police investigation determined she had a solid alibi. R.58-59.

C. Vann’s Lie that Paige was Involved in the Robbery/Homicide

The false implication of Paige forms the basis of the *Brady* claim that led the Philadelphia Court of Common Pleas to grant the relief – without reaching the other suppression and false testimony claims – that the Pennsylvania Supreme Court reversed. It is the claim at issue in this petition.

Several documents (bearing the police homicide unit’s number for this case) record Detective Baker’s investigation into whether Paige was involved in the robbery-homicide. On July 14, 2003, Detective Baker called Paige, who said that she was in an institution at the time of the homicide. R.210. Baker wrote, “I would hate to drag her in and then find out that she was truly incarcerated and Vann was lying. After all he is the only one that mentioned her.” R.210. The next day, Baker called

the Gannondale Residential Center for Girls, a juvenile facility in Erie, Pennsylvania. The Center confirmed that Paige was “a client and not away from the Center during the time of the homicide.” R.212. The Center provided police with contemporaneous records “from January of 2003 showing the staff on duty logging her in for Jan. 19.” R214-15.

Another of the undisclosed documents confirming Vann’s identification of Paige as involved in the robbery-homicide is an undated memorandum titled “23rd Dist, ‘A’ sector Robberies.” It described Vann’s cooperation in various robbery cases. This cooperation included identifying Jamaar Richardson (who was later arrested and charged for this crime) and Kennisha Paige as being involved in a robbery-homicide. It stated:

On 1/21/03, defendant Ronald Vann PPN/867801 was arrested by CDD SIU for the robbery, point of handgun of a pizza delivery person, [redacted] (DC#03-23-00618)

Vann then co-operated with CDD SIU, providing in[f]ormation into the robbery of the Rite Aid, 1301 Girard Ave, on 1-18-03, and the homicide at the Rite Aid the following day, 1-19-03. Based on Vann’s co-operation, defendants Christopher Kennedy 22/B/M, PPN/840063 and James Richardson 22/B/M, PPN/858783 have been arrested and charged with robbery & homicide. (DC#03-23-001770 and 03-23-001914)

Vann is continuing to co-operate with CDD SIU regarding robberies being committed in the 23rd dist area of Broad and Girard Ave, providing confidential information concerning the following:

Robbery/Homicide: Jama[a]r Richardson 21/B/M, 1218 N 11th St (no record), **Kennisha Paige 17/B/F, 1116 Stiles St**

Robberies: William Green 19/B/M, PPN/885936, [redacted] Anthony Frames 20/B/M, PPN/836622, aka “Spanky” Lavar Brown, 25/B/M, PPN/807547, 1222 N 11th, aka “Black” Stephen Kennedy 19/B/M, PPN/823690, [redacted] James Montgomery, 20/B/M,

PPN/885941, [redacted] Naheem Johnson 20/B/M, PPN/851060, [redacted]

R.165 (emphasis added).

The prosecution did not disclose any of the documents showing that Vann had identified Paige as being involved and lied about Paige's involvement which the police established by investigating Paige's whereabouts at the time of the homicide on January 19, 2003.

D. Litigation Leading to the PCRA Court's Grant of Relief

On November 1, 2021, the DAO conceded that, based upon the new disclosures, relief was due on Mr. Brown's *Brady* and *Napue* violations in light of all the undisclosed evidence discussed above: "Viewed cumulatively, as required, the Commonwealth concedes that the misconduct in the case was grave enough to cast doubt upon the integrity of the proceeding." R.334. The DAO conceded relief based on its failure to disclose benefits promised and given to Vann in other cases, Vann's false implication of Paige in this crime, and Lyons's untruthful December 2003 statement, as well as the false testimony and argument at trial related to the suppressed evidence. R.333-36. The DAO did not address Mr. Brown's other claims for relief. R.336-37.

The victims' family members unsuccessfully sought to intervene as a party, but were allowed to participate as amici, and then submitted briefing. Counsel for amici averred that he "consulted with former Philadelphia prosecutors Cari Mahler, Esq., Ron Eisenberg, Esq., and Tom Malone, Esq."—the PCRA prosecutor, Law Division

Supervisor, and trial prosecutor whose conduct is at issue in this case.² Counsel for the victims' family members acknowledged that these three attorneys "reviewed and/or authored in whole or in part the amicus curiae Opening Brief or other filings by the undersigned in connection with this case." R.687-88.

