No.

IN THE
Supreme Court of the United States

COREY DEWAYNE WILLIAMS,
Petitioner,

v.

STATE OF LOUISIANA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether exculpatory evidence that is inadmissible can be material under *Brady v. Maryland*, 373 U.S. 83 (1963).

2. Whether a court evaluating the materiality of suppressed evidence under *Brady* against a confession should take into account a post-trial judicial finding that the defendant was an intellectually disabled child.

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PETITION FOR A WRIT OF CERTIORARI

Corey Dewayne Williams respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Louisiana in this case.

OPINION AND ORDER BELOW

The order of the Supreme Court of Louisiana denying Petitioner's writ application (Pet.App. 1a) is reported at 228 So.3d 1233. The opinion of the Court of Appeal of Louisiana for the Second Circuit (Pet.App. 2a-3a) is unpublished. The opinions of the District Court for Caddo Parish (Pet.App. 4a-14a, 15a-21a) are unpublished.

JURISDICTION

The judgment of the Supreme Court of Louisiana was entered on October 27, 2017. On January 9, 2018, Justice Alito granted an extension of time to file a petition for certiorari to February 23, 2018. On February 12, 2018, Justice Alito granted a further extension to March 26, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

In January of 1998, Petitioner Corey Dewayne Williams was an intellectually disabled 16-year-old child. He still sucked his thumb, urinated himself on an ordinary basis, and regularly ate dirt and paper. Throughout his childhood, he was hospitalized for extreme lead poisoning, institutionalized multiple times, and placed in special education. In his community, he "was known to be a 'duck' or what one might refer to as a 'chump,'" who was willing to take the blame for things he did not do.

Just three weeks past his 16th birthday, Corey was standing in front of a friend's house when shots were fired, killing a man who had been delivering pizza. Following the shooting, eyewitnesses saw several older men—and not Corey—steal money and pizza from the man who had been shot. When the police interrogated those men, they implicated Corey as the shooter. Upon being arrested and questioned through the night, Corey gave the police a confession. Oblivious to the significance of what he had just said, Corey told the officers he was "ready to go home and lay down." Based chiefly upon that confession and using one of the older men as its sole eyewitness at trial, the State convicted Corey of first-degree murder.

The record on postconviction reveals that Corey's conviction followed from a bald violation of *Brady v. Maryland*, 373 U.S. 83 (1963), that breaches the basic notion that guilt should be decided in a courtroom, not by the prosecution itself. It is undisputed that, at Corey's trial, the State suppressed a series of recorded statements from the night of the murder and shortly thereafter. The prosecution instead provided state-

created "summaries" that it considered to be sufficient for Corey's defense.

This practice, while not uncommon in Louisiana, is, happily, out of step with the way that prosecutors in the rest of this country understand their constitutional obligations under *Brady*. This case demonstrates why. Aside from hamstringing the defense's ability to prepare for trial and examine witnesses using their actual statements to police on the night of the murder, the recorded statements (finally obtained on postconviction) show that the State's summaries omitted, and even altered, numerous statements by the witnesses. The information withheld from the defense is staggering. It included:

1. A witness's statement on the night of the murder that, based on what he saw immediately following the shooting, it "don't make any sense" to conclude that Corey committed the murder. The witness stated that, based on his observations, his own brother and the State's eyewitness at trial "had to" have been the ones who committed the murder. The summary provided to the defense at trial reported just the opposite: that this witness "thought that Corey shot the man.";

2. A witness's statement on the night of the murder that he had seen the State's sole eyewitness with the murder weapon earlier in the day (contradicting the eyewitness's trial testimony that he was an innocent observer who had never held a gun);

3. Statements from multiple witnesses that they had been threatened to change their stories by the older men;

4. Statements by the investigating police officers indicating that, up until they obtained Corey's confession, they believed the older men had conspired to blame Corey for the murder.

The State conceded that it did not turn over the above witness statements.

The court below held that the State's suppression of the statements did not violate *Brady* because they were not material. It relied principally on two grounds. First, the court concluded that a witness's perception that Corey could not have committed the crime and police officers' suspicion that others had conspired against Corey were not material because "theories, opinions or beliefs are not admissible evidence." Pet.App. 12a. As discussed herein, the application of *Brady*'s materiality prong to inadmissible evidence is the subject of a conflict of authority acknowledged by innumerable courts and commentators.

Second, the court declined to take into account the post-trial judicial determination that Corey was an intellectually disabled 16-year-old when assessing the weight that should be afforded to his confession, repeating: "Corey Williams confessed to the murder. He admitted his guilt." Pet.App. 12a. The court refused to even consider the prevalence of false confessions among intellectually disabled persons, stating "I just don't see how it's relevant." Writ-App.

2:213.[1] That reasoning contradicts this Court's direction that the materiality of suppressed evidence "must be evaluated in the context of the entire record," *United States v. Agurs*, 427 U.S. 97, 112 (1976); this Court's own consideration of post-trial evidence in assessing materiality, *e.g.*, *Kyles v. Whitley*, 514 U.S. 419, 448 (1995); and this Court's repeated recognition that the reduced capacity of intellectually disabled persons makes them "more likely to give false confessions," *Hall v. Florida*, 134 S. Ct. 1986, 1988 (2014). The refusal to consider the post-trial determination that Corey is intellectually disabled is in square conflict with one federal court of appeal, and reflects a broader conflict as to whether post-trial facts should be considered in *Brady*'s materiality inquiry.

The resolution of these questions carries special importance in this case. The position of Louisiana prosecutors throughout these proceedings—and the very practice of providing state-created summaries instead of actual witness statements—reflects the State's longstanding position that it is entitled to withhold exculpatory evidence based upon its own pretrial assessment that the evidence would not alter the outcome at trial. *See* Transcript of Oral Argument at 29-32, 37-38, 42-45, 48-53, *Smith v. Cain*, 565 U.S. 73 (2012) (No. 10-8145) (virtually every Justice of this Court expressing dismay at Louisiana's adherence to this position). On this understanding of *Brady*, once the State obtains a confession, it has been able to rationalize the suppression of powerful exculpatory

[1] "Writ-App. X:Y" refers to volume X, page Y of the appendix filed with the Louisiana Supreme Court. "R." refers to the state trial record.

evidence—including witness statements from the night of a murder whose truth would absolve the defendant of guilt and implicate the State's eyewitness at trial. Left unaddressed, this creates an intolerable risk of wrongful conviction that peaks in the case of children and intellectually disabled persons. Corey was both.

The Court should grant certiorari.

STATEMENT OF THE CASE

I. The Murder And Corey's Confession.

On the night of January 4, 1998, Corey, just three weeks past his 16th birthday, was standing in front of a friend's house, where a group of older men gathered, including Chris Moore (who went by the nickname "Rapist") and Nathan Logan.[2] While the group was there, a man named Jarvis Griffin pulled up to deliver a pizza. After making the delivery and returning to his car, Mr. Griffin was shot and killed with .25 caliber gun.

Following the shooting, witnesses saw Corey run to his grandmother's house, by himself, with nothing in his hands. Nathan Logan's brother, Gabriel Logan, ran to the delivery car and robbed the victim of his money and pizzas. Chris Moore, Nathan Logan, Gabriel Logan, and another friend then fled the scene and split the proceeds of the robbery and hid the .25 caliber murder weapon in an alley near the Logans' house.

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[2] The account of the crime and testimony recited herein is taken from the Supreme Court of Louisiana's decision on direct appeal, *State v. Williams*, 831 So. 2d 835 (La. 2002), or undisputed.

When detectives arrived on the scene, the older men implicated Corey as the shooter. Nathan Logan directed the police to the .25 caliber gun that he, his brother, and Chris Moore had hidden in the alley near his house.

The police found Corey at his grandmother's house, hiding under a sheet on the couch. When he was brought to the station for questioning, Corey told the police that he saw Gabriel Logan shoot the pizza man while a man (later identified as Chris "Rapist" Moore) stood next to him. Corey told the police that when the men asked him to help rob the pizza man, he ran home. Corey reported that one of the other men called him on the phone that night and said he would kill Corey if he told anyone what happened. "They trying to get me to go to jail for they charge," he said. Writ-App. 2:248-49.

At 8:30 a.m., after being questioned through the night, Corey changed his story and told the officers that he was the person who shot the pizza man. His confession was brief, devoid of corroborating details. Details that Corey recounted during his confession, such as that Gabriel Logan beat him up after the shooting, were confirmed to be inconsistent with reality by the investigating officers. When the police asked Corey how much money he got from the crime, Corey responded: "was there money involved with this?" Writ-App. 2:256; R. 2459-60. Having just assumed responsibility for a homicide, Corey told the officers, "I'm tired. I'm ready to go home and lay down." Writ-App. 2:263.

There was no physical evidence linking Corey to the crime. The only fingerprints on the gun belonged to Nathan Logan. The victim's blood was found on

Gabriel Logan's clothing. And the victim's money and pizzas were found in a dumpster, also near the Logans' house.

Following Corey's confession, police located and conducted an unrecorded interview with Chris Moore. Mr. Moore denied any involvement in the homicide, and claimed that he observed Corey shoot the victim. Mr. Moore would serve as the State's sole eyewitness to the shooting.

II. The State's Case At Trial.

The State charged Corey with first-degree murder.

Prior to trial, defense counsel made numerous requests to obtain all witness interviews recorded by the State. The State refused, asserting that providing police reports with "summaries" of interviews satisfied its obligations under *Brady*. The State represented that "[t]he content of those statements are very clearly included in the Police reports provided to Defense Counsel." Writ-App. 2:266-67.

The State's case against Corey was based primarily on Corey's confession and the eyewitness testimony of Chris "Rapist" Moore. Mr. Moore claimed that he was innocently standing out on the street when he saw Corey shoot Jarvis Griffin. Mr. Moore denied that he participated in either the shooting or the robbery, explaining that he "[d]idn't have a gun" and "w[asn't] carrying a gun back then." Indeed, he denied that he had ever carried "any type of gun, [or] firearm." R. 2592-93.[3]

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[3] The State supplemented Mr. Moore's testimony with the testimony of Nathan Logan and Calandria Iverson. Mr. Logan testified that, after the shooting, he went with his brother,

Defense counsel argued to the jury that Corey had falsely confessed and the crime had been committed by the other men, including Mr. Moore. *See* R. 2771, 2774 ("Do you think that we saw the real murderer on the witness stand at this trial? . . . Could Chris Moore be the real murderer in this case? . . . Is it conceivable that Chris Moore, Nathan Logan, and maybe even Gabriel Logan got together and tried to pin the murder on [Corey Williams]?"). The State mocked the defense as "the biggest set of circumstances concerning a conspiracy since John Kennedy was killed in 1963." R. 2785.

The jury found Corey guilty of first-degree murder and sentenced him to death.

III. The Post-Trial Judicial Finding That Petitioner Is Intellectually Disabled.

While Corey's case was on direct appeal, this Court recognized in *Atkins v. Virginia*, 536 U.S. 304 (2002), that the execution of intellectually disabled persons constitutes cruel and unusual punishment. The Supreme Court of Louisiana thereafter remanded for a determination of whether Corey was intellectually disabled. *See State v. Williams*, 831 So. 2d 835, 861 (La. 2002).

Gabriel, and their friend Patrick Anthony to Corey's house, retrieved the murder weapon, and hid it near the Logan's house. R. 2622-23. Ms. Iverson testified that when the pizza man arrived at her house, she saw Gabriel Logan hand Corey a gun, but that the gun did not look like the same gun that police later identified as the murder weapon. R. 2553. Ms. Iverson testified that when she heard shots fired, she ran into the street and saw Gabriel Logan; she did not see Corey. R. 2542, 2544.

