

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - x

JUAN SMITH, :

Petitioner :

v. : No. 10-8145

BURL CAIN, WARDEN :

- - - - - x

Washington, D.C.

Tuesday, November 8, 2011

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:11 a.m.

APPEARANCES:

KANNON K. SHANMUGAM, ESQ., Washington, D.C.; on behalf of Petitioner.

DONNA R. ANDRIEU, ESQ., Assistant District Attorney, New Orleans, Louisiana; on behalf of Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	KANNON K. SHANMUGAM, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	DONNA R. ANDRIEU, ESQ.	
7	On behalf of the Respondent	25
8	REBUTTAL ARGUMENT OF	
9	KANNON K. SHANMUGAM, ESQ.	
10	On behalf of the Petitioner	54
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(11:11 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next this morning in Case 10-8145, Smith v. Cain.

Mr. Shanmugam.

ORAL ARGUMENT OF KANNON K. SHANMUGAM

ON BEHALF OF THE PETITIONER

MR. SHANMUGAM: Thank you, Mr. Chief Justice, and may it please the Court:

In Brady v. Maryland, this Court established the now-familiar principle that the prosecution must hand over all favorable material evidence to the defense before trial. This case presents a flagrant violation of that principle.

The Orleans Parish district attorney's office produced almost no relevant evidence to the defense before Petitioner's trial, and Petitioner was convicted of first-degree murder based solely on the testimony of a single eyewitness. Unbeknownst to the defense, however, that eyewitness had told the police on multiple occasions that he could not identify any of the perpetrators or, as he put it, that he would not know them if he saw them.

The suppression of those statements alone justifies a new trial, but the district attorney's

1 office in this case also engaged in the wholesale
2 suppression of statements of numerous other witnesses,
3 statements that further undermined the sole eyewitness
4 identification of Petitioner and, more broadly, cast
5 doubt on Petitioner's involvement and role in the
6 shootings.

7 If all of that information had been
8 disclosed to the defense before trial, the jury surely
9 would have viewed this case in a completely different
10 light. The trial court therefore erred by rejecting
11 Petitioner's Brady claim, and its judgment should be
12 reversed.

13 In our view, in order to conclude that
14 Petitioner is entitled to a new trial here, this Court
15 need do nothing more than to consider the suppressed
16 statements of the key eyewitness, Larry Boatner.
17 Respondent concedes that those statements were withheld
18 from the defense before trial, and argues only that the
19 failure to disclose those statements was not
20 prejudicial.

21 Those statements, however, could not have
22 more clearly contradicted Boatner's confident
23 identification of Petitioner at trial --

24 JUSTICE GINSBURG: Well, he saw a picture.
25 Boatner saw a picture in a newspaper, and that turned on

1 the light for him, right? It wasn't any police
2 suggestion.

3 MR. SHANMUGAM: That is correct. The basis
4 for Boatner's identification was that he saw a
5 photograph in the New Orleans newspaper of Petitioner.
6 It was in connection with an article describing the
7 shootings and suggesting that Petitioner was one of the
8 suspects in the case. And that was what led to his
9 prior identification out of court.

10 But just to be clear, Justice Ginsburg,
11 we're not arguing today that the identification was
12 somehow constitutionally problematic. At most, we're
13 arguing that the identification was of questionable
14 validity in light of the fact that Boatner had only a
15 limited opportunity to see the perpetrators and in light
16 of the circumstances that led to his identification.

17 Now, even if his identification were more
18 clearly reliable, our argument today would be the same.
19 In a case such as this one, in which the sole basis for
20 linking the defendant to the crime is the testimony of a
21 single eyewitness, and there is evidence that the single
22 eyewitness said on multiple occasions that he couldn't
23 identify anyone, we believe that, absent extraordinary
24 circumstances, that will be sufficient to --

25 JUSTICE ALITO: Well, aren't you

1 exaggerating a little bit about the value of the
2 impeachment evidence regarding Boatner? Now, my
3 understanding is that he made his first statement to the
4 effect that he couldn't identify anybody at the scene
5 when he had been at the scene where five people that he
6 knew very well had been killed.

7 He was lying on the floor with a big gash on
8 his head. He was questioned at the scene, and at that
9 time -- and this was in the evening -- he said: I can't
10 identify anybody. But then, later that very day, wasn't
11 it, that very evening, after midnight, he was questioned
12 at the police station; am I correct?