The PCRA proceedings became focused on the Kennisha Paige portion of Mr. Brown's extensive *Brady* and *Napue* evidence: the assertion that Vann falsely implicated Paige as being involved in the January 19, 2003 Rite Aid robbery-murder. The police later determined she had an ironclad alibi. Suppression of this information "deprived the defense of evidence that could have been used at trial to show police knew Mr. Vann had provided untrue information and was capable of falsely implicating an innocent person in this crime simply to save himself." R.58-59. Vann was one of only two witnesses who implicated Mr. Brown and his credibility was already suspect. Vann gave numerous conflicting statements to police (many of which were only discovered in postconviction file review), was granted immunity in this case, and had ample motive to please the prosecution to obtain leniency in his own open felony cases. Vann's false implication of someone else in this crime would have directly discredited his testimony implicating Brown and further revealed the extent of his motive to please the prosecution.

E. The PCRA Court's Grant of a New Trial.

² At the time, Ms. Mahler and Mr. Eisenberg were employed by the Office of the Attorney General (OAG), where they remain employed. Mr. Eisenberg argued the instant matter for the OAG in the Pennsylvania Supreme Court.

All parties (as well as the victims' families) agreed that no evidentiary hearing was needed, R.967, and the PCRA judge conducted an independent review of the evidence and granted PCRA relief solely on Mr. Brown's *Brady* claim pertaining to Vann's false implication of Paige. The PCRA judge concluded:

I'm going to find that the record establishes that the assigned detective in this case learned through investigation that witness, Ronald Vann, had falsely identified Kennisha Paige as being a participant in the January 19th, 2003 robbery and murder here at issue, and that this false identification was not disclosed to the defense; that a critical witness had made a demonstrably false identification of someone as being a participant in the same criminal events that are the subject of the charges against [Brown] was, in my view, impeachment evidence of a different character than the impeachment material used at trial and I find that the suppressed evidence satisfies the standard for materiality under *Brady* and its progeny.

A.42 (*Commonwealth v. Brown*, 358 A.3d at 490 (quoting the trial court's order from NT May 5, 2023 at 4)). The PCRA Court did not address the numerous other *Brady* and *Napue* claims for which the DAO had conceded relief. R.1004; RSA.791-92. The PCRA court entered a formal written order vacating Mr. Brown's sentence on May 5, 2023. A.1. The court signed a stipulation slightly amending the May 5, 2023 transcript on June 7, 2025. A.3-4.

F. King's Bench Litigation in the Supreme Court of Pennsylvania

On May 26, 2023, the victims' families filed a Petition for Exercise of King's Bench Jurisdiction in the Pennsylvania Supreme Court. The same day, the Office of the Attorney General (OAG) filed an application seeking amicus curiae status in support of the victims' families' request. On April 3, 2024, the Pennsylvania Supreme Court granted the petition, and directed the litigants to address, "[w]hether, and via

what procedure, a common pleas court judge may grant PCRA relief based upon concessions of the parties.” A.43. The court ultimately held “that in any PCRA case in which the [Philadelphia District Attorney’s Office] concedes relief, the PCRA court shall grant the Office of Attorney General (OAG) notice and the right to intervene in the case before ruling on the concession,” A.84.

The court also reversed the PCRA Court’s grant of relief, holding that “Brown did not carry his burden to prove by a preponderance of the evidence that Vann in fact incriminated Paige in the first place.” A.57. The court reasoned that “[i]n the absence of the alleged misidentification of Paige by Vann, there can be no viable *Brady* claim,” because “[t]he Commonwealth, of course, cannot suppress evidence which does not exist, nor can a nonexistent identification be impeaching, favorable, or material.” A.57-58. The Court noted that “[i]n support of his *Brady* claim, Brown proffered four documents: the 23rd District memorandum, Detective Baker’s July 14 and 15 memoranda, and the Gannondale fax,” and “[t]hese documents do not render it *more likely than not* Vann incriminated Paige.” A.58. (emphasis added). The Court remanded the case for further proceedings in which the lower court was instructed to consider the materiality of the suppressed evidence only if it is first proven that Vann made the false accusation referenced in the suppressed documents. A.61.

REASONS FOR GRANTING THE PETITION

In rejecting the merits of Mr. Brown’s *Brady* claim, the Supreme Court of Pennsylvania “decided an important federal question in a way that conflicts with the decision . . . of a United States court of appeals,” and “decided an important federal

question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(b) &(c).