Upon reviewing a plethora of school and institutional records, and hearing testimony from numerous medical experts, the district court found the evidence "consistent and compelling" that Corey had an IQ between 65 and 69. Pet.App. 27a.

The court also found severe adaptive deficits. It credited testing that placed Corey in "less than the 1st percentile." Pet.App. 29a. Corey has a consistent drool, symptomatic of severe intellectual disability. Pet.App. 30a n.6. He "never fully mastered toileting" and, into his teenage years, "frequently urinated on himself." Pet.App. 30a-31a & n.6. Corey "sucked his thumb until incarcerated." Pet.App. 31a. Corey "regularly ate dirt, paper, [and] lead paint chips." *Id*. The court credited an expert who described Corey as having suffered "the most extreme case of lead poisoning that I have ever seen." Pet.App. 33a.

The court specifically credited evidence that Corey's intellectual disability had caused him to take the blame for the misconduct of others. The court described a "credible and consistent history from a close family member" who explained that Corey was known to be "a 'duck' or what one might refer to as a 'chump.'" Pet.App. 31a. The witness stated that Corey had "'taken the rap' for him on a prior charge." *Id*. It was also well known in the community that Corey was "dumb" and would take the blame for others. *Id*. Corey was known to act as "'a puppet' that would uncritically do what others said." *Id*.

IV. Post-Conviction Proceedings.

A. The Suppressed Witness Statements.

On postconviction, counsel obtained the recorded witness interviews the prosecution withheld at trial,

which contained numerous exculpatory statements that had been omitted (and even altered) in the summaries provided to the defense at trial. The omitted information included statements from witnesses on the night of the murder that Corey could not have committed the crime based upon observations immediately after the shooting; that the State's sole eyewitness at trial had been seen with the murder weapon before the shooting; that the older men had threatened several people to change their stories; and that, prior to obtaining Corey's confession, the police had suspected that the older men were conspiring to blame Corey.

1. Witness's opinion that, based on what he saw immediately following the shooting, it "don't make any sense" to say that Corey committed the murder and that it "had to" have been committed by the witness's brother or the State's eyewitness.

In one of the suppressed recordings, police interviewed Nathan Logan on the night of the murder. In that recording, Nathan Logan is asked about what he witnessed earlier that night. He states that he had just come out of his house at the time of the shooting and that, given what he saw, "one of [Corey or Nathan Logan's brother, Gabriel] had to shoot the man." Writ-App. 1:79. Upon further describing what he saw, Nathan Logan tells the police that given the timing of when he had seen Corey running away, "it don't make any sense" to say that Corey committed the shooting. Nathan Logan told police that based upon his observations, his brother Gabriel "had to do it" and that Chris Moore ("Rapist") must have "set it up":

RG: How come Cory didn't come and split the money?

NL: See, Cory—see, that's what I'm saying. Cory ran. He ran slap off, straight away. Straight to his house.

TE: Do you see how that don't make any sense if he did the shooting?

NL: Yes, sir. I seen—

TE: Who do you think did it?

NL: See, to me, Gabriel, he had to do it. He had to.

. . .

NL: Rapist was outside. I know Rapist and Cory was together. That's why I'm saying **Rapist had to been set it up.**

…

TE: Which one do you think shot him?

NL: Up to now? **I'm thinking Gabriel shot him**. Now that—now that we just (inaudible) all together, 'cause see, we was in the house. We just heard the shots. And I came out. I seen him running.

TE: **You think Gabriel shot him?**

NL: **Yes, sir.**

Writ-App. 1:79, 81, 83-84 (emphasis added).

The prosecution never disclosed these statements. In fact, the summary provided to the defense at trial falsely reported that Nathan Logan had told the police that Corey committed the murder: "Nathan thought that Cory shot the man but he was not sure which one of them shot him." Writ-App. 2:300. The prosecution thus suppressed evidence from a witness to the immediate aftermath of the shooting, who did not believe that Corey could have committed this crime based upon what he saw and whose observations caused him to believe that someone else (the witness's own brother or the State's eyewitness) had planned and committed it.

2. Witness's statement that he saw the State's eyewitness with the murder weapon before the murder.

In another suppressed statement from the night of the murder, Patrick Anthony, a friend of Nathan and Gabriel Logan, told detectives that he had seen Nathan Logan give Chris Moore ("Rapist") the .25 caliber gun that was used in the murder, before the shooting occurred. In the recorded interview, detectives asked Mr. Anthony, "[w]hy in the world would Corey do the shooting and this guy Rapist show up with Gabriel and they split the money?" Writ-App. 1:65. Mr. Anthony responded, that Chris Moore "had the gun first." *Id.* When Mr. Anthony later surmised that Chris Moore must have given the gun to Corey, the detectives asked, "And how do you know this?" *Id.* Mr. Anthony explained that after the shooting, he helped Rapist, Gabriel, and Nathan Logan hide that same gun in an alley near the Logans' house. *Id.* In doing so, he specifically recognized the .25 caliber gun as the same gun that Nathan Logan had given to

Chris Moore earlier in the night. "[Nathan] gave it to Rapist. I seen it when he gave it to Rapist," Mr. Anthony explained. *Id.*

The State never disclosed this statement, which was omitted from its purported summaries, and Patrick Anthony did not testify at trial.[4] The jury thus never heard that, on the night of the murder, the State's sole eyewitness was the last person Mr. Anthony saw with the murder weapon before the murder occurred. In addition to implicating Mr. Moore, the statements contradicted his express testimony at trial that he had never held a gun:

> Q. Did you shoot the gun that killed the Pizza Hut man?
>
> A. No, sir. Didn't have a gun.
>
> Q. You weren't carrying a gun back then?
>
> A. No, sir.
>
> . . .
>
> **Q. From 1995 up to the date of this event, did you ever have any type of . . . gun or firearm in your possession?**
>
> **A. No, sir.**

R. 2592.

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[4] On postconviction, Mr. Anthony stated that that he reached out to state agents in advance of trial, who told him that "someone confessed, so [he] didn't need to testify." Writ-App. 1:53. At trial, the prosecution stated that it could not locate Mr. Anthony, although he was actually incarcerated at the time. *Id.* at 47.

3. Statements of witnesses who admitted to falsely placing the blame on Corey and that the older men had threatened people to change their stories.

In one of the suppressed recordings, a witness named Derrick White initially told police that he had seen Corey shoot the pizza man. When the detectives questioned Mr. White's account and asked if this story was "going to come back and bite [him] later," Mr. White admitted that he had lied. Writ-App. 1:120. When asked whether he had "any reason to be scared of" the men who had implicated Corey in the murder, Mr. White said that the men were "bad," "crazy," and had in the past threatened to kill people. Writ-App. 1:119, 121 ("They tell you, like, 'I'll kill you.'"). Two other witnesses similarly told the police that the Logans had threatened them to change their stories.[5]

The State did not disclose these statements to the defense.

4. Statements of investigating officers indicating that, up until they obtained Corey's confession, they suspected that the older men were trying to blame him.

In the suppressed interviews from the night of the murder, the investigating officers several times

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[5] Writ-App. 1:109 (witness stating that Gabriel Logan called her to say, "don't tell them I had the gun," called other people after the murder "trying to tell everybody and everybody done changed the story," and communicated a threat that his "boys talking about getting her and doing something"); Writ-App. 1:136 (witness stating that one of the Logans called him immediately after the murder and repeatedly asked him to "switch [his] story," but he refused).

expressed suspicion that Chris Moore and the Logans had conspired to blame Corey for the murder. For instance, after Patrick Anthony told police that he had helped Mr. Moore and the Logans hide the gun, but nonetheless believed Corey committed the murder, the police stated, "It sounds like to me y'all all decided y'all going to blame it on Corey. . . That's exactly what I'm getting." Writ-App. 1:68. The police referenced a statement by Mr. Moore "that everybody was going to get together and say that Corey did the shooting." *Id.* at 69.

Up until the time the police obtained a confession from Corey, they repeated such suspicions:

- "Now, what does not make sense to me at all and what may end up causing you some problems is this part about Corey."

- "You wouldn't tell me that about Corey when Gabriel did it, would you?"

- "Why would you want to say that [Corey did it] if you weren't sure? Initially you were sure, now you're not sure. Now you're also telling us that you're afraid of Gabriel and Nathan."

- "So you're not trying to stick this gun thing on Corey for no reason, are you?"

Writ-App. 1:65, 119, 120-21. None of these statements were disclosed.

B. The Louisiana Courts' Denial Of Petitioner's *Brady* Claim.

Postconviction counsel argued that the prosecution's suppression of the above witness statements

violated *Brady* and requested, at the very least, an evidentiary hearing to present evidence and witness testimony. Writ-App. 2:176, 214-15. Relying upon this Court's recognition in *Atkins* that a person who is intellectually disabled carries a heightened risk of "unwittingly confess[ing] to a crime that he did not commit," and on the post-trial judicial finding that Corey's intellectual disability manifested a willingness to take the blame for others' wrongdoing, counsel urged the court that it must take into account the fact that Corey was not just a child, but an intellectually disabled one, at the time he confessed. Writ-App. 2:182-84. Counsel sought to introduce studies on the prevalence of false confessions among intellectually disabled persons. *Id.* at 182-84, 213-14.

The State conceded that none of these witness statements were provided to the defense before trial, despite the defense's requests. Writ-App. 1:147. The State defended its decision not to produce evidence at trial on the basis that the prosecution may withhold witness statements unless it determines that the statements "are favorable to defendant and are material" to the defense. *Id.* (emphasis in original). The State argued that evidence cannot be material within the meaning of *Brady* if the State "would have soundly objected" to its admissibility at trial. Writ-App. 1:152.

With respect to every statement it had suppressed, the State pointed to Corey's confession as the most important fact defeating materiality. *E.g.*, Writ-App. 1:152-53 (witness's statement that Corey could not be shooter not material because confession was "overwhelmingly indicative of [Defendant's] guilt" and it is "implausible to suggest that the jury would have given

greater weight [to that opinion] than it did Defendant's confession"); Writ-App. 1:150 (witness's observation that State's eyewitness had murder weapon not material because "most importantly, Defendant confessed to the murder"); Writ-App. 1:154 (officers' statements that men conspired to blame Corey not material because "Defendant confessed to committing the murder").

The district court held that the State's suppression of the witness statements did not violate *Brady*. The court declined to take into account the post-trial finding that Corey is intellectually disabled in evaluating the weight that should be afforded to his confession under *Brady*'s materiality inquiry. At an oral hearing, the court refused to even consider studies regarding the incidence of false confessions among intellectually disabled persons, explaining: "I don't find they're really relevant to the issues at hand, particularly the *Brady* claims. I just don't. I just don't see how it's relevant." Writ-App. 2:213.

In its written opinion, the court reviewed the materiality of each suppressed statement individually. According to the court, Nathan Logan's statements that it "don't make sense" to say that Corey committed the murder and that his brother "had to" have committed the shooting with Chris Moore, were not material because "Nathan Logan's speculation (not even an opinion) as to who he 'thought' committed the murder were [sic] irrelevant and not admissible." Pet.App. 11a. The court concluded that the suppressed statements of police officers indicating suspicion that the other men had conspired to blame Corey was not material for the same reason: because "police

statements, theories, opinions or beliefs are not admissible evidence." Pet.App. 12a.

