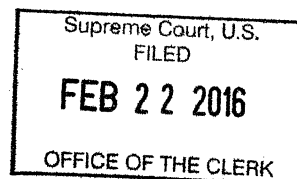


No.15-7451



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IN THE  
SUPREME COURT OF THE UNITED STATES

REX ALLEN BECKWORTH,  
*Petitioner,*

v.

STATE OF ALABAMA,  
*Respondent.*

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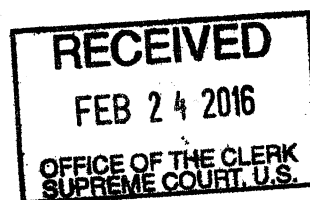
On Petition for a Writ of Certiorari  
to the Alabama Supreme Court

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REPLY TO BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI

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## REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Mr. Beckworth's *Brady* claim alleges that the prosecution unlawfully suppressed his co-defendant's admission to a cell-mate that he was the trigger man in a capital murder. The Alabama Court of Criminal Appeals ruled that this claim was meritless, citing Mr. Beckworth's failure to demonstrate that his attorneys were unaware of the suppressed confession at the time of trial.

In opposition to Mr. Beckworth's petition for writ of certiorari, Respondent makes two arguments: that this case presents no federal question, and that there is no split of authority among the lower courts regarding the issue. For the reasons expressed below, both contentions are untrue.

### **This case presents a federal question.**

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), this Court established that the suppression of favorable evidence by the prosecution is unconstitutional. "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

Although Mr. Beckworth's *Brady* claim satisfies this Court's three-factor test, the Alabama Court of Criminal Appeals determined that the claim was

insufficiently pleaded. As this conclusion involved an interpretation of federal law, there is no independent and adequate state procedural bar to this Court's review of Mr. Beckworth's *Brady* claim. *See Ake v. Oklahoma*, 470 U.S. 68, 75 (1985) (“[W]hen resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded.”).

**There is a difference of authority among the lower courts  
regarding the equal access rule.**

In analyzing *Brady* claims, a number of lower courts have adopted an “equal access” rule, whereby suppression of favorable evidence cannot be established if the defendant had equal access to the evidence or could have acquired it with reasonable diligence. *See, e.g., United States v. Graham*, 484 F.3d 413, 417 (6th Cir. 2007); *Commonwealth v. Spatz*, 896 A.2d 1191, 1248 (Pa. 2006); *Maharaj v. Sec’y for Dept. of Corr.*, 432 F.3d 1292, 1315 (11th Cir. 2005); *Boss v. Pierce*, 263 F.3d 734, 740 (7th Cir. 2001). At least one lower court has explicitly rejected the equal access rule. *See People v. Chenault*, 845 N.W.2d 731, 738 (Mich. 2014) (“[W]e do not believe that the goals of *Brady* counsel in favor of adopting a diligence requirement. The Supreme Court has consistently stated that, when confronted with potential *Brady* evidence, the prosecution must always err on the side of disclosure.”).

Even among jurisdictions embracing the equal access rule, courts have

recognized that defendants lack equal access to information conveyed orally to the prosecution. Thus, in *Boss*, the court determined that the prosecution violated *Brady* by withholding favorable evidence it obtained from the defense's own witness: "[I]t is simply not true that a reasonably diligent defense counsel will always be able to extract all the favorable evidence a defense witness possesses." 263 F.3d at 740. *See also United States v. Lewis*, 2008 WL 268828, at \*4 (N.D. Ind. Jan. 29, 2008) ("[T]he Defendant cannot be charged with the responsibility to become aware of information that may not be forthcoming.").

Likewise, in *United States v. Tavera*, 719 F.3d 705 (6th Cir. 2013), the court held that the prosecution violated *Brady* by withholding a co-defendant's admission during plea negotiations that the defendant had no knowledge of the drug conspiracy. In rejecting the prosecutor's argument that the defendant should have asked his co-defendant whether he gave a statement to the prosecution, the court noted that "[t]his 'due diligence' defense places the burden of discovering exculpatory information on the defendant and releases the prosecutor from the duty of disclosure." 719 F.3d at 711.

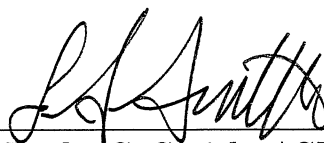
The Alabama Court of Criminal Appeals rejected Mr. Beckworth's *Brady* claim for failing to demonstrate that his trial attorneys were unaware of his co-defendant's confession to his cell-mate, a prosecution witness called in the co-defendant's subsequent trial. This decision therefore conflicts with those of other

courts recognizing that defendants lack equal access to such witness statements, and that *Brady* imposes no burden on defendants to discover such statements.

### Conclusion

The prosecution in Mr. Beckworth's case withheld his co-defendant's confession to being the triggerman, the same evidence at issue in *Brady*. The Alabama Court of Criminal Appeals' rejection of Mr. Beckworth's claim therefore conflicts with the precedent of this court, as well as the decisions of other lower courts. For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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