Contrary to this Court’s precedent and that of numerous federal courts of appeals, the Supreme Court of Pennsylvania found that the *Brady* favorability component had not been met in this case because “Brown did not carry his burden to prove by a preponderance of the evidence that Vann *in fact* incriminated Paige in the first place.” A.57 (emphasis added). The Court expressly required that such proof be established before any materiality analysis may be conducted. A.61. This holding misapplied *Brady* by requiring Mr. Brown to establish that the undisclosed evidence proved by a “preponderance of the evidence” that Vann “more likely than not” incriminated Paige.

Under *Brady* and its progeny, there is no requirement that undisclosed evidence be unambiguously in a defendant’s favor – it is enough that competent defense counsel could have used the suppressed documents to cross-examine Vann, about his reported identification of Paige, and the police investigators, about their subsequent investigation of that accusation – to establish *Brady*’s first prong of favorability.

I. When Deciding Whether Evidence is Favorable to a Defendant, this Court Instructs that a Court Should Not Confuse the Weight of the Evidence With its Favorable Tendency; Here, the Withheld Evidence Tended to Favor the Defendant.

This Court has warned that when considering a *Brady* claim, a court should not “confuse[] the weight of the evidence with its favorable tendency.” *Kyles v.*

Whitley, 514 U.S. 419, 451 (1995). In *Kyles*, the State argued that evidence was neither impeaching nor exculpatory because it could be interpreted in a way that was not necessarily favorable to the defendant, but the Court disagreed, noting the State was confusing weight with favorable tendency, and found, “the evidence would have been used [by the defense], it would have had *some* weight and its tendency would have been favorable to Kyles.” *Id.* at 450-51 (emphasis supplied).

The undisclosed evidence here had much more than just “some weight” in Mr. Brown’s favor. First, a memorandum from Detective Baker to Detective Kevin Judge dated July 14, 2003, and marked with the case number for this homicide memorializes Baker’s investigation of Paige. R.210. This memorandum notably states that Baker “would hate to drag [Paige] in and then find that she was truly incarcerated and Vann was lying. After all he is the only one that mentioned her,” *id.*, clearly establishing a basis for defense counsel to confront Vann about why he would identify Paige as being involved in this crime when she was, in truth, incarcerated on the other side of the state at the time.

Second, a July 15, 2003, memorandum from Baker to Judge—again marked with the case number for this homicide—memorialized that Nancy Sabol, from the Gannondale Residential Center for Girls, confirmed that Paige was at the Center “during the time of the homicide,” and that Baker received a fax of a “Night log chart” further confirming Paige’s location there “during the time of the homicide.” R.212. This memorandum confirms that Baker was investigating whether “Vann was lying” about Paige’s involvement in the homicide.

Third, a fax from Gannondale sent to Detective Baker on July 15, 2003, included “the night log chart indicating Paige was at Gannondale on January 19, 2003, the day of the Rite Aid murder.” R.214-15. This establishes a basis for defense counsel to investigate and confront the prosecution’s witnesses about why Baker was investigating Paige’s whereabouts on the day of the murder at issue in this case.

The above evidence was all contained in the case file for this homicide, “focused on Paige’s whereabouts on the day of the murder, were marked with the case number for this murder, and were addressed to Detective Judge, the assigned detective for this case.” A.47.

Fourth and finally, is the undated memorandum titled “23rd Dist, ‘A’ sector Robberies” describing Vann’s cooperation in various robbery cases including his mention of Kennisha Paige and Jamar Richardson as involved in a robbery-homicide. The text is set out in full above. It stated that Vann had provided information into the robbery of the Rite Aid and that he had provided “confidential information concerning the following:

Robbery/Homicide: Jama[a]r Richardson 21/B/M, 1218 N 11th St (no record), **Kennisha Paige 17/B/F, 1116 Stiles St**

R.165 (emphasis added). This memorandum plainly indicates that Vann identified Paige as being involved in a robbery-homicide with Jamaar Richardson. Given that the other documentary evidence establishes that Baker was investigating Paige’s whereabouts on the day of the Rite Aid robbery-homicide, and that Jamaar Richardson (James Richardson’s brother) was involved in this, and only this, homicide, the reasonable inference is that the robbery-homicide referred to in this

memorandum is the one at the Rite Aid. Surely, any competent defense counsel could have used such documentation to great effect at trial.