Relying heavily on Corey's confession, the court concluded that this evidence would not have "changed the outcome of Corey Williams' jury trial." *Id*. The court repeated: "Corey Williams confessed to the murder. He admitted his guilt." *Id.*

Although the State itself conceded that the suppressed statement from Mr. Anthony put the gun in Chris Moore's hands "earlier in the day" and before the shooting (in conflict with his eyewitness testimony at trial), Writ-App. 1:149-50 (emphasis in original), the district court concluded that the statement was not "material or exculpatory" because the statement provided "no indication . . . that [Chris Moore] had the gun on the day of the murder." Pet.App. 10a-11a. The court also speculated that "it is likely that Mr. Moore would have denied Mr. Anthony's allegations" had he been confronted with them at trial. *Id*.

The district court did not address the suppressed statements from witnesses who admitted to falsely blaming Corey and who reported threats from the older men until the Court of Appeal for the Second Circuit ordered it to do so. Pet.App. 3a. The district court then issued a supplemental opinion that the threats described in the statements were too vague and that Petitioner failed to demonstrate that any of the witnesses actually "altered their testimony in light of receiving the alleged threats." Pet.App. 19a-20a.

In a 4-2 vote, the Supreme Court of Louisiana denied Petitioner's writ application, without opinion. The Chief Justice and Justice Weimer would have

granted the writ to allow Petitioner an evidentiary hearing on his claim. Pet.App. 1a.

REASONS FOR GRANTING THE PETITION

This case satisfies all of this Court's criteria for certiorari. The questions presented are squarely presented on this record, are the subject of a conflict among federal circuits and state high courts, and were resolved below in a manner that conflicts with this Court's precedent. As set forth below, the Court's review is urgently needed.

I. The Court Should Grant Certiorari To Resolve Whether Inadmissible Evidence Can Be Material Under *Brady*.

The court below twice concluded that the inadmissibility of evidence was dispositive of its materiality. First, inadmissibility was the court's exclusive rationale for concluding it was immaterial to suppress a witness statement that, based on what he saw, it "don't make any sense" to say that Corey committed the murder and that it "had to" have been the witness's brother or the State's eyewitness who did it. Pet.App. 11a. Second, the court concluded that the statements of police officers expressing suspicion that the State's eyewitness and the Logans had conspired to blame him were inadmissible because "police statements, theories, opinions or beliefs are not admissible evidence." Pet.App. 12a.

The application of *Brady*'s materiality inquiry to inadmissible evidence is subject to a well-developed conflict in the lower courts. Dozens of courts have acknowledged the conflict. *E.g.*, *Dennis v. Sec'y, Pennsylvania Dep't of Corr.*, 834 F.3d 263, 310 (3d Cir. 2016) (en banc) (setting forth split); *United States v.*

Morales, 746 F.3d 310, 314 (7th Cir. 2014) (setting forth the "difference of opinion among the circuits"); *Ellsworth v. Warden*, 333 F.3d 1, 5 (1st Cir. 2003) (en banc) ("The circuits are split on whether a petitioner can have a viable *Brady* claim if the withheld evidence itself is inadmissible."); *Paradis v. Arave*, 240 F.3d 1169, 1178 (9th Cir. 2001) ("There is no uniform approach in the federal courts to the treatment of inadmissible evidence as the basis for *Brady* claims."); *Felder v. Johnson*, 180 F.3d 206, 212 & n.7 (5th Cir. 1999) (observing that "[h]ow to deal with *Brady* claims about inadmissible evidence [is] a matter of some confusion in federal courts," summarizing split, and adhering to circuit's unique approach).

Innumerable commentators, including several current and former government attorneys, have acknowledged it too. *E.g.*, Brian R. Means, POSTCONVICTION REMEDIES § 36:17 & nn.43-52 (2017) (setting forth split); Bennett L. Gershman, PROSECUTORIAL MISCONDUCT § 5:8 & nn.6-8 (2d ed. 2017) (same); Blaise Niosi, *Architects of Justice: The Prosecutor's Role and Resolving Whether Inadmissible Evidence Is Material Under the Brady Rule*, 83 Fordham L. Rev. 1499, 1502, 1520-27 (2014) (same); Federal Judicial Center, BENCHBOOK FOR U.S. DISTRICT JUDGES § 5.06 n.5 (2013) (same); Abigail B. Scott, *No Secrets Allowed: A Prosecutor's Obligation to Disclose Inadmissible Evidence*, 61 Cath. U. L. Rev. 867, 869, 877-78 (2012) (same); Ellen Yaroshefsky, *Prosecutorial Disclosure Obligations*, 62 Hastings L.J. 1321, 1331-32 (2011) (same); Gregory S. Seador, *A Search for the Truth or A Game of Strategy? The Circuit Split over the Prosecution's Obligation to Disclose Inadmissible*

Exculpatory Information to the Accused, 51 Syracuse L. Rev. 139, 140 (2001) (same).

As these authorities have recognized, the conflict stems from competing interpretations of this Court's decisions in *United States v. Bagley*, 473 U.S. 667 (1985), and *Wood v. Bartholomew*, 516 U.S. 1 (1995). In *Bagley*, the Court explained that the materiality standard called for by *Brady* is the same as the prejudice inquiry for ineffective assistance claims under *Strickland v. Washington*, 466 U.S. 668 (1984): Whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. In *Wood*, the Court granted certiorari to address whether the failure to disclose evidence that is inadmissible *and would not have led to admissible evidence* could nonetheless be material if it may have affected the defense's pre-trial preparation.[6] The Court did not ultimately resolve that question. In a per curiam opinion, the Court acknowledged that the polygraphs at issue "were inadmissible under state law," but simply applied *Bagley* to hold that the evidence was not "'reasonably likely'" to have affected the outcome. *Wood*, 516 U.S. at 8.

Because the authorities above set forth the conflict among the lower courts in great detail, Petitioner provides only a brief account:

1. A minority of lower courts have adopted the restrictive approach applied by the court below—*i.e.*, inadmissible evidence is not material. The Fourth and Seventh Circuits have adopted this position. *Morales*,

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[6] Petition for Certiorari at i, *Wood v. Bartholomew*, 516 U.S. 1 (1995) (No. 94-1419), 1995 WL 17013873 (emphasis added).

746 F.3d at 314 (7th Cir.) ("In a number of decisions, we have understood the Court to be saying that suppressed evidence must be more than material to guilt or punishment—it must actually be admissible in order to trigger *Brady* analysis."); *Hoke v. Netherland*, 92 F.3d 1350, 1356 n.3 (4th Cir. 1996) (inadmissible statements are immaterial "as a matter of law").[7] The Texas Court of Criminal Appeals and Supreme Court of Louisiana have also adopted this position.[8]

2. The First, Second, Third, Sixth, Tenth, and Eleventh Circuits have each held that materiality can encompass inadmissible evidence. These courts hold that suppressed evidence is material "if it would have

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[7] This minority position of the Fourth and Seventh Circuits' is well acknowledged. *See Dennis*, 834 F.3d at 310; *United States v. Fuller*, 2015 WL 1288328, at *3 (E.D. Va. Mar. 20, 2015) ("In the Fourth Circuit, the Defendant must demonstrate that potentially exculpatory or impeaching evidence would have likely been admissible at trial."). The Eighth Circuit has similarly held that inadmissible evidence is immaterial because it "is not 'evidence' at all," but left open the possibility that it could be material if the link is based on more than "mere speculation." *Madsen v. Dormire*, 137 F.3d 602, 604 (8th Cir. 1998).

[8]. *E.g.*, *Pena v. State*, 353 S.W.3d 797, 809 (Tex. Crim. App. 2011) ("[W]e require that the evidence central to the *Brady* claim be admissible in court."); *Ex parte Kimes*, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993) ("A prosecutor does not have a duty to turn over evidence that would be inadmissible at trial."); *State v. Humphrey*, 445 So. 2d 1155, 1158, 1164 (La. 1984) (evidence immaterial because it was "inadmissible at criminal trials and therefore could not have directly affected the jury's verdict"); *State v. Johnson*, 333 So. 2d 223, 227 (La. 1976) (report "is inadmissible [and] [t]hus the report is not evidence which *Brady* refers to as 'material'").

been admissible at trial or would have led to admissible evidence." *DeCologero v. United States*, 802 F.3d 155, 162 (1st Cir. 2015); *Ellsworth*, 333 F.3d at 5 (1st Cir.) (en banc); *United States v. Rodriguez*, 496 F.3d 221, 226 n.4 (2d Cir. 2007); *Dennis*, 834 F.3d at 310 (3d Cir.) (en banc); *Barton v. Warden*, 786 F.3d 450, 465 (6th Cir. 2015); *Banks v. Workman*, 692 F.3d 1133, 1142 (10th Cir. 2012); *Wright v. Hopper*, 169 F.3d 695, 703 & n.1 (11th Cir. 1999). Numerous state high courts have adopted this rule.[9]

3. The Fifth Circuit has adopted "a slightly broader approach," *Scott*, *supra*, at 877-78, which asks simply "whether the disclosure of the evidence would have created a reasonable probability that the result of the proceeding would have been different." *Felder*, 180 F.3d at 212 & n.7 (acknowledging the other rules and adhering to this more general inquiry). The courts of last resort of Montana, New Hampshire, and Virginia have similarly refused to restrict the materiality inquiry, holding that "[t]he focus of the inquiry should not be on whether the evidence is admissible or inadmissible, but rather whether the evidence . . . could have affected the outcome of the proceedings." *State v. Weisbarth*, 378 P.3d 1195, 1201 (Mont. 2016); *State v. Laurie*, 653 A.2d 549, 553-54 (N.H. 1995); *Workman v. Commonwealth*, 636 S.E.2d

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[9] *E.g.*, *People v. Bueno*, 409 P.3d 320, 329 n.12 (Colo. 2018) ("[U]ndisclosed evidence need not be admissible to satisfy *Brady*; it need merely lead to the possible discovery of other evidence."); *Turner v. United States*, 116 A.3d 894, 918 (D.C. 2015), *aff'd on other grounds* 137 S. Ct. 1885 (2017); *Stokes v. State*, 402 A.2d 376, 381 (Del. 1979); *Davis v. State*, 136 So. 3d 1169, 1185 (Fla. 2014); *Jones v. Medlin*, 807 S.E.2d 849, 854 (Ga. 2017); *People v. McCray*, 12 N.E.3d 1079, 1082 (N.Y. 2014); *State v. Mullen*, 259 P.3d 158, 167 (Wash. 2011).

368, 376 (Va. 2006) (adopting the Fifth Circuit's approach). These courts have "decline[d] to develop a rule that would foreclose the development of defense strategy and investigation or to presuppose what information the defense may have developed as a result of properly disclosed evidence." *Weisbarth*, 378 P.3d at 1201. It is, instead, "sufficient . . . to find that the evidence is material to 'the preparation *or* presentation of the defendant's case.'" *Laurie*, 653 A.2d at 553 (quoting *Bagley*, 473 U.S. at 683).[10]

The conflict above "has substantial repercussions in practice." *Niosi*, *supra*, at 1499. In particular, it means that prosecutors across the country have different understandings of their constitutional obligations to disclose exculpatory evidence. *Id.* There is no basis for allowing this disparity in constitutional interpretation and prosecutorial practice to persist—all sides of the argument have been aired in the myriad opinions and other authorities.

