

No. 15-7451
CAPITAL CASE

In the SUPREME COURT of the UNITED STATES

◆

REX ALLEN BECKWORTH,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

◆

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

**BRIEF OF RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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February 8, 2016

CAPITAL CASE

QUESTION PRESENTED FOR REVIEW

I. Should this Court decline to review Beckworth's claim that the holding of the Alabama Court of Criminal Appeals creates a fourth *Brady* element where the claim does not involve a federal question and is not worthy of this Court's review?

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STATEMENT OF THE CASE

A. The Proceedings Below

Rex Allen Beckworth was convicted of capital murder for shooting and killing Bessie Lee Thweatt during a burglary in violation of Alabama Code, §13A-5-40(a)(4). (C. 968, 990) Ms. Thweatt was an 87-year old widow who was 5 feet, 1 inch tall, weighed 112 pounds, and lived alone in a house in which she had resided for 67 years. *Beckworth v. State*, 946 So. 2d 490, 495 (Ala. Crim. App. 2005). Following a sentencing hearing, the jury recommended that Beckworth be sentenced to death by a ten-to-two vote. (C. 970) The trial court agreed with the jury and sentenced Beckworth to death. (C. 990-995)

On direct appeal, the Alabama Court of Criminal Appeals affirmed Beckworth's conviction and death sentence. *Beckworth v. State*, 946 So. 2d 490 (Ala. Crim. App. 2005). The Alabama Supreme Court and this Court denied Beckworth's petitions for writ of certiorari. *Id.*; *Beckworth v. Alabama*, 549 U.S. 1120 (2007).

After his direct appeal was concluded, Beckworth filed a petition for post-conviction relief under Rule 32 of the Alabama Rules of Criminal Procedure. The majority of the allegations involved various ineffective assistance of counsel claims, as well as a *Brady* claim and claims of juror

misconduct. (Rule 32 C. 3-79) After the State filed an answer, the circuit court entered an order summarily dismissing the Rule 32 petition. The circuit court determined that Beckworth's allegations were insufficiently pleaded, finding that his allegations were conclusory and of a "speculative nature." (Rule 32 C. 157) Beckworth filed a notice of appeal.

The Alabama Court of Criminal Appeals affirmed the circuit court's summary dismissal of Beckworth's Rule 32 petition. In pertinent part, the circuit court found that Beckworth's *Brady* claims were properly dismissed because they were not sufficiently pleaded under Rule 32.6(b), Ala.R.Crim.P., and were procedurally barred under Rule 32.2(a)(3) and (5), Ala.R.Crim.P. *Beckworth v. State*, 2009 WL 1164994, at *8-11 (Ala. Crim. App. May 1, 2009). The Alabama Court of Criminal Appeals did issue a limited remand for the circuit court to consider specific claims of juror misconduct relating to one juror. *Id.* at 38. After conducting an evidentiary hearing on these claims, the circuit court denied relief on the juror misconduct claim. (Rule 32 C. Remand 167-168) On return from remand, the Alabama Court of Criminal Appeals held that the circuit court correctly denied relief, finding that Beckworth had failed to establish that he might have been prejudiced by the juror misconduct allegations. *Beckworth v.*

State, CR-07-0051, __ So. 2d __ (Ala. Crim. App. June 18, 2010)

(unpublished memorandum on return to remand).

The Alabama Supreme Court then granted Beckworth's certiorari petition on one issue – whether the Alabama Court of Criminal Appeals correctly affirmed the circuit's court's summary dismissal of Beckworth's *Brady* claim because Beckworth failed to state a claim for relief where he did not plead any fact negating the grounds of preclusion in Rule 32.2(a)(3) and (5). The circuit court had summarily dismissed Beckworth's Rule 32 petition before Beckworth had an opportunity to plead that the preclusionary bars of Rule 32.2(a)(3) and (5) did not apply to his case. The Alabama Supreme Court reversed the holding of the Alabama Court of Criminal Appeals and held that "Beckworth's Rule 32 petition should not have been dismissed on the ground that this claim for relief under Rule 32.1(a) lacked allegations negating the preclusive bars of Rule 32.2(a)(3) and (5)." *Id.* at *5.