The logical conclusion from the withheld evidence is that Vann identified Paige as being involved in the robbery-homicide at the Rite Aid, police investigated this accusation and found that Vann was lying, and this accusation and investigation were withheld from the defense. There is no question that this evidence would have “would have had *some* weight and its tendency would have been favorable” to Mr. Brown. *Kyles*, 514 U.S. at 450-51 (emphasis added).

II. The Supreme Court of Pennsylvania Created a New Rule Requiring that Mr. Brown Had to Show Facts by a Preponderance of the Evidence.

The Supreme Court of Pennsylvania imposed an undue burden on Mr. Brown and went to great lengths to assert that he had not proven the fact that Vann incriminated Paige by a preponderance of the evidence. In the court’s view, only if the truth of the underlying fact is first proven may a *Brady* claim even exist such that materiality can be considered. A.61.

Relying on convoluted inferences drawn against Mr. Brown, the Court reasoned that “in light of its opaque structure, vague phrasing, and clerical origins, the 23rd District memorandum is far from *conclusive proof* Vann incriminated Paige,” A.58 (emphasis added); and concluded that the July 2003 memoranda and the Gannondale fax “merely indicate the detective investigated Paige in connection with the Rite Aid murder, not that Vann identified her as participating in the crime.” A.58-59. The Court summarized, “In short, the inconclusive and disputable documents

submitted by Brown did not carry his burden to prove it was more likely than not Vann actually inculpated Paige.” A.60. Rather than leave those convoluted factual inferences to a jury to assess, the Court deemed them a threshold legal barrier to the cognizability of Mr. Brown’s due process claims.

The majority then imposed this same burden on the Court of Common Pleas on remand: “The PCRA court is thus instructed on remand to conduct a hearing, after which it shall determine whether Brown has proven by a preponderance of the evidence that Vann in fact incriminated Paige in the first place,” and, only “[i]f so,” to then “reassess whether this evidence is material under *Brady*.” A.61.

III. The Supreme Court of Pennsylvania’s Decision Conflicts with the Decisions of this Court.

This Court’s cases are clear that withheld evidence need not first prove a contested fact by a preponderance of the evidence to be favorable. *Wearry v. Cain*, 577 U.S. 385 (2016), is illustrative. *Wearry* involved “three categories of belatedly revealed information would have undermined the prosecution and materially aided Wearry’s defense at trial.” *Id.* at 389.

First, “previously undisclosed police records showed that two of [prosecution witness] Scott’s fellow inmates had made statements that cast doubt on Scott’s credibility.” *Id.* One fellow inmate “reported hearing Scott ‘say that he wanted to make sure Wearry gets the needle cause he jacked over me.’” *Id.* (cleaned up). A second inmate claimed that Scott had coached him to lie to police about witnessing the murder at issue. *Id.* at 390.

Second, “the State had failed to disclose that, contrary to the prosecution’s assertions at trial, Brown [another witness of the State] had twice sought a deal to reduce his existing sentence in exchange for testifying against Wearry.” *Id.*

Third, “the prosecution had failed to turn over medical records on Randy Hutchinson,” an alleged accomplice of Wearry, showing that he had knee surgery nine days before the murder, and may have been physically incapable of participating in the murder in the way that Scott testified to at trial. *Id.* at 391. Dueling experts in state collateral proceedings disagreed with Hutchinson’s physical capabilities after this surgery. *Id.*

This Court’s reasoning finding a *Brady* violation establishes that such evidence does not have to prove the facts placed at issue by a preponderance of the evidence to be favorable or even material:

Scott’s credibility, already impugned by his many inconsistent stories, would have been further diminished had the jury learned that Hutchinson *may* have been physically incapable of performing the role Scott ascribed to him, that Scott had coached another inmate to lie about the murder and thereby enhance his chances to get out of jail, or that Scott *may* have implicated Wearry to settle a personal score. Moreover, any juror who found Scott more credible in light of Brown’s testimony *might* have thought differently had she learned that Brown *may* have been motivated to come forward not by his sister’s relationship with the victim’s sister—as the prosecution had insisted in its closing argument—but by the possibility of a reduced sentence on an existing conviction.