The Court should take this opportunity to resolve it. Inadmissibility was twice the dispositive rationale below for rejecting the materiality of suppressed witness statements. Moreover, this was evidence that went to the heart of the guilt or innocence of this

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[10] Other circuits and state high courts have recognized conflicting rules within their own case law. *E.g.*, *Paradis v. Arave*, 240 F.3d 1169, 1179 (9th Cir. 2001) (observing that "our Circuit's law on this issue is not entirely consistent" and citing conflicting rules); *compare also, e.g.*, *Commonwealth v. Johnson*, 174 A.3d 1050, 1056 (Pa. 2017) ("The substantive admissibility of impeachment evidence, *vel non*, is not dispositive of a *Brady* claim.") *with Commonwealth v. Lambert*, 884 A.2d 848, 857 (Pa. 2005) ("[I]nadmissible evidence cannot be the basis for a *Brady* violation.").

intellectually disabled 16-year-old child—including a witness's statement that based on what he saw, it "don't make any sense" to conclude that Corey committed this crime. Even if the recorded statements themselves would have been inadmissible, they would have led any competent defense counsel to investigate why Nathan Logan concluded on the night of the murder his brother and Chris Moore "had to" have set up and committed this crime, and that Corey could not have. Moreover, any competent counsel would have gotten the statements in front of the jury in a number of ways. It would have been used to impeach Nathan Logan himself, who testified for the State at trial and, without mentioning his opinion, claimed that he retrieved the murder weapon from Corey's house on the night of the murder to hide it, *see supra* at 9 n.3. It also would have been used to impeach the lead investigators (who also testified at trial) regarding their creation of the police summaries that falsely recounted, "Nathan thought that Cory shot the man." Writ-App. 2:300. The State's suppression thus prevented the jury from hearing a night-of-the-murder statement that Corey could not have committed the crime, that others (including the State's sole eyewitness) did commit it, and that the lead investigators misreported statement as implicating Corey. The latter could have further been used (with the several suppressed statements of the officers themselves) "to throw the reliability of the investigation into doubt and to sully the credibility of" the investigation. *Kyles*, 514 U.S. at 447.

Failure to resolve this question now would only compound the problem, leading to unnecessary litigation as to whether the decision below was an

unreasonable application of this Court's precedent under AEDPA—a question that has only further divided the circuits. *Compare Breedlove v. Moore*, 279 F.3d 952, 964 (11th Cir. 2002) (treating admissibility as dispositive is not unreasonable under AEDPA) *with Dennis*, 834 F.3d at 310 (conclusion that evidence must be admissible under *Brady* is unreasonable under AEDPA).

The Court should grant certiorari and resolve this acknowledged conflict.

II. The Court Should Resolve Whether, In Evaluating The Materiality Of Suppressed Evidence Against A Confession, Courts Should Take Into Account A Post-Trial Judicial Finding That The Defendant Is Intellectually Disabled.

As described above, with respect to every statement it suppressed, the State argued that Corey's confession was "overwhelmingly indicative of [his] guilt." Writ-App. 1:152-53; *id*. at 1:150, 154. Post-conviction counsel urged the district court that its materiality analysis must take into account the judicial determination that Corey was an intellectually disabled child. As set forth above, that determination included findings that Corey had an IQ between 65 and 69; drooled, ate dirt, paper, and lead chips; suffered from one of the most extreme cases of lead poisoning; and urinated himself into his teenage years. *See supra* at 10. It included specific findings that Corey had a history of, and was known within the community, to be a "duck," "chump" and "puppet" that would take the blame for others. *Id*. However, the court below refused to consider the prevalence of false confessions by intellectually disabled persons, finding

that it was not "really relevant to the issues at hand, particularly the *Brady* claims." In rejecting the materiality of suppressed statements, the court repeated: "Corey Williams confessed to the murder. He admitted his guilt." Pet.App. 12a.

The failure of the court below to consider the post-trial adjudication of Petitioner's intellectual disability flatly contradicts this Court's precedent. This Court has said that "[t]he proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt." *Agurs*, 427 U.S. at 112; *Kyles*, 514 U.S. at 435 (evidence is material if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict"). "It necessarily follows," the Court has said, that the materiality of suppressed evidence "must be evaluated in the context of the entire record." *Agurs*, 427 U.S. at 112. Applying these standards, this Court has relied upon post-trial events in assessing materiality under *Brady*. *See Kyles*, 514 U.S. at 448 (admissions by prosecutor and detective elicited post-trial "confirmed" materiality); *Wood*, 516 U.S. at 8 (results of cross-examination on postconviction using withheld evidence "the best possible proof" of lack of materiality).

The general question of whether courts should consider facts discovered post-trial under *Brady* is the subject of a conflict among the circuits and state high courts. Two circuits and the Supreme Court of Delaware hold that such facts are not relevant, reasoning that "[n]ew, non-*Brady*, evidence . . . is *not* enlightening as to the probability that a petitioner would have—at trial—been acquitted based on the evidence that was presented to the jury and on the

evidence that was withheld from the defense, which is the *Brady* inquiry." *Apanovitch v. Bobby*, 648 F.3d 434, 437-38 (6th Cir. 2011) (refusing to consider post-trial DNA evidence because it was "not relevant" to the defendant's *Brady* claims); *Turner v. United States*, 116 A.3d 894, 917 (D.C. 2015) (post-trial evidence has "no bearing on the question of the materiality" because *Brady* does not allow consideration of whether "evidence not kept from the defendant might lead to a different result"); *Wright v. State*, 91 A.3d 972, 990 n.61 (Del. 2014) (post-trial recantation by witness "is not part of th[e] *Brady* analysis" because it was not "available at trial or suppressed by the State").

In conflict, two circuits and the Supreme Court of Missouri hold that under *Brady*'s materiality analysis, "courts should consider the effect of all of the suppressed evidence *along with the totality of the other evidence uncovered following* the prior trial." *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330 (Mo. 2013) (emphasis added); *see also State ex rel. Griffin v. Denney*, 347 S.W.3d 73, 77 (Mo. 2011) ("When reviewing a habeas petition premised on an alleged *Brady* violation, this Court considers all available evidence uncovered following the trial."); *Leka v. Portuondo*, 257 F.3d 89, 97 (2d Cir. 2001) (holding that the court's "evaluation of materiality considers," among other things, " the recantations made by [the prosecution's] eyewitnesses" following trial); *Williams v. Ryan*, 623 F.3d 1258, 1265-66, 1276, 1279 (9th Cir. 2010) (relying upon post-trial declarations and rejecting dissent's view that "information that comes to light years after trial and sentencing

cannot alter the materiality of potential *Brady* information").

This conflict was previously raised in the certiorari petition filed in *Turner v. United States*, No. 15-1503. The Court granted certiorari in that case and, upon consolidating it with *Overton v. United States*, No. 15-1504, adopted the *Overton* petitioner's more general question of "[w]hether the petitioners' convictions should be set aside under *Brady*."[11] The Court ultimately held the evidence at issue immaterial without resolving the conflict above. *See Turner v. United States*,137 S. Ct. 1885, 1894-95 (2017).

Three features of this case make it an especially important opportunity to intervene. First, it presents an unusually clean record for the Court to resolve the conflict. The post-trial fact in this case is not some evidence discovered following trial, whose credibility might be questioned. It was a judicial determination. The fact of Petitioner's intellectual disability is final and undisputed.

Second, this Court has already recognized the significance of this particular fact: that the risk of false confession is heightened in the case of intellectually disabled persons. *Hall*, 134 S. Ct. at 1988 (recognizing that intellectually disabled people are "more likely to give false confessions"); *Atkins*, 536 U.S. at 320 (recognizing "enhance[d]" risk of false confessions).

Third, the determination of intellectual disability has special significance in the split above that causes

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[11] https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/15-1503.html.

a pointed conflict with the decision below. At least one circuit that holds post-trial facts may not, as a general matter, be considered has made an exception in the case of a post-trial finding that the defendant is intellectually disabled. As set forth above, the Sixth Circuit has been clear that "[n]ew, non-*Brady*, evidence . . . is *not* enlightening" to materiality. *Apanovitch*, 648 F.3d at 437. However, in cases on all fours with this one—involving a state's failure to turn over witness statements, a state's reliance upon the defendant's confession at trial, and a post-trial adjudication of intellectual disability—the Sixth Circuit has held that the defendant's intellectual disability should be taken into account.

In *Gumm v. Mitchell*, 775 F.3d 345, 359 (6th Cir. 2014), the court considered whether the state's failure to turn over "'tips, interview notes and other evidence concerning [a] suspect'" violated *Brady*. Of the State's evidence at trial, "most importantly, the state relied on Petitioner's own confession to the murder," which was "'strong evidence of [his] guilt.'" *Id.* at 371. On postconviction, the defendant "was found to be [intellectually disabled] by the Ohio state courts." *Id.* at 372; *see also id.* at 358. Relying upon the postconviction findings as to the defendant's intellectual disability, on this Court's precedent recognizing "the heightened possibility of false confessions from [intellectually disabled] individuals," and on the very studies that the court below in this case rejected as irrelevant, the Sixth Circuit concluded that the defendant's confession was "far from overwhelming evidence of his guilt." *Id.* at 371-

73.[12] The Sixth Circuit again held that the significance of a confession should be discounted by a post-trial adjudication of intellectual disability in its *Brady* materiality analysis in *Bies v. Sheldon*, 775 F.3d 386, 388-89, 394, 402 (6th Cir. 2014) (relying upon post-trial finding of intellectual disability, this Court's precedent, and studies rejected by the court here to hold that suppressed evidence was material notwithstanding defendant's confession).

The Court should intervene to resolve this square conflict and the broader conflict above.

III. This Court Must Correct The Pretrial Conviction Of Defendants By Louisiana Prosecutors.

Petitioner urges this Court to grant certiorari in this case because it presents a critical opportunity to correct an interpretation of *Brady* by Louisiana prosecutors that threatens the basic notion that guilt should be decided in a courtroom, not by the prosecution itself, and creates an unacceptable risk that convictions will be obtained upon false confessions—a risk most salient in the case of children and intellectually disabled persons.

Throughout these proceedings, Louisiana prosecutors have taken the position that, under this Court's precedent, it is perfectly permissible to withhold favorable witness statements based upon their own pretrial determination that the omitted statements

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[12] Further demonstrating the split described in Section I, the court in *Gumm* held that the state court not only erred, but *was unreasonable under AEDPA* to conclude that evidence was immaterial simply because it was inadmissible. 775 F.3d at 359, 368-69.

would not change the result at trial. Writ-App. 1:147 ("The State concedes the aforementioned witness statements were not tendered to defense counsel during discovery. However, as the Court is aware, statements made by witnesses are generally not discoverable unless they are favorable to the defendant and are material." (emphasis in original)); Writ-App. 2:399 (arguing that *Brady* requires the State "only to disclose evidence favorable to the accused that, if suppressed, would deprive him of a fair trial").

The last time Louisiana prosecutors advanced this interpretation of *Brady* before this Court several Justices expressed substantial concern. In *Smith v. Cain*, the State similarly suppressed a witness statement from the night of the murder, which indicated that its sole eyewitness had initially been unable to identify any perpetrator. 565 U.S. 73, 74-75 (2012). At oral argument, the State took the same position it has asserted throughout these proceedings: that favorable statements of witnesses need only be disclosed "if the prosecutor makes a determination that they would materially affect the outcome."[13] Several Justices of this Court expressed the dismay at that proposition, including:

- "Of course it should have been turned over. . . surely it should have been turned over."[14]

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[13] Transcript of Oral Argument at 37-38, *Smith v. Cain*, 565 U.S. 73 (2012) (No. 10-8145); *see also id.* at 29 (arguing that "favorable evidence which is not material need not be turned over to the defense").

[14] *Id.* at 51-52 (Scalia, J.).