13 MR. SHANMUGAM: Yes, that's correct.

14 JUSTICE ALITO: And at that point he gave a
15 description. He did make an -- he did provide a
16 description of the person that he said was the one who
17 first came through the door. So, you know, that -- I
18 don't know -- and then later, he said he -- there were
19 statements to the effect that he couldn't identify
20 anybody.

21 But in light of the fact that he did provide
22 a pretty, you know, somewhat detailed description on the
23 very evening of the event, doesn't that -- aren't you
24 exaggerating when you say that he said numerous times --
25 the effect of these statements that he couldn't

1 identify --

2 MR. SHANMUGAM: Justice Alito, it is true
3 that Boatner provided identifying details in the later
4 statement that night. I would respectfully submit that
5 they were relatively limited identifying details, simply
6 the fact that the first man through the door had a
7 low-cut haircut and gold teeth. And as we indicate in
8 our brief, those were characteristics shared by numerous
9 other suspects in the case.

10 But I think more broadly, with regard to
11 both sets of statements at issue here, the State's
12 explanations for those statements are at best plausible.
13 And we really think that in a case such as this one, in
14 which the evidence on its face is so clearly of high
15 exculpatory or impeaching values, it takes something
16 more than that. It is not sufficient for Respondent to
17 argue here simply that, even taking into account these
18 statements, a rational juror could still reach the same
19 result and return a verdict of guilty here, because this
20 Court made clear in *Kyles v. Whitley* that the standard
21 for Brady claims is not a *Jackson v. Virginia* type
22 sufficiency of the evidence standard.

23 So, again, where you have statements that on
24 their face are not simply statements calling a witness's
25 credibility into question, but statements that really

1 directly contradict the confident in-court
2 identification, it would take an exceedingly persuasive
3 explanation for those statements to defeat a showing of
4 materiality. Now, with regard --

5 JUSTICE KENNEDY: The standard is a
6 reasonable probability that the result would have been
7 different, reasonable probability?

8 MR. SHANMUGAM: Yes, that's correct. And
9 this Court made clear in *Kyles v. Whitley* that that's
10 not a more likely than not standard. That is
11 essentially the same standard that this Court has
12 articulated for prejudice for ineffective assistance of
13 counsel claims under *Strickland v. Washington*, and by
14 now it's a quite clearly established standard. And,
15 again, it requires something less than a showing of more
16 likely than not and perhaps something slightly more than
17 the showing required for harmless error under *Chapman v.*
18 *California*.

19 But I do want to touch upon the State's
20 explanations for these statements and explain very
21 briefly why we think that those explanations are frankly
22 not even plausible. With regard to the first statement
23 to which Justice Alito referred, the statement that was
24 made at the scene approximately half an hour after
25 initial -- officers initially responded to the scene,

1 the State's argument is that Boatner was somehow too
2 traumatized to make an identification at the time.

3 But not only did Boatner not so testify at
4 the postconviction hearing -- in fact he testified that
5 he couldn't recall the statement at all -- but the very
6 officer who took the statement himself testified at
7 trial in this case that at the time of the statement
8 Boatner was, quote, "coherent and articulated very well
9 the events that transpired." And that is at pages 137
10 to 138 of the joint appendix.

11 JUSTICE ALITO: That may be true, but if you
12 were a juror and Boatner testified and he was
13 cross-examined and they attempted to impeach him based
14 on his failure to make an identification right at the
15 scene, and he said, well, that was because five of my
16 friends had just been killed and I was lying on the
17 floor and I thought I was going to be shot too and I had
18 a big gash on my head, and then a couple of hours later
19 when I collected myself and they asked me the same
20 question at the police station, I provided a description
21 and didn't say I couldn't identify anybody -- do you
22 think jurors would just dismiss that and say, well, he
23 couldn't identify him at the scene so he must have been
24 lying when he identified -- when he provided a
25 description later at the police station?

1 MR. SHANMUGAM: Justice Alito, I think that
2 it's possible that a juror could credit that explanation
3 in any retrial, though I --

4 JUSTICE GINSBURG: Wasn't there also an
5 intervening -- didn't he say 5 days after that he
6 couldn't identify? And that was after what he said on
7 the night, the same night.