Id. at 393-94 (emphasis supplied). The Court concluded, “Even if the jury—armed with all of this new evidence—*could* have voted to convict Wearry, we have ‘no confidence that it *would* have done so.’” *Id.* (emphasis in original) (quoting *Smith v. Cain*, 565 U.S. 73, 76 (2012)). The Court’s repeated use of conditional verbs makes it

clear that impeaching or favorable evidence under *Brady* need only support an exculpatory inference and need not unequivocally prove an exculpatory fact.

Smith v. Cain further supports this conclusion. *Smith* evaluated the materiality of an eyewitness's statements that the State did not dispute were favorable and undisclosed to the defense. 565 U.S. at 75. Relevant here, however, the State (and dissent), like the state court below in this case, "advance[d] various reasons why the jury might have discounted [the] undisclosed statements." *Id.* at 76. The Court noted that such arguments "merely leave[] us to speculate about which of the [eyewitness's] contradictory declarations the jury would have believed." *Id.* The Court concluded that "the State's argument offers a reason that the jury *could* have disbelieved [the] undisclosed statements, but gives us no confidence that it *would* have done so." *Id.* at 76 (emphasis in original). The Court concluded that the undisclosed evidence was material and granted relief. *Id.* at 76-77. If such ambiguous undisclosed evidence can be material under *Brady*, then such evidence can *a priori* be favorable too.

None of this Court's cases have ever required what the Supreme Court of Pennsylvania now requires. *Brady* did not first require the truth of the codefendant's suppression confession to be proven before granting relief. *Brady*, 373 U.S. at 85-86. *Giglio* did not resolve contested facts about the nature of the promise that had been made to a testifying witness before granting relief. *Giglio v. United States*, 405 U.S. 150, 153 (1972) ("We need not concern ourselves with the differing versions of the events as described by the two assistants in their affidavits."). *Strickler* did not

require the petitioner to prove the facts within the documents impeaching a key eyewitness before granting relief. *Strickler v. Greene*, 527 U.S. 263, 273-75 (1999). And so on. Given the nature of most *Brady* evidence – in the State’s possession, concerning the State’s investigation and witnesses, and disclosed to the defense only after a trial – the threshold of proof imposed by the Supreme Court of Pennsylvania is a poison pill for even the strongest *Brady* claims, like Mr. Brown’s here.

More generally, as noted above, this Court has noted that evidence must merely have “some value” to the defense “as exculpation and impeachment” to be favorable. *Kyles*, 514 U.S. at 450. Evidence with “some” tendency to exculpate a defendant is favorable, even if it does not preclude the defendant’s participation in the offense. *Id.* As Justice Jackson recently noted, pursuant to *Kyles*, evidence that merely “supports an inference” can be favorable pursuant to *Brady*. *Brown v. Louisiana*, 143 S. Ct. 886, 887 (2023) (Jackson, J., dissenting from denial of certiorari).

Brady looks to the impact prosecution’s suppression of evidence “might have had on the preparation or presentation of the defendant’s case” and “the course that the defense and the trial would have taken had the defense not been misled by the prosecution’s incomplete” disclosures. *United States v. Bagley*, 473 U.S. 667, 683 (1985). In first requiring proof of the underlying fact inferred from the undisclosed evidence, the court below avoids this consideration entirely. Had the documents related to Paige been disclosed, the defense could have impeached Vann with evidence showing that he had provided untrue information to police and was capable

of falsely implicating an innocent person in this very crime, suggesting that he might have done the same to Mr. Brown, given that Vann never mentioned Brown being involved in this crime until he had given several statements to police. The defense could have further used the suppressed paperwork to not only discredit Vann's testimony, but the entire investigation resulting in Mr. Brown's conviction.

The Supreme Court of Pennsylvania departed from this Court's precedents by requiring that undisclosed facts must first be proven true to be in a defendant's favor. This ruling injects a high barrier for Mr. Brown not only to establish *Brady's* prong of favorability, but, by extension, its materiality prong. This is not a case where "evidence is arguably favorable only after several inferences are made." *Harris v. Kuba*, 486 F.3d 1010, 1016 (7th Cir. 2007). The most obvious inferences from the withheld evidence are that: 1) Vann identified Paige as being involved in the Rite Aid robbery-homicide at issue in this case; and 2) Baker investigated Paige's whereabouts to determine that Vann was "lying" about her involvement. These inferences are apparent from the face of the documents as the PCRA Court found, and the Pennsylvania Supreme Court concluded otherwise only "after [making] several inferences" *against* Mr. Brown.