- "You don't determine your *Brady* obligation by the test for whether there's a *Brady* violation. You're transposing two very different things."[15]
- "It is disconcerting to me that when I asked you the question directly should this material have been turned over, you gave an absolute no."[16]
- "[D]id your office ever consider confessing error in this case?"[17]

In an 8-1 decision, this Court held that the "undisclosed statements were plainly material," 565 U.S. at 76, without addressing the prosecution's position that it was entitled to withhold evidence on its pretrial belief that the evidence would not ultimately lead to acquittal.

The record in this case epitomizes the dangers of allowing prosecutors to continue to suppress exculpatory evidence based upon their pretrial assessment of what would be "material" to the defense. With a confession in hand, the prosecution has maintained throughout these proceedings that it was permitted to provide the defense with state-created summaries of witness statements omitting plainly exculpatory evidence, including observations that the defendant could not have committed the murder and opinions that other individuals committed it, including the State's sole eyewitness

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[15] *Id.* at 48-49 (Kennedy, J.).

[16] *Id.* at 52 (Sotomayor, J.).

[17] *Id.* at 50 (Kagan, J.); *see also id.* at 29-32 (Roberts, C.J. and Scalia, Kennedy, and Ginsburg, JJ.); *id.* at 37-38 (Alito, J.); *id.* at 42 (Breyer, J.); *id.* at 43-45 (multiple Justices expressing surprise that the State did not concede *Brady* violation).

who professed his complete innocence at trial. That understanding of *Brady* creates an untenable risk that people will be convicted based upon false confessions. That risk is at its highest in the case of an intellectually disabled person or a child. Corey was both.

IV. In The Alternative, The Court Should Summarily Reverse.

In the alternative to granting plenary review on the questions presented, the Court should summarily reverse. The evidence suppressed by the State in this case went even beyond what a substantial majority of this Court found "plainly material" in *Smith*. As set forth above, *Smith* concerned the suppression of an inconsistent statement made by the state's sole eyewitness at trial. The evidence here did not only include a witness statement that directly contradicted the sole eyewitness's testimony that he was an innocent bystander who had never held a gun (by placing the murder weapon in his hands before the murder). It also included witness statements from the night of the murder indicating that Corey could not have committed the offense; that witnesses were threatened to change their stories; and that, until obtaining the confession, the police themselves suspected Corey was being set up to take the fall.

Summary reversal is also warranted because the court below also misapplied this Court's standard in several ways. First, the court analyzed each of the concededly exculpatory suppressed statements individually, violating this Court's directive that suppressed evidence be "considered collectively, not item by item." *Kyles*, 514 U.S. at 436.

Second, at critical junctures of its decision, the court misstated the legal standard for materiality. For instance, it held that suppressed statements of the police officers "does not constitute material evidence that if disclosed *would have changed the outcome of Corey William's jury trial*." Pet.App. 12a (emphasis added). That contravenes this Court's directive that "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial." *Kyles*, 514 U.S. at 434.

Finally, the analysis below depended, in part, upon speculation that had the State's eyewitness been confronted with evidence placing the murder weapon in his hands, "it is likely that [he] would have denied [the] allegations as untrue." Pet.App. 11a. That directly contravenes this Court's direction in *Smith* that, in evaluating materiality of an eyewitness's inconsistent statement, it is not the court's role to "speculate about which of [a witness's] contradictory declarations the jury would have believed." 565 U.S. at 77. It is insufficient when the State "offers a reason that the jury *could* have disbelieved [an eyewitness's] undisclosed statements, but gives us no confidence that it *would* have done." *Id.* (emphasis in original).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

STATE OF LOUISIANA

VS. No. 2016-KP-1114

COREY DEWAYNE WILLIAMS

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IN RE: Corey Dewayne Williams; – Defendant; Applying For Supervisory and/or Remedial Writs, Parish of Caddo, 1st Judicial District Court Div. 1, No. 193,258; to the Court of Appeal, Second Circuit, No. 50702-KW;

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October 27, 2017

Denied.

JDH
GGG
MRC
JTG

JOHNSON, C.J., would grant and remand for an evidentiary hearing.

WEIMER, J., would grant and remand for an evidentiary hearing.

CRICHTON, J., recused.

Supreme Court of Louisiana
October 27,2017

/s/ Theresa McCarthy
Deputy Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

NO: 50702-KW

STATE OF LOUISIANA

VERSUS

COREY DEWAYNE WILLIAMS

FILED: 12/04/15
RECEIVED: FED EX 12/03/15

On application of Corey Dewayne Williams for POST CONVICTION RELIEF in No. 193,258 on the docket of the First Judicial District, Parish of CADDO, Judge Katherine Clark Dorroh.

THE PROMISE OF JUSTICE INITIATIVE Blythe Taplin	Counsel for: Corey Dewayne Williams
James Edward Stewart, Sr. Jessica D. Cassidy	Counsel for: State of Louisiana

Before DREW, MOORE and STONE, JJ.

WRIT GRANTED IN PART; REMANDED; DENIED IN PART.

Applicant, Corey Dewayne Williams, seeks supervisory review of the trial court's ruling denying

his application for post-conviction relief. This writ is hereby granted in part solely as to the claim that the applicant's sentence of life imprisonment without parole is unconstitutional. The trial court's ruling on this claim is vacated, and the matter remanded to the trial court for further proceedings consistent with *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), La. C. Cr. P. art. 878.1, and La. R.S. 15:574.4(E). This writ is hereby denied as to the remainder of the rulings on the applicant's claims. However, this matter is remanded to the trial court for a ruling on the claim that the state failed to disclose the statements of Calandria Iverson and Walter Shaw that Gabriel Logan and his family threatened witnesses into changing their stories, in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 251 (1963).

Shreveport, Louisiana, this 16th day of May, 2016.

/s/ Illegible /s/ Illegible /s/ Illegible

FILED: May 16, 2016
/s/ Karen Freer McFee
Dep. Clerk

APPENDIX C

STATE OF LOUISIANA	DOCKET NO. 193,258 – SECTION 1
VERSUS	FIRST JUDICIAL DISTRICT COURT
COREY WILLIAMS	CADDO PARISH, LOUISIANA

[filed Nov. 4, 2015]

RULING

Following recusal orders signed by Judge Brady O'Callaghan and Judge Ramona Emanuel, this criminal matter was randomly allotted to Section 1 of the First Judicial District Court.

On October 28, 2000, Petitioner, Corey Williams, was convicted of first degree murder and sentenced to death. On appeal, the Louisiana Supreme Court affirmed, but remanded the case for a determination of whether Petitioner was exempted from the death penalty due to mental retardation. *State v. Williams*, 2001-1650 (La. 11/1/02), 831 So.2d 835. After an evidentiary hearing, the trial court found Petitioner to be mentally retarded, and he was resentenced to life imprisonment. Petitioner then filed a Motion for New Trial, a Notice of Appeal, and a Motion to Reconsider Sentence, among others. All requests for relief have been denied, as have Petitioner's writs to the Second Circuit and the Louisiana Supreme Court. *State v. Williams*, 40,180 (La. App. 2d Cir. 5/12/05), *writ granted, relief denied* 2005-1556 (La. 2/17/06), 921 So.2d 105.

On April 5, 2005, Petitioner filed an application for post-conviction relief wherein he raised approximately 35 assignments of error. The State filed procedural objections, which the trial court granted and found that only six of Petitioner's claims had not been procedurally defaulted. On November 30, 2007, the State filed a supplemental memorandum wherein it addressed those six remaining claims on the merits.

On November 24, 2014, Petitioner filed an "Unopposed Motion to File *Additional Factual and Legal Support for Application for Post-Conviction Relief* Under Seal." Petitioner claimed to have located witnesses who will testify "at an evidentiary hearing on the relevant claims contained in Mr. Williams' Uniform Application for Post-Conviction Relief."

On January 13, 2015, Petitioner filed an "Additional Factual and Legal Support for Application for Post-Conviction Relief," wherein he purports to submit additional information to support those six outstanding claims contained in his Uniform Application for Post-Conviction Relief.

The State filed procedural objections with regard to Petitioner's "Additional Factual and Legal Support for Application for Post-Conviction Relief." The State claims three of his five claims do not support those six remaining claims contained in his Uniform Application for Post-Conviction Relief. Rather, the State claims the three assignment of error constitute new claims, which are subject to the two-year time limitation for seeking post-conviction relief.

In addition, the State claims the alleged new claims are not only untimely, but these new claims also fail to establish an exception to the time limitation for seeking post-conviction relief. La. C.Cr.P. art. 930.8(A)(1)-(4). The Court has addressed those three claims in a separate ruling filed this same date.

On June 1, 2015, Petitioner filed a "Notice of Filing" and attached transcribed versions of the statements Petitioner claims were suppressed. The Court has reviewed the transcripts and the police reports which contained "summaries" of the witnesses' statements to police. A hearing was held in connection with the alleged Brady violations on June 10, 2015. This matter was submitted to the Court on that date for its ruling.

As stated above, Petitioner raised 35 grounds for relief in his original Petition for Post-Conviction Relief. While the majority of claims have been denied by the Court, the claims addressed at the hearing held on June 10, 2015 revolve around several alleged *Brady* violations. Petitioner argues that several pieces of evidence were excluded by the State and that the evidence was exculpatory. Petitioner relies on *Brady v. Maryland*, 373 U.S. 83 (1963) and the jurisprudence interpreting that case to support his position.

According to the United States Supreme Court in *Brady v. Maryland*, the suppression of evidence favorable to the accused by the prosecution, either intentional or inadvertent, violates the defendant's due process rights if said evidence is "material either

to guilt or to punishment." 373 U.S. 83, 87 (1963). Simply put, a defendant is entitled to exculpatory evidence when it is material to his defense. In *Giglio v. United States*, 405 U.S. 150 (1972), the parameters of *Brady* were extended to also include evidence that impeached the credibility of a prosecution witness. Failure to disclose *Brady* material may result in a reversal of conviction and a new trial. *United States v. Bagley*, 473 U.S. 667 (1985) (finding that a new trial is not automatically granted because evidence may possibly be useful td defense; a new trial is only granted upon a finding of materiality.).[1] The purpose of retrying the case is not to punish the prosecutor for failing to disclose material evidence; rather, it is to ensure a defendant's right to a fair trial. *Id.* at 675.

Under Louisiana law, the prosecution is not required to provide unlimited discovery. La. Code Crim. Proc. art. 723 (2014). However, Articles 718(1), 719 and 722 have adopted the holdings of the *Brady* line of cases and provide that a defendant is entitled to exculpatory and impeachment material contained in police reports and in the statements of any possible witnesses. La. Code Crim. Proc. art. 718(1), 719 and 722 (2014). Prosecution, not the police, is responsible for determining what is favorable to defense, and prosecution, not the police, bears the responsibility for

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[1] "We do not, however, automatically require a new trial whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to change the verdict...' A finding of materiality is required under Brady...A new trial is required if 'the false testimony could...in any reasonable likelihood have affected the judgment of the jury." *Giglio v. United States*, 405 U.S. 150, 154 (1972).

failing to disclose material exculpatory evidence to defense. *Kyles v. Whitley*, 514 U.S. 419 (1995). Furthermore, under Article 729(3) of the Louisiana Code of Criminal Procedure, the "state has a continuing duty to disclose, even during trial, and the jurisprudence holds that if the state does not comply with this obligation, a defendant's conviction may be reversed if such noncompliance prejudiced the defendant." *State v. Lindsey*, 621 So.2d 618, 622-23 (La. App. 2d Cir. 1993).;

In *Kyles v. Whitley*, the defendant was convicted of capital murder and received a death sentence. 514 U.S. 419 (1995). The Court, upon re-examining the conviction, faced several claims of Brady violations. The alleged exculpatory evidence included, but was not limited to the following: (1) eyewitness statements that provided drastically different descriptions of the culprit; (2) initial statements witnesses made to the police that contradicted to what they testified to in court; (3) a witness statement telling the police that they saw another witness plant the murder weapon at the defendant's house; and (4) new information from a key witness, during the defendant's second trial, which contradicted what he previously said and pointed to a different—and previously unmentioned—suspect. *Id.* at 430. Upon addressing these issues, the Court reiterated the importance of continuing disclosure on the part of the prosecution. *Id.* at 437-38. It ultimately held that, after looking at the evidence cumulatively, it was reasonably probable that the undisclosed evidence would have undermined the outcome of the trial. *Id.* at 454.