8 MR. SHANMUGAM: That is --

9 JUSTICE GINSBURG: Five days later he said:
10 I couldn't -- I couldn't identify him.

11 MR. SHANMUGAM: That is correct, Justice
12 Ginsburg. But even if we didn't have the March 6th
13 statement or statements, I would frankly be happy to
14 take my chances with the jury, even with regard solely
15 to the March 1st statement, in light of that testimony
16 of Officer Ronquillo that Boatner was in fact coherent,
17 articulated very well the events that transpired, just
18 like any witness, and so on and so forth.

19 So, again -- -

20 JUSTICE SOTOMAYOR: Counselor --

21 MR. SHANMUGAM: -- we don't think that it's
22 our burden to show that no juror could credit the
23 State's explanation. It's simply that we think that
24 that explanation doesn't hold water.

25 JUSTICE SOTOMAYOR: Counselor, your argument

1 now and in your brief suggests that you're relying most
2 heavily on the failure to provide the impeachment
3 materials of the only witness to this crime and the only
4 piece of evidence that ties your client to the crime.
5 But you also mention other things, and Respondents spend
6 90 percent of their brief arguing against the other
7 things. But I just want to clarify those other things.

8 Number one, was the testimony mixed
9 testimony about whether the assailants wore a mask
10 across their face or over their entire head?

11 MR. SHANMUGAM: There --

12 JUSTICE SOTOMAYOR: What's the best take on
13 what the evidence showed that was presented on that
14 issue?

15 MR. SHANMUGAM: There was some degree of
16 variation in what the witnesses said. Now, in the main,
17 we're talking, again, about statements that were
18 withheld. And I want to lay out those statements very
19 briefly, if I may. There were two eyewitnesses who made
20 statements to the police indicating that some or all of
21 the perpetrators, including the first man through the
22 door, were wearing masks. Those were the statements of
23 Shelita Russel and the statement of Dale Mims.

24 Now, with regard to the statement of Shelita
25 Russell -- and this was what we believe was the dying

1 declaration that she made at the scene in the immediate
2 aftermath of having been shot multiple times -- Russell
3 said she saw people barge into the kitchen; one had a
4 black cloth across the face, first one through the door.
5 So, it is at least theoretically possible --

6 JUSTICE SOTOMAYOR: Could I ask you
7 something? Who determines that issue of whether that's
8 a dying declaration? Do we determine that in deciding
9 whether the withholding of the Brady materials was
10 harmful or not? Do we give deference to the lower
11 court's determination of that? Do they have to decide
12 whether it was a dying declaration? What's the standard
13 on something like this?

14 MR. SHANMUGAM: The lower court did not make
15 such a determination in this case on this or any of the
16 other evidentiary issues that Respondent now advances,
17 at least in part because it does not appear that
18 Respondent advanced any of those arguments below. But I
19 think more broadly, Justice Sotomayor, in terms of the
20 role of this Court or any other court considering a
21 Brady claim, this Court hasn't quite spoken to the
22 specific issue of whether a Brady court is supposed to
23 itself make an evidentiary determination where there's a
24 question about admissibility, but the closest that this
25 Court came was in *Wood v. Bartholomew*, in which this

1 Court indicated that with regard to Brady material, it
2 either has to itself be admissible or be reasonably
3 likely to lead to admissible evidence. And the Court's
4 reasoning in Wood v. Bartholomew was somewhat spare on
5 that score. That was a summary reversal in a per curiam
6 opinion.

7 But I do think that it would be appropriate
8 for a Brady court to make that determination itself or,
9 at a minimum, make a determination as to whether it
10 appears that it's reasonably likely that the evidence
11 would be admissible.

12 Here, we really don't think that it's a
13 close question, particularly with regard to the
14 statement of Shelita Russell, because the context of the
15 handwritten notes makes clear that the statement was
16 taken at the scene of the crime. Shelita Russell was
17 taken to the hospital approximately a half an hour after
18 the shootings occurred. She told two witnesses that she
19 believed that she was dying. And so, under the law on
20 dying declarations -- and I have no reason to believe
21 that the law is any different in Louisiana from the
22 Federal system or the 49 other States -- that would
23 comfortably satisfy that requirement.

24 JUSTICE SOTOMAYOR: Now, Mr. Mims was the
25 neighbor who saw the two -- there were three assailants

1 in total, right, and two left the scene?