On remand, the Alabama Court of Criminal Appeals noted that the Alabama Supreme Court's holding in this case was limited and "did not hold that the circuit court's summary dismissal of the *Brady* claim was improper, only that this Court's affirmance of that judgment based on the ground that Beckworth had failed to plead facts regarding the preclusive bars was

improper.” *Beckworth v. State*, CR-07-0051, __ So. 3d __, pp. 2-3 (Ala. Crim. App. Nov. 14, 2014) (unpublished memorandum on remand). The Alabama Court of Criminal Appeals then held that the summary dismissal of Beckworth’s *Brady* claim was proper because Beckworth failed to meet the requirement of Rule 32.6(b), Ala.R.Crim.P., that he specifically plead the *Brady* claim in his Rule 32 petition. The Alabama Court of Criminal Appeals specifically found that Beckworth failed to allege in his petition facts “to establish that evidence of Walker’s statement to his cell mate was not known to the defense. ...” *Id.* at p. 5. Beckworth then filed a petition for writ of certiorari in the Alabama Supreme Court which was denied on September 18, 2015.

B. Statement of the Facts

Beckworth murdered 87-year-old Bessie Lee Thweatt in the home where she have lived for 67 years in rural Houston County, Alabama. Early in the morning of January 6, 2000, Beckworth and his younger half-brother, James Walker, broke into Ms. Thweatt’s house. The two men were armed with a .22 caliber rifle when they entered the house. They beat Ms. Thweatt, shot her in the head, and ransacked her house. *Beckworth v. State*, 946 So. 2d at 495. The evidence showed that Ms. Thweatt suffered more than seven blunt-force injuries to her face and head. *Id.* at 496. After fleeing the scene,

Beckworth and Walker disposed of the murder weapon by throwing it off a bridge into a nearby creek. *Id.* at 498.

Beckworth was eventually arrested in Arizona. While waiting to be transferred back to Alabama from Arizona, Beckworth gave a tape-recorded confession admitting his involvement in the capital murder. Beckworth described the circumstances of the murder, including how he and Walker had disposed of the murder weapon and fled. His confession comported with the physical evidence as it related to the method of entry into the house, the location of Ms. Thweatt's body, and the manner of her injuries. The .22 caliber rifle was discovered in the creek where Beckworth said it would be. *Id.* at 497-498.

Testimony from several other witnesses at trial implicated Beckworth in Ms. Thweatt's murder. Mark Peacock, Ms. Thweatt's grandson, testified that in 1997 or 1998 he had told Beckworth where his grandmother lived and testified that he may have told Beckworth that his grandmother kept a large amount of cash in her house. *Id.* at 496-497. Angela Foster, Walker's half-sister, testified that, in January 2000, she got a hotel room under her name for Beckworth and Walker because they did not want anyone to know they were in town. During this time, Foster saw a .22 caliber rifle in the trunk of Beckworth's car. Beckworth told her that someone had given the gun to

him. *Id.* at 497. Chris Hood, who was incarcerated with Beckworth on unrelated charges testified that Beckworth asked him in December of 2000 if he could get “a hot gun” that could not be traced back to Hood or Beckworth. Hood also testified that Beckworth told him that the best way to kill a person was execution-style. After Hood heard about the murder, he contacted local law enforcement and told them about his conversations with Beckworth. *Id.*¹

REASONS FOR DENYING THE PETITION

It is worth noting at the outset that Beckworth has not raised any certworthy issue. The decision below does not conflict with any decision of this Court, does not implicate any split, and the claim is thoroughly factbound. Such review is not the proper domain of this Court. SUP. CT. R. 10. This Court should, therefore, deny Beckworth’s petition for writ of certiorari.

I. This Court Should Decline To Review Beckworth’s Claim That The Holding Of The Court Of Criminal Appeals Creates A Fourth *Brady* Element Because The Claim Does Not Present A Federal Question And Is Not Worth Of This Court’s Review.

Beckworth contends that the Alabama Court of Criminal Appeals

¹ A more detailed statement of the facts can be found in the Alabama Court of Criminal Appeals’ August 26, 2005 opinion. *Beckworth v. State*, 946 So. 2d 490, 490-495 (Ala. Crim. App. 2005).

erred when it refused to grant relief on his allegation that a *Brady v. Maryland*, 373 U.S. 83 (1963), violation occurred when the prosecutor allegedly suppressed a statement by his co-defendant to a cell mate admitting that he, not Beckworth, shot the victim in this case. Specifically, Beckworth asserts that the Alabama Court of Criminal Appeals created a fourth *Brady* element, that the holding of the Alabama Court of Criminal Appeals conflicts with decisions of other courts “equal access” rule and shifts the focus of the *Brady* analysis from prosecutorial duties to defense counsel’s diligence. This Court should deny cert on these arguments for at least two reasons.