In the instant case, Petitioner, like the defendant in *Kyles*, argues that certain witness statements are material exculpatory evidence, which are sufficient to undermine the original trial's verdict.

In his Application for Post-Conviction Relief, Petitioner alleges several pieces of excluded evidence; but in the hearing held on June 10, 2015, defense addressed only claims I, II, III, IV, V, VII, and VIII. Specifically, the Petitioner argues that the summarized witness statements that were provided by the police are not sufficient to constitute disclosure of *Brady* evidence. According to the Petitioner, the summaries compiled by the police misrepresent the witnesses' actual statements, which—if presented to the jury—would cast a new light on the case.

Furthermore, Petitioner argues that these statements contain several contradictory stories, which would be ripe for impeachment purposes. As noted in *Giglio*, *Kyles*, and *Bagley*, evidence that impeaches the credibility of prosecution witnesses falls within the parameters of *Brady* and should be disclosed. *United States v. Bagley*, 473 U.S. 667 (1985). The statements at issue pertain to witness account of what happened during the events surrounding the shooting of the victim.

In, the first alleged *Brady* violation, Petitioner contends that the State suppressed a statement made by Patrick Anthony. Patrick Anthony was friends with Nathan and Gabriel Logan and was present on the night of the shooting. Mr. Anthony told police that after the shooting, he went with Chris Moore ("Rapist"), Gabriel Logan and Nathan Logan to

dispose of the .25 caliber gun and split the money. Petitioner claims that Patrick Anthony told police that he saw Nathan Logan give the gun to "Rapist" and that was suppressed.

The Court has reviewed the statement of Patrick Anthony in detail, along with all of the other statements made by various witnesses that were attached to Petitioner's June 1, 2015 pleading. The portion where Mr. Anthony says he sees someone give the gun to "Rapist" is not clear, nor is it definitive as to time. Mr. Anthony also appears to be speculating that "Rapist" later gave the gun to Corey Williams. This Court concludes the evidence that was excluded is not material because there is no showing of a "reasonable probability that had the evidence been disclosed, the result pf the proceeding would have been different." *State v. Marshall supra.* An examination of all the evidence collectively leads the Court to conclude that the Petitioner had copies of the police summaries of Mr. Anthony's statement, the summarized statements were not different from the actual statements and Petitioner's claims concerning the statements of Patrick Anthony are without merit. The fact that Patrick Anthony allegedly saw "Rapist" with the gun at some time is not material evidence. There is no indication from Patrick Anthony that "Rapist" had the gun on the day of the murder other than speculation.

In addition, the allegations of Petitioner that Mr. Moore's testimony could have been impeached by the statements of Patrick Anthony are also without merit. If confronted with the contents of Patrick Anthony's

statement concerning possession of the gun, it is likely that Mr. Moore would have denied Patrick Anthony's allegations as untrue. In any event, the Court does not find that the Court does not find that the statement that was suppressed was material or exculpatory. For these reasons Petitioner's claim is **DENIED**.

In its second alleged *Brady* violation, Petitioner claims the State suppressed a statement by Nathan Logan that entirely contradicted his trial testimony. The Court finds Petitioner's claims with regard to the statement of Nathan Logan to be without merit. The Court has compared the statement and the summary contained in the police report. The summarized statement is almost identical to the actual statement. Moreover, Petitioner fails to demonstrate how the alleged excluded evidence was material and fails to demonstrate or show a "reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different." For these reasons, Petitioner's claim is **DENIED**.

In its third alleged *Brady* violation, Petitioner claims the State suppressed Nathan Logan's opinion as to who committed the homicide. The Court concludes that Nathan Logan's speculation (not even an opinion) as to who he "thought" committed the murder were irrelevant and not admissible. The Petitioner claims that Nathan Logan's opinion as to who committed the murder prevented the defense from attacking the, credibility of the investigation because the police allegedly failed to pursue other suspects. Nathan Logan repeatedly told police he did

not see who pulled the trigger. The Court concludes that the claim that the State's suppression of Nathan Logan's opinion/speculation does not constitute Brady material. For these reasons, Petitioner's claim is **DENIED**.

In the fourth alleged *Brady* violation, Petitioner claims the State suppressed evidence that detectives abandoned their original investigation into alternate suspects once Corey Williams confessed to the murder. In addition, Petitioner claims the State suppressed statements that police made during the course of the investigation that they didn't believe Corey Williams committed the murder. The Court finds that police statements, theories, opinions or beliefs are not admissible evidence. What police said during an investigation concerning Corey Williams does not constitute material evidence that if disclosed would have changed the outcome of Corey Williams' jury trial. Corey Williams confessed to the murder. He admitted his guilt. The Court finds Petitioner's claims concerning police opinion to be without merit. For these reasons, Petitioner's claim is **DENIED**.

In its fifth alleged *Brady* violation, Petitioner claims the State suppressed Calandria Iverson's statement to a Caddo district attorney investigation wherein Ms. Iverson said she saw Gabriel Logan with a gun immediately after the shooting. The Court concludes that this statement of Ms. Iverson was produced (Volume 14, pages 2554-2558). Since the statement was disclosed, this Court finds no *Brady* violation. Moreover, a previous Judge assigned to this case, Judge Crichton examined her pretrial statement

and compared it to her grand jury testimony and he found no *Brady* material. For these reasons, Petitioner's claim is **DENIED**.

In the next alleged *Brady* violation, Petitioner claims that the State suppressed a statement by Gabriel Logan made to Alfrayon Jones where Logan claims to have choked the pizza delivery man because he was not dead. The Court concludes the failure to disclose this statement does not constitute a *Brady* violation. The Court concludes this statement is not material and if disclosed would not have changed the verdict of the jury in this case. Mr. Logan's statements are contrary to the forensic evidence that was presented at trial which revealed the victim died of a gun shot wound, not strangulation. For these reasons, Petitioner's claim: is **DENIED**.

In its last alleged *Brady* violation, Petitioner claim the State withheld Calandria Iverson's criminal record. Ms. Iverson apparently had charges pending in Shreveport City Court. After she testified at the Corey Williams trial, the charges were not prosecuted. The State argues that it had no control over what happened to the charges in City Court, and the fact that her criminal charges in City Court were not disclosed is not relevant to the Court's *Brady* inquiry. Again, this Court finds that the pending charges in City Court is not material because there is no showing of a reasonable probability that had this evidence been disclosed, the result of the proceeding would have been different. Moreover, it should be noted Ms. Iverson was not presented by the State as a wholly

credible witness. For these reasons, Petitioner's claim is **DENIED**.

The Clerk of Court is directed to mail a copy this Ruling to Petitioner, Petitioner's counsel and the District Attorney.

Signed this 21st day of October 2015, in Shreveport, Caddo Parish, Louisiana.

/s/ K. Dorroh
Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

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Corey Williams

APPENDIX D

STATE OF LOUISIANA	DOCKET NO. 193258 (SECTION1)
VERSUS	FIRST JUDICIAL DISTRICT COURT
COREY WILLIAMS	CADDO PARISH, LOUISIANA

[filed June 9, 2016]

RULING

On October 28, 2000, Corey Williams ("Petitioner") was convicted of First Degree Murder and sentenced to death. On appeal, the Louisiana Supreme Court affirmed Mr. Williams' conviction, but remanded the case for a determination of whether Petitioner was exempt from the death penalty due to mental retardation. *State v. Williams,* 2001-1650 (La. 11/1/02), 831 So.2d 835. An evidentiary hearing was held, and the trial court found Petitioner to be mentally retarded. Consequently, Petitioner was resentenced to life imprisonment. After his resentencing, Petitioner filed a several motions, including a Motion for New Trial, a Notice of Appeal, and a Motion to Reconsider Sentence. All requests for relief have been denied, as have Petitioner' s writs to the Second Circuit and the Louisiana Supreme Court. *State v. Williams.,* 40,180 (La. App. 2d Cir. 5/12/05), *writ granted, relief denied* 2005-1556 (La. 2.17.06), 921 So.2d 105.

On April 5, 2005, Petitioner filed an Application for Post-Conviction Relief wherein he raised approximately 35 assignments of error. The State filed procedural objections, which the trial court granted, finding that only six of Petitioner's claims

had not been procedurally defaulted. On November 30, 2007, the State filed a supplemental memorandum wherein it addressed those six remaining claims on the merits.

On November 24, 2014, Petitioner filed an "Unopposed Motion to File *Additional Factual and Legal Support for Application for Post-Conviction Relief* Under Seal." In the Motion, Petitioner claimed to have located witnesses who will testify "at an evidentiary hearing on the relevant claims contained in Mr. Williams' Uniform Application for Post-Conviction Relief."

Petitioner filed the "Additional Factual and Legal Support for Application for Post- Conviction Relief" on January 13, 2015. In it, he submitted additional information to support those six outstanding claims contained in his Uniform Application for Post-Conviction Relief.

The State filed procedural objections with regard to Petitioner's "Additional Factual and Legal Support for Application for Post-Conviction Relief." The State claimed that three of his five claims do not support those six remaining claims contained in his Uniform Application for Post-Conviction Relief. Rather, the State argued the three assignment of error constitute new claims, which are subject to the two-year time limitation for seeking post-conviction relief. Additionally, the State argued that the alleged new claims are not only untimely, but these new claims also fail to establish an exception to the time limitation for seeking post-conviction relief. La. C. Cr. P. art. 930.8(A)(l)-(4). This Court addressed those three claims in a ruling filed on November 4, 2015.

On April 23, 2015, Petitioner filed another "Additional Factual Support to Petition for Post-Conviction Relief," which further elaborated on the purported *Brady* violations. The State addressed these claims in an answer filed on June 8, 2015.

On June 1, 2015, Petitioner filed a "Notice of Filing" and attached transcribed versions of the statements Petitioner claimed were suppressed. A hearing was held in connection with the alleged *Brady* violations on June 10,2015, and the Court took the matter under advisement. After reviewing all the trial transcripts and the police reports that contained the witness statements "summaries," this Court denied six of the seven *Brady* claims in another opinion filed on November 4, 2015. The Second Circuit affirmed this Court's findings; however, the matter was remanded to this Court for a ruling on the claim that the State 'failed to disclose the statements of Calandria Iverson and Walter Shaw that Gabriel Logan and his family threatened witnesses into changing their stories, in violation of *Brady v. Maryland*." No: 50702-KW May 16, 2016. For the following reasons, this final *Brady* claim is **DENIED.**

The United States Supreme Court, in *Brady v. Maryland,* held that the suppression of evidence favorable to the accused by the prosecution, either intentional or inadvertent, violates the defendant's due process rights if said evidence is "material either to guilt or to punishment." 373 U.S. 83, 87 (1963). In *Giglio v. United States,* 405 U.S. 150 (1972), the parameters of *Brady* were extended to also include evidence that impeached the credibility of a prosecution witness. Failure to disclose *Brady* material may result in a reversal of conviction and a

new trial. *United States v. Bagley,* 473 U.S. 67 (1985) (finding that a new trial is not automatically granted because evidence may possibly be useful to defense; a new trial is only granted upon a finding of materiality). The purpose of retrying the case is not to punish the prosecutor for failing to disclose material evidence; rather, it is to ensure a defendant's tight to a fair trial. *Id.* at 675.