2 MR. SHANMUGAM: There's some doubt as to
3 whether or not there were three or four assailants. And
4 Mims himself, in all candor, was a little bit
5 inconsistent on that point. But he consistently said,
6 both in the handwritten notes and in his testimony at
7 the postconviction hearing, that all of the assailants,
8 however many there were, were wearing masks and that --
9 that he saw them as they were getting into the car. He
10 didn't say anything further other than that the masks
11 were ski-type masks.

12 But the State's argument with regard to the
13 materiality of Mims's statement is that it is possible
14 that the men would not have been wearing masks when they
15 entered the house to allegedly commit the armed robbery;
16 and, therefore, the fact that Boatner saw the first man
17 unmasked can be reconciled with his statement. And,
18 again, we would be happy to take our chances with the
19 jury and make the argument that that would be an
20 exceedingly unconventional way to go about committing an
21 armed robbery.

22 And, again, with regard to the Russell and
23 Mims statements, I think it's important to remember that
24 we view those statements as going directly to and
25 contradicting Boatner's in-court identification. And

1 so, in some sense, we view those statements as being of
2 a piece with Boatner's own prior statements in which he
3 indicated that he could not identify anyone and that he
4 did not --

5 JUSTICE ALITO: Does the defense have any
6 theory as to why Boatner would lie about whether he
7 could identify this individual?

8 MR. SHANMUGAM: First of all, Justice Alito,
9 it would, of course, not be the defense's burden in any
10 subsequent retrial to come up with a theory of its own.
11 The defense could simply argue, as it did at the first
12 trial, that the prosecution simply didn't bear its
13 burden on reasonable doubt. But --

14 JUSTICE ALITO: But, yes -- but the -- the
15 impact of your impeachment evidence would be related
16 certainly to if a juror would ask, well, why would he
17 lie about this? And I -- I'm just asking, would -- did
18 the defense have any theory about what his motive would
19 be about whether he could identify somebody, whether
20 this first person had a mask or not?

21 MR. SHANMUGAM: As this Court will be aware
22 from its recent consideration of eyewitness evidence, it
23 doesn't necessarily follow from the fact that an
24 eyewitness identification is mistaken that the
25 eyewitness was somehow lying about it. It may very well

1 have been that Boatner made a mistaken identification in
2 good faith out of a desire to identify the person who
3 killed several of his friends.

4 And, indeed, as the amicus brief of the
5 Innocence Project explains in this case, there is a
6 phenomenon known as "mug shot exposure effect," where an
7 individual who sees a mug shot in some other context is
8 more likely to identify that same person when confronted
9 with a subsequent line-up. Of course, where, as here,
10 the individual is exposed to the mug shot for the first
11 time in seeing a newspaper article that depicts the
12 individual in question and suggests that that individual
13 is a suspect in the crime, it would not at all be
14 unusual for the individual, when confronted with that
15 photograph again in a line-up a few weeks later, to pick
16 that individual.

17 JUSTICE ALITO: But the first time he -- he
18 said that the person wasn't masked and provided a
19 description was long before he saw any mug shots. It
20 was the evening of the event. It was when he was
21 questioned at the police station.

22 MR. SHANMUGAM: Well, on the evening of the
23 event, he provided those limited details about the gold
24 teeth and the low-cut haircut.

25 JUSTICE ALITO: Yes, but by doing that he's

1 saying this person wasn't wearing a mask. That's the
2 critical point.

3 MR. SHANMUGAM: Well, that may suggest that
4 the person was not wearing a mask. Of course, it's
5 possible that the person somehow had part of his face
6 covered.

7 But I think it's important to realize,
8 Justice Alito, that even with regard to that statement,
9 while it is true that Boatner provided those limiting
10 details, he also made statements suggesting that he was
11 not confident of his ability to actually make an
12 identification. And in that statement, which is found
13 at page 296 of the joint appendix, he says: I was too
14 scared to look at anybody. I wish I could give y'all a
15 description.

16 So, in some sense, we think that the focus
17 on the gold teeth and the low-cut haircut in this case
18 is a bit of an aside, because the question here is not
19 whether he saw enough to support the subsequent
20 identification; the question is whether his suppressed
21 statements in which he repeatedly said, I can't make an
22 identification, contradict his in-court confident
23 identification of Petitioner.

24 And we think that in order to decide this
25 case, all that the Court essentially need say in an

1 opinion is that in a case such as this one, in which all
2 you have is the identification of a single eyewitness,
3 where you have statements in which that eyewitness said
4 I can't make an identification, and those statements
5 have concededly been suppressed, the Brady materiality
6 threshold is satisfied.