Justice Donohue, writing separately, aptly criticized the majority's analysis:

Since the Majority agrees that this PCRA case must be remanded for a hearing, Majority Op. at 509, it is curious and suspect that it engages in an extensive evaluation of the probative value of the evidence. In doing so, the Majority concludes not only that the evidence submitted does not resolve all factual issues, but it characterizes much of the evidence as detrimental to Brown's position. This skewed evaluation of the evidence is inappropriate.

Brown, 358 A.3d at 558-59 (Donohue, J., concurring and dissenting).

IV. The Supreme Court of Pennsylvania’s Decision Conflicts with the Decisions of a Number of United States Courts of Appeals.

The Pennsylvania Supreme Court overstated the burden on defendants pursuing *Brady* claims. *Brady*’s favorability prong requires only that the suppressed evidence have “some value . . . [or] weight and its tendency would have been favorable” to the defendant. *Kyles*, 514 U.S. at 450-51. Circuit courts recognize this standard from *Kyles*. See *Long v. Hooks*, 972 F.3d 442, 461 (4th Cir. 2020) (“[E]vidence is favorable under *Brady* if it would have ‘some weight’ and a ‘tendency [to be] favorable’ to Petitioner.”) (quoting *Kyles*, 514 U.S. at 451); *United States v. Ballard*, 885 F.3d 500, 504 (7th Cir. 2018) (“Evidence need only have ‘some weight’ or ‘tendency’ to be favorable to the defendant.”) (quoting *Kyles*, 514 U.S. at 451); *Dennis v. Sec’y, Penn. Dep’t of Corr.*, 834 F.3d 263, 286 (3d Cir. 2016) (“The United States Supreme Court has made plain that impeachment evidence may be considered favorable under *Brady* even if the jury might not afford it significant weight.”) (citing *Kyles*, 514 U.S. at 450-51).

To be sure, a petitioner’s general burden of proof regarding factual contentions related to constitutional claims in collateral proceedings is often a preponderance of the evidence. See, e.g., *Holland v. Jackson*, 543 U.S. 649, 654 (2004) (noting state court’s general statement that “[i]n a post-conviction proceeding, the defendant has the burden of proving his allegations by a preponderance of the evidence” was “reasonably read as addressing the general burden of proof in postconviction proceedings with regard to factual contentions”). Indeed, this is the standard in

Pennsylvania. *See* 42 Pa. C.S. § 9543(a). The same standard generally governs *Brady* claims as a whole. *See, e.g., United States v. Durham*, 902 F.3d 1180, 1221 (10th Cir. 2018); *Weeks v. Jones*, 26 F.3d 1030, 1047 (11th Cir. 1994); *State v. Thomas*, 687 S.W. 3d 223, 253 (Tenn. 2024); *DeSimone v. State*, 803 N.W.2d 97, 103 (Iowa 2011).

However, the Supreme Court of Pennsylvania misapplied this precedent. By contrast to the precedent set by this Court and the decisions of many federal courts of appeals, the Supreme Court of Pennsylvania required exculpatory proven facts rather than exculpatory evidence. It held that “Brown did not carry his burden to prove by a preponderance of the evidence that Vann in fact incriminated Paige in the first place,” and that “the existence of this fact is a *sine qua non* of the claim.” A.57. Under this Court’s precedents, Mr. Brown was only required to show that the undisclosed evidence *may* have had *some* value, weight, and tendency to impeach Vann’s truthfulness. The suppressed evidence in this case easily satisfies that modest requirement.

V. The Court Should Grant the Writ.

The Court should grant certiorari to remedy and contain the Pennsylvania Supreme Court’s error now because that court “decided an important federal question in a way that conflicts with the decision . . . of a United States court of appeals,” “and “decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(b) &(c).

The Pennsylvania Supreme Court’s ruling is not a mere “misapplication of a properly stated rule of law.” Sup. Ct. R. 10. The opinion below states and applies a proof-of-fact requirement that is fundamentally at odds with *Brady*, subsequent

decisions of this Court, and decisions of the federal circuit courts. As precedent, it substantially diminishes *Brady*'s protections not only on remand to Mr. Brown's trial court, but throughout Pennsylvania's criminal justice system.

CONCLUSION

For these reasons, Mr. Brown requests that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

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