Exculpatory evidence is material if there is "a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *State v. Marshall,* 660 So.2d 819, quoting, *United States* v. *Bagley,* 473 U.S. 667, 682 (1985). A "reasonable probability" is a probability "sufficient to undermine confidence in the outcome [of the trial]." *Id.* at 825. Specifically, the court must examine all of the evidence collectively and determine whether the excluded evidence-had it been disclosed-would have made a different result reasonably probable. *Id* at 826. A showing of materiality of by preponderance that the disclosure of the suppressed evidence would have resulted in acquittal is not required. *Kyles* v. *Whitley,* 514 U.S. 419 (1995).

Under Louisiana law, the prosecution is not required to provide unlimited discovery. La. Code Crim. Proc. art. 723 (2014). However, Articles 718(1), 719 and 722 have adopted the holdings of the *Brady* line of cases and provide that a defendant is entitled to exculpatory and impeachment material contained in police reports and in the statements of any possibly witnesses. La. Code *Crim.* Proc. art. 718(1), 719 and 722 (2014). Prosecution, not the police, is responsible for determining what is favorable to defense, and prosecution, not the police,

bears the responsibility for failing to disclose material exculpatory evidence to defense. *Kyles v. Whitley,* 514 U.S. 419 (1995). Furthermore, under Article 729(3) of the Louisiana Code of Criminal Procedure, the "state has a continuing duty to disclose, even during trial, and the jurisprudence holds that if the state does not comply with this obligation, a defendant's conviction may be reversed if such noncompliance prejudiced the defendant.". *State v. Lindsey,* 621 So.2d 618, 622- 23 (La. App. 2d Cir. 1993).

In the instant matter, Petitioner's *Brady* claim fails for two reasons. First, Petitioner's evidence supporting the threatening allegations is insufficient. The only evidence offered by Petitioner in support of the purported threats made against Calandria Iverson is a handwritten affidavit from Latrece Savannah. This affidavit was filed with Petitioner's "Additional Factual and Legal Support for Application for Post-Conviction Relief" on January 13, 2015. In her affidavit, Savannah states, "I heard that Calandria was threatened shortly after, but she wouldn't talk to me about it or admitted to it." This statement regarding threats made against Calandria Iverson is vague at best. It does not identify who made the threats, and it provides no credence to Petitioner's claim that the State was aware of these alleged threats and deliberately failed to disclose them to Petitioner's defense counsel.

Second, Petitioner fails to demonstrate that these alleged threats constitute *Brady* material. As previously stated, a *Brady* violation occurs when the evidentiary suppression "undermines the confidence in the outcome of the trial." *Kyles* v. *Whitley,* 514 U.S.

419 (1995). In the present case, both Calandria Iverson and Walter Shaw gave statements to the police within hours of the murder. In his statement, Shaw told the police that after the shooting, he observed Gabriel Logan pulling the victim from the car. This initial statement is materially consistent with Shaw's trial testimony. Likewise, the two statements given by Calandria Iverson immediately after the murder are also materially consistent with her trial testimony. In her initial interviews, Iverson repeatedly stated that moments before gunfire erupted, she observed Gabriel Logan hand a weapon to Petitioner. She also told police that after the shooting, Logan appeared to be tucking a weapon into his pants. Iverson's trial testimony mirrors her initial statement.

If Gabriel Logan made any threats against Shaw and Iverson, they would have occurred after the night of the murder. Meaning, the witnesses would have been threatened by Logan after giving their initial statements to the police. Despite these alleged threats, both Iverson's and Shaw's trial testimony were consistent with their initial police statements. Petitioner, therefore, fails to demonstrate not only that the witnesses altered. their testimony in light of receiving the alleged threats from Gabriel Logan but that the suppression of the alleged threats undermined the confidence of Petitioner's trial. For the foregoing reasons, the Court concludes that there was no Brady violation and the Court denies Petitioner's request for relief. All of Petitioner's Brady claims have now been addressed and are DENIED. A hearing will be scheduled at a later date to address the Petitioner's claim that his sentence of life imprisonment without

benefit of parole is unconstitutional consistent with *Mongmery* v. *Louisiana,* 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

The Clerk of Court is directed to mail a copy of this Ruling to Petitioner, Petitioner's counsel, and the District Attorney.

Signed this 2d day of June 2016, in Shreveport, Caddo Parish, Louisiana.

/s/ K. Dorroh
Honorable Katherine Clark Dorroh
District Judge
First Judicial District

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Corey Williams

APPENDIX E

STATE OF LOUISIANA	: NUMBER 193,258
VERSUS	: FIRST JUDICIAL DISTRICT COURT
COREY D. WILLIAMS	: CADDO PARISH, LOUISIANA
	[filed February 20, 2004]

RULING ON ISSUE OF MENTAL RETARDATION

The Supreme Court of Louisiana affirmed the first degree murder conviction[1] of Corey Williams but remanded the case to the trial court for an evidentiary hearing to determine the issue of mental retardation, State v. Williams 2001-1650 (La. 11/1/02) 831 So.2d 835 (La. 2002). Pursuant to the Supreme Court's Order, this Court appointed Dr. Samuel Webb Sentell, a clinical psychologist included in the prosecution's

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[1] Corey Williams was 16 years old when he committed the first degree murder of Jarvis Griffin. He was 18 years old at the time of trial. The evidence was that on January 4, 1998 Jarvis Griffen, a 23 year old pizza delivery man, made a delivery to a home in the Queensborough area of Shreveport. Gabriel Logan had previously conspired with Corey Williams to rob Mr. Griffen and had provided a gun to Mr. Williams to effectuate the crime. As Griffen was pulling away in his car, Williams approached Griffon's car and demanded money. Williams fired several shots, killing Griffen, and then fled the scene. Gabriel Logan ran to Griffon's car, pulled his lifeless body from the car and rifled through his pockets. Logan took a bank bag and another pizza from the car and fled the scene. Within hours of the shooting, Shreveport Police arrested Gabriel Logan and Corey Williams for the homicide of Jarvis Griffen. Logan subsequently pled guilty to second degree murder and was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence.

list of experts, and Dr. Pamela McPherson, a forensic psychiatrist included in the defense's list of experts. An evidentiary hearing was held October 27-30, 2003. Testimony was adduced from Dr. Sentell, Dr. McPherson, Dr. Victoria Swanson, Dr. Mark Vigen and Edmund Nagot, Jr., and the Court received into evidence a volume of school, hospital and corrections records. After having considered the applicable law, evidence, and for reasons which follow, the Court concludes that Corey Williams is mentally retarded as defined by law such that he is not subject to the death penalty.

In Atkins v. Virginia 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed. 2d 335 (2002), the United States Supreme Court held that executing mentally retarded offenders violates the Eighth Amendment to the United States Constitution and its prohibition against cruel and unusual punishment. The capital jury trial in this case was held October 23-27, 2000; and even though Atkins was pending and not rendered until 2002, it is applicable to this case. Because the issue of low intellectual function of Mr. Williams had been substantively addressed with regard to diminished culpability during the penalty phase and since the issue of mental retardation under Atkins was asserted on appeal, the Supreme Court of Louisiana remanded the case for evidentiary hearing[2] • Specifically, the Court stated:

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[2] During the 2003 session, the Louisiana Legislature passed Act 698 which, among other things, defines mental retardation as a disability characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills, the onset of which must occur before the age of 18 years.

> Thus, this Court concludes the defendant is entitled to an evidentiary hearing which will give him an opportunity to prove he is mentally retarded pursuant to the definitions of LSA-R.S. 28:38(1), and, under Atkins, not subject to the death penalty.

LSA-R.S. 28:381(28) provides:

"Mental Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.

"General intellectual functioning" is shown by "the results obtained by assessment without one or more of the individually administered general intelligence tests developed for that purpose." LSA-R.S. 28:381(18). To be "significantly subaverage" in general intellectual functioning one must be "more than two standard deviations below the mean for the test of intellectual functioning." LSA-R.S. 28:381(42).

"Louisiana Revised Statutes 28:381(12) provides:

"Developmental disability" means a severe chronic disability of a person:

(a) That is attributable to:

(i) Mental retardation

…

(b) That is manifested before the person reaches age 22.

(c) That is likely to continue indefinitely.

(d) That results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care.

(ii) Understanding and use of language.

(iii) Learning.
(iv) Mobility.
(v) Self-direction.
(vi) Capacity for independent living.

In Williams, the Louisiana Supreme Court observed:

> An apparent universal agreement is reflected in Louisiana's definitions in LSA-R.S. 28:381, that a diagnosis of mental retardation has three distinct components: (1) subaverage intelligence, as measured by objective standardized IQ tests; (2) significant impairment in several areas of adaptive skills; and (3) manifestations of this neuro-psychological disorder in the developmental stage, i.e., by the age of 22 years.

In its post-hearing brief, the district attorney has written:

> The State does not dispute that Corey Williams meets two of the three criteria for mental retardation which the Court has been ordered to rely on in making the determination: Williams' full scale IQ scores have consistently been below 70, that is, two standard deviations below the mean. Also, onset was before the age of 18 (or 22) years of age.
>
> ***
>
> The only issue in dispute then is whether Corey Williams suffers from a deficit in adaptive functioning skills to such a degree as to classify him as mentally retarded. The burden of proof is on Corey Williams, and the standard is by a preponderance of the evidence.
>
> * * *

Notwithstanding the fact, then, that the State has conceded that Williams' IQ tests have "consistently been below 70, that is, two standard deviations below the mean and that the onset was before the age of 18, the Court will nevertheless list the evidence which fully supports that finding:

Date of Test	Psychologist	Test Administered	Results
1992	SSA-appointed	Unknown	"mentally retarded"
6/10/1996	Dr. Howard Hughes Emily Wagner	WISC-III	IQ 65 (VIQ 70, PIQ 65)
11/9/1999	Dr. M. Dulle	K-BIT	IQ 66 (Voe. 70, Matrices 68)
6/20/2000	Dr. Mark Vigen	WAIS-III	IQ 68 (VIQ 73, PIQ 68)
10/15/2003	Dr. Victoria Swanson	WAIS-III	IQ 67 (VIQ 73, PIQ 65)
10/18/2003	Dr. Webb Sentell	WAIS-III	IQ 69[3], (VIQ 79, PIQ 77)

[3] Dr. Sentell administered the Wechsler Adult Intelligence Scales, Third Edition (WAIS-III), which yielded a Full Scale IQ score of 7 6. However, Dr. Sentell noted that Dr. Swanson had administered the same test three days earlier, and the subsequent score was artificially inflated by "practice effects". Dr. Sentell testified that practice effects are well documented and could range from 3-11 points with an average increase of

Thus, the evidence is consistent and compelling that Corey Williams' IQ is below 70, specifically, more than two standard deviations below the mean.