7 JUSTICE SOTOMAYOR: Am I right --

8 JUSTICE KENNEDY: In looking at the
9 appendix, there are some asterisks. Were these
10 statements, the first two -- the one at 252 in the joint
11 appendix and then the statement on March the 2nd, which
12 is the one you just referred to, 296, were parts of
13 those statements given to the defense counsel or none of
14 the statements? And how long were the documents? Were
15 they 20 or 30 pages? Can you tell me a little bit about
16 that?

17 MR. SHANMUGAM: First of all, none of those
18 statements were given to the defense. The only
19 relevant --

20 JUSTICE KENNEDY: I shouldn't have said
21 "statements." None of the reports.

22 MR. SHANMUGAM: Yes. None of the statements
23 or the surrounding materials was given to the defense at
24 all. The only even remotely relevant thing that was
25 given to the defense was the initial police report,

1 which was a five-page document prepared by the officers
2 who initially responded to the scene, with a one-page
3 narrative of what took place. And that document, for
4 the Court's reference, is in volume 10 of the initial
5 record that was received from the district court at
6 pages R1907 to 1911.

7 Now, with regard to these specific
8 statements, both the narrative statements and the
9 handwritten notes, the narrative statements were
10 contained in a relatively voluminous document -- I
11 believe it was an 83-page document -- that was a
12 narrative prepared by Officer Ronquillo that set out
13 everything that took place over the course of the
14 investigation. And none of that was disclosed.

15 Respondent makes the argument that the trial
16 court reviewed that document in camera, but we think
17 that it is somewhat unclear what, if anything, the trial
18 court actually reviewed in camera. There's no dispute
19 that that document was not handed over to the defense.

20 With regard to the handwritten notes, there
21 actually are a relatively small number of relevant
22 handwritten notes in this case, but all of them were
23 contained in the police files, and none of them, none of
24 the ones at issue on which we're relying, was handed
25 over before trial.

1 So, this is not a case in which selective
2 materials were handed over. None of this material was
3 handed over, and that's why we really think that this is
4 a case that involves the categorical withholding of
5 documents and not simply the withholding of selected
6 documents that may subsequently turn out to be relevant.

7 JUSTICE KENNEDY: Can you just tell me, how
8 does Brady work? Is there some obligation for the
9 defense counsel to say please give me all relevant
10 reports?

11 MR. SHANMUGAM: No. This Court has made
12 clear that a request is unnecessary to trigger the Brady
13 obligation, and this Court has made clear in cases
14 dating back to Brady itself that the good faith or bad
15 faith of the prosecutor is irrelevant. And, of course,
16 the prosecutor has a duty under Brady to hand over not
17 only materials in the prosecutor's own possession but
18 also materials in the possession of the police as well.

19 JUSTICE SOTOMAYOR: Counsel, is -- this
20 group or gang, all of them had gold teeth and faded hair
21 cuts?

22 MR. SHANMUGAM: There were five other
23 suspects who had gold teeth or -- and low-cut haircuts.
24 Three of the other individuals who were primarily in the
25 frame for this murder had those characteristics. I

1 believe that the three were Bannister, Phillips, and
2 Young. The only other suspect who is a reasonably
3 likely suspect who didn't was Robert Trackling, the
4 suspect whose confession to involvement in these
5 shootings was withheld.

6 JUSTICE SOTOMAYOR: In short, faded hair
7 cuts and gold teeth were not a unique characteristic.

8 MR. SHANMUGAM: They were not uncommon in
9 the 1990s.

10 JUSTICE SCALIA: Yes, what were these --
11 (Laughter.)

12 JUSTICE SCALIA: They're uncommon to me.
13 These --

14 (Laughter.)

15 JUSTICE SCALIA: These were not gold teeth
16 that were implanted, right? They -- what was it? Some
17 kind of a mouthpiece of gold?

18 MR. SHANMUGAM: I have to admit that my
19 familiarity with this practice is perhaps not that much
20 greater than yours, Justice Scalia. But my
21 understanding is --

22 JUSTICE SCALIA: I'm sorry to hear that.
23 (Laughter.)

24 MR. SHANMUGAM: My understanding is that
25 these are gold teeth that are worn either as temporary

1 or perhaps semipermanent implants, and that in hip-hop
2 culture in the 1990s, this was relatively common. But
3 whatever the provenance of this practice, it is
4 undisputed on this record that multiple other suspects
5 had those characteristics.