A. This Court Should Deny Certiorari Because This Claim Does Not Create A Federal Question.

Beckworth is requesting that this Court grant certiorari to review the Alabama Court of Criminal Appeals holding that his *Brady* claim was not sufficiently pleaded. In this case, the Alabama Court of Criminal Appeals held that Beckworth failed to specifically plead his *Brady* claim under Rule 32.6(b) of the Alabama Rules of Criminal Procedure. *Beckworth v. State*, CR-07-0051, __ So. 3d __, p. 5 (Ala. Crim. App. Nov. 14, 2014) (unpublished memorandum on remand). The application of the requirement that a petitioner specifically plead the claims in his post-conviction petition is strictly a matter of state law. A state may apply its own criminal rules of

procedure and may defeat a claim based on that independent state law. This Court should, therefore, deny certiorari on Beckworth's claim because it was decided on an independent state law rule and it does not present a federal question pursuant to 28 U.S.C. §1257(a).

B. This Court Should Deny Certiorari Because The Claim Is Not Worthy Of Certiorari Review.

This Court should also deny certiorari review because Beckworth's claim is not worthy of certiorari consideration. Certiorari is not a matter of right, but of judicial discretion, and will be granted only where there are special and important reasons. In addition, the demands on this Court's time mandate that it select for review only those truly important cases that will have a wide ranging impact.

Beckworth has not alleged compelling grounds for this Court to grant certiorari review of this claim. While Beckworth asserts that the Alabama Court of Criminal Appeals created a fourth *Brady* element, this allegation is untrue. Instead, the Alabama Court of Criminal Appeals noted that a defendant had to prove three elements to establish a *Brady* claim. The Alabama Court of Criminal Appeals also noted that *Brady* only applies in situations involving discovery after trial of information which had been known to the prosecution but unknown to the defense. After examining this law, the Alabama Court of Criminal Appeals determined that Beckworth

failed to specifically plead the first element of a *Brady* claim – that the prosecution suppressed evidence which was not known to Beckworth. *Beckworth v. State*, CR-07-0051, __ So. 3d __, pp. 4-5 (Ala. Crim. App. Nov. 14, 2014) (unpublished memorandum on remand). The Alabama Court of Criminal Appeals did not establish a fourth *Brady* element, as Beckworth alleges. Rather, it found that Beckworth failed to specifically plead his *Brady* claim as required by Rule 32.6(b) of the Alabama Rules of Criminal Procedure. The holding of the Alabama Court of Criminal Appeals does not have a wide ranging impact and therefore does not entitle Beckworth to certiorari review.

Because the Alabama Court of Criminal Appeals simply found that Beckworth failed to comply with Alabama’s pleading requirement for claims raised in a post-conviction proceeding, his other arguments likewise do not entitle him to certiorari consideration. The holding of the Alabama Court of Criminal Appeals does not conflict with decisions of other courts “equal access” rule and does not shift the focus of the *Brady* analysis from prosecutorial duties to defense counsel’s diligence, as Beckworth contends, because the Alabama Court of Criminal Appeals did not consider the merits of Beckworth’s *Brady* claim. For that reason, a decision in this case would

be of such narrow scope and limited precedential value that it is not worthy of certiorari consideration.

Finally, the underlying issue is not worthy of certiorari consideration because it is without merit. Beckworth failed to allege in his post-conviction petition what, if any, exculpatory information was contained in Byrd's statement. In fact, Byrd's statement was consistent with the State's theory of the case and with Beckworth's confession. Indeed, Byrd's testimony corroborated the State's theory because Byrd indicated that Walker had told him that Beckworth participated in the crime. *Walker v. State*, 932 So. 2d 140, at 149 (Ala. Crim. App. 2004).

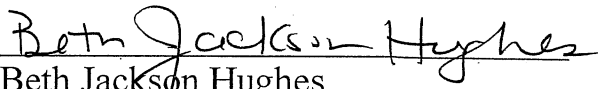
CONCLUSION

For the foregoing reasons, this Court should deny Beckworth's petition for writ of certiorari.

Respectfully submitted,

Luther Strange
Alabama Attorney General

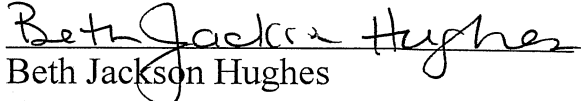
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2016, I did serve a copy of the foregoing on the attorneys for the Petitioner, by placing same in the United States mail, first class, postage prepaid and addressed as follows:

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