Accordingly, it is conclusive (and conceded by the district attorney and defense counsel) that at least two of the three required elements for a determination of mental retardation are present. Therefore, the core issue in the evidentiary hearing has become whether there are significant limitations in Corey Williams' adaptive behavior as expressed in conceptual, social, and practical adaptive skills. In considering the issue of significant limitations in adaptive behavior, the Court has conducted a careful examination of the expert opinions of Drs. Sentell, McPherson, Swanson and Vigen[4] and has conducted a thorough review of the records of Caddo Parish School Board, the Social Security Administration, Department of Health and Hospitals and Department of Corrections.

Mental retardation as defined in La. RS. 28:381 involves substantial functional limitations in three or more of the following areas of major life activity: self-

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about seven points. Dr. Sentell noted that if he subtracted seven points from his score, the resulting I.Q. score would be under 70 and therefore within the mental retardation range. The Court believes that that assessment makes sense and is consistent with the IQ scores concluded by all other experts who tested Corey Williams – both before and after the homicide.

[4] Even though Dr. Mark Vigen, the defendant's expert, testified that Williams had an I.Q. of 68, Vigen also testified at the penalty phase that Williams was "street smart" to the extent that he did not have significant behavior deficits and was therefore not mentally retarded. During the October 2003 evidentiary hearing, Dr. Vigen testified that his opinion had changed in light of the additional data (SSI determination, additional DOC records and the evaluation of Drs. Sentell, McPherson and Swanson) and that Corey Williams is mentally retarded.

care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living. Adaptive behavior is defined by the American Association of Mental Retardation (AAMR) tenth edition as "the collection of conceptual, social, and practical skills that have been learned by people in order to function in their everyday lives." The definition details "representative skills" for each of the three broad areas. Conceptual skills include language, reading and writing, money concepts and self-direction. Social skills include characteristics involving interpersonal responsibility, self-esteem, gullibility, naivete and following rules. Practical skills include activities of daily living, occupational skills, and maintaining safe environments. Finally, the DSM-IV-TR requires significant limitations in adaptive functioning in at least two of the following skills areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.

The evidence of adaptive deficits in this case[5] emanates from the following: (1) numerous

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[5] Although there has been considerable evidence adduced on remand, the Supreme Court had some evidence of adaptive deficit in the record, as reflected by the following:

> According to school records, as early as age nine, defendant was in special classes at Oak Park Elementary School. He was placed in "special ed" in 1988 (seventh grade), classified as learning disabled/speech impaired. The defendant advanced through the public school system without making much measurable progress toward learning. He attended J. S. Clark Middle School and was enrolled at Booker T. Washington High school at the time of the instant offense. His grades in school were mostly D's and F's.
>
> On May 24, 1995, at age 13, defendant was admitted to Fairfield Hospital following a suicide attempt in which he

institutional records; (2) past adaptive functioning evaluations; (3) Vineland Adaptive Behavior Scales testing; (4) clinical observations of the defendant; and (5) collateral interview data.

There are voluminous institutional records, including records of the Caddo Parish schools, various hospitals including Highland Hills, Brentwood Hospital and Fairfield Hospital, Department of Corrections records, including Tallulah as well as SSI determinations. Those records consistently evidence low adaptive functioning of Mr. Williams as well as peculiar and inappropriate misbehavior.

The Vineland Adaptive Behavior Scales–Interview Edition, was administered by Drs. Sentell and Swanson as a tool to help determine overall adaptive functioning of Corey Williams. The test provides a measure of habitual or typical behavior by interviewing persons familiar with the individual's ability to adapt in his or her environment. According to Dr. Sentell, Corey Williams' score is less than the 1st percentile and considered significantly low; and according to Dr. Swanson, the scores reflect adaptive behavior deficits in the moderate to severe range.

Besides making significant clinical observations of Mr. Williams, all experts testified as to the fact that there are multiple, recurring references throughout the records to maladaptive behaviors such as PICA,

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tried to jump off a bridge. In approximately September 1995, defendant was placed in Highland Hills Hospital (a facility that specializes in treating adolescents with behavioral such as thumb sucking and "nocturnal enuresis" (bedwetting). The defendant had a prescription history of antidepressant medications, including Prozac and Zoloft.

enuresis, hand mouthing, and acting out[6]. The relevance of a, pattern of maladaptive behaviors to the diagnosis of mental retardation was summarized by Dr. Swanson as follows:

> Maladaptive behaviors are behaviors that you adapt when you don't have the proper adaptive skills to cope with your society because the whole idea of adaptive behavior is personal self-sufficiency and social self-sufficiency. And those specific behaviors that we're talking about are examples of why Corey doesn't interact well in his society and cannot take care of himself completely alone. So, yes, you have to look at the maladaptive behaviors for his age and his culture.

In this regard, it should be noted that Corey Williams' demeanor[7] in Court was consistent with the

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[6] According to PDR Medical Dictionary, Second Edition, pica is a perverted appetite for substances not fit as food or of no nutritional value; e.g., clay, dried paint, starch, etc. Enuresis is defined as the involuntary discharge or leakage of urine. There was ample evidence presented at the penalty phase as well as the post verdict evidentiary hearing that, as a child, Corey Williams regularly ate dirt, paper, lead paint chips, for which he was hospitalized, and other substances which are either toxins are otherwise unfit for consumption. In addition, the testimony was clear that Williams frequently urinated on himself and that the problem was not lessened until his teenage years when he became an inmate at the Department of Corrections. Besides hand-mouthing, Williams apparently had a consistent drool, which either would "crust up" or he would wipe on his shirt. It is not unusual – and in fact it is consistent – to find these maladaptive behaviors exhibited by persons who are mentally retarded. His cousin, Mr. Griffins, stated, "He was like a goat".

[7] For instance, throughout the hearing, Williams consistently appeared puzzled, confused and confounded. During Dr. Swanson's testimony, Williams fell asleep, which the Court construed not as a lack of interest or disrespect but, rather, Williams' lack of ability to engage in the world around him [even

experts' opinions of maladaptive behavior, lack of cognitive ability, and adaptive deficit.

Drs. Swanson, Sentell and McPherson also obtained information in collateral interviews which, while not determinative of any issue, proved helpful and was consistent with other records in the case. For instance, Dr. Sentell obtained what he believed to be a credible and consistent history from a close family member of Mr. Williams, Erick Griffins, who reported as' follows:

> He said that Mr. Corey Williams was actually not in the Crips gang but was a "wanna be". He said that he was a "yes man" and characterized him as a "duck" or what one might refer to as "chump". He stated, "We used to take him with us to laugh at him." He also described him as "a puppet" that would uncritically do what others said. He stated that Mr. Williams was well known in the neighborhood for being "dumb" and "crazy". He was known as someone who could be "set out" to go and do some undesirable or ill-advised task that someone wiser would decline. Mr. Griffins stated that Corey Williams had indeed "taken the rap" for him on a prior charge and that he was known for this. He implied that this feature may have been relevant for Mr. Williams' current charge. He went on to describe Corey Williams as a teen who had never fully mastered toileting and was enuresis and chronically smelled of urine from soiling himself at night and having poor hygiene. He stated that he sucked his thumb until incarcerated. Additionally, he was known to "eat

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in a proceeding where the death penalty (for him) is being addressed.]

> dirt" and other nonnutritive substances including toilet paper and school paper and said, "He was like a goat". Mr. Griffins indicated that although he tried to play football, he couldn't grasp the rules and would always pass inappropriately. When asked about driving cars, he stated that Mr. William "couldn't drive a lick." He could, however rides a bike. He supposed that Corey Williams would not have known it if he was short changed in a store. He said that he had no girlfriend or best friend and added, "I was his best man." He stated, "He couldn't hold his spit ... his nose was always running ... he wiped it on his shirt collar or it'd just crust up." Mr. Griffins stated that Mr. Williams "could barely talk" and generally did not take appropriate self care, citing that "if he had $100 he'd take it all to the candy lady's house and then he couldn't' buy new shoes for himself.

Further, all experts testified that there were multiple possible etiologies in Mr. Williams' history consistent with mental retardation, the most significant of which was that when Mr. Williams was a young child, he was hospitalized for extremely high lead poisoning. According to Dr. McPherson, lead is a neurotoxin that impacts the brain and has been shown to cause intellectual impairment.

Dr. McPherson referenced a report issued by Dr. Felicia A. Rabito, clinical assistant professor in the department of biostatistics and epidemiology at Tulane University Health Sciences Center. Dr. Rabito wrote the following:

> Lead is a well studied, potent neurotoxin. The epidemiology of lead has been well described and is based on human data. Lead affects every system

in the body and there is no known threshold of safety, although the Centers for Disease Control and Prevention has set a level of less than 10 mg/di as a target level of safety for children. Children less than six years of age are at highest risk due to their proximity to the exposure source (contaminated dust, paint and soil) and the ready pathway for exposure (normal hand-to-mouth activity). Although lead can potentially affect every system, the nervous system and the developing brain of children are the most susceptible targets.

Corey Williams' case is the most extreme case of lead poisoning that I have seen. Not only did he have documented lead levels well over the established safe limit, but he had chronic exposure stretching over many years. These values appear to be valid measurements as they were conducted at a well respected health center and were confirmatory (venous) rather than screening in nature. This situation is particularly dramatic given that the timing of Corey's exposure was during a critical phase of brain development. An abundance of literature exists to support lead's adverse effects at the levels of Corey Williams experienced. These effects include (but are not limited to) neurocognitive, neurobehavioral, and renal effects.

Starting when he as two years old and documented for approximately six years, Corey had lead levels ranging from 35-102 mg/dl. It appears that he suffered from lead poisoning continually for a least six years. Lead's effects on IQ begin at 10mg/dl. Given the abundance of scientific literature on the harmful effects of lead poisoning, in my opinion

there is every reason to expect that Corey has suffered extreme health consequences, to multiple organ systems, including intellectual deficits, as a result of his sustained lead poisoning.

Furthermore, there is medical evidence which provides some correlation between heredity and mental retardation. The evidence was uncontroverted that Corey Williams' mother, Dorothy Williams, was diagnosed as mentally retarded when she was a child.

Finally, it is significant that Drs. Swanson, McPherson and Vigen testified that, in their opinions, Corey Williams is mentally retarded; Dr. Sentell testified to the effect that there is no evidence to suggest that he is not mentally retarded. All experts testified that there was no evidence of malingering.[8] Thus, purely from the expert testimony in this case, it is clear that the defense has proven by a preponderance of the evidence that Corey Williams is mentally retarded.

CONCLUSION

It is clear that Corey Williams is mentally retarded as defined by applicable Louisiana law (and any other universal standard) as he has significant sub-average general intellectual functioning (more than two standard deviations below the mean) existing concurrently with significant deficit adaptive

[8] Particularly at the post-verdict stage of a death penalty case, the Court should be especially cognizant of the possibility – maybe even the probability – of malingering. In this case, there was absolutely no evidence of malingering. In fact, Dr. Sentell testified that he felt that Corey Williams had actually "tried his very hardest" on tests. Dr. Sentell observed that the fact that he tried so hard under the particular circumstances supports the conclusion that Corey Williams has a significant lack of cognitive ability.

behavior, all of which was manifested during his developmental period.

Unquestionably, the first degree homicide, of which Corey Williams was convicted, was a violent and outrageous crime and Mr. Williams should never be released from Department of Corrections custody. However, it is clear that inasmuch as Mr. Williams is mentally retarded, he is not subject to the death penalty under the Eighth Amendment to the United States Constitution and the United States Supreme Court's holding in Atkins v. Virginia.

Signed this 20th day of February, 2004 in Shreveport, Caddo Parish, Louisiana.

/s/ Scott J. Chrichton
SCOTT J. CRICHTON
DISTRICT JUDGE

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