6 Justice Sotomayor, there was one thing you
7 asked that I just want to get back to with regard to the
8 remaining categories of evidence. I just want to set
9 them out, and then I'd be happy to answer any questions
10 that the Court has about them. And if there are no
11 further questions, I'll reserve the balance of my time.

12 As we explain in our brief, there are three
13 other categories of evidence at issue here. There was
14 the statement of Phillip Young, Petitioner's
15 co-defendant, suggesting that Petitioner was not
16 involved in the shootings. There were also the
17 statements that would have called into question the
18 prosecution's theory that Petitioner was one of the
19 shooters, a theory that was essential to establishing
20 the intent required for first-degree murder under
21 Louisiana law. Louisiana is somewhat different from
22 other States in that it doesn't require premeditation,
23 but that it -- but it does require a specific intent to
24 kill or inflict great bodily harm.

25 JUSTICE ALITO: Well, on that point, the

1 State says that you're drawing a meaningless distinction
2 between a hand -- a 9-millimeter handgun and a
3 9-millimeter automatic pistol.

4 MR. SHANMUGAM: Well, we don't think that
5 that's a meaningless distinction, and we cite numerous
6 sources in our brief that draw precisely that
7 distinction.

8 But I think that what's noteworthy with
9 regard to the statements at issue is that both Boatner,
10 who identified the weapon that the perpetrator whom he
11 believed to be Petitioner was carrying, and the State's
12 ballistics expert, Kenneth Leary, who identified the
13 weapon that was responsible for the firing of the
14 casings at issue, conspicuously failed to say that the
15 weapon at issue was a 9- millimeter handgun. But at
16 trial their testimonies suddenly converged, and Boatner,
17 who had previously said only that the perpetrator was
18 carrying a handgun, said that the perpetrator was
19 carrying a 9-millimeter handgun; and Leary, who said
20 that the casings at issue had come from a machine pistol
21 of the Intratec or MAC-11 type, suddenly said that they
22 came from a 9-millimeter handgun instead.

23 And so, at a minimum, if the defense had
24 possessed those statements, it could have sown doubt on
25 whether the firearm was in fact one and the same and,

1 therefore, sown doubt on a critical element of the
2 offense at issue.

3 And finally, the only other category --

4 JUSTICE SOTOMAYOR: I'd just like to go back
5 to that because I'm not sure I understand the argument.
6 Both the ballistics expert at trial said that the
7 casings were consistent with a 9-millimeter? And I know
8 that Boatner said that it was a 9-millimeter that was
9 used. And the issue was whether anybody would call a
10 MAC gun a handgun as opposed to an automatic pistol,
11 correct?

12 MR. SHANMUGAM: Well, that's right with
13 regard to Leary's testimony. I think the thing that was
14 a little bit odd with regard to Boatner's testimony was
15 the sudden degree of specificity. Having said only that
16 it was a handgun or a chrome automatic in his prior
17 statements, he said at trial that it was a 9-millimeter
18 handgun, which he had not previously said in the
19 statements that were withheld.

20 And, finally, the last category of evidence
21 consists of the notes of the interview in which Eric
22 Rogers relayed Robert Trackling's confession to
23 involvement in the shootings. As the amicus brief of
24 the NACDL points out, courts have routinely held that
25 confessions by other perpetrators constitute exculpatory

1 evidence, even with regard to offenses that may have had
2 multiple perpetrators. And we certainly believe that at
3 a minimum the suppression of those notes, when
4 considered in conjunction with all of the other
5 evidence, comfortably satisfies the Brady materiality
6 standard, and it's for that reason that we think that
7 the judgment of the trial court should be reversed.

8 JUSTICE KAGAN: Mr. Shanmugam, just a quick
9 one. Was -- is all the evidence that you're discussing
10 here today -- was that presented to the State
11 postconviction court?

12 MR. SHANMUGAM: Yes. We believe that all of
13 this evidence was before the State postconviction court.

14 Thank you, and I'll reserve the balance of
15 my time.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.
17 Ms. Andrieu.

18 ORAL ARGUMENT OF DONNA R. ANDRIEU
19 ON BEHALF OF THE RESPONDENT

20 MS. ANDRIEU: Yes. Mr. Chief Justice, and
21 may it please the Court:

22 The only survivor who could identify the
23 assailant who led the massacre in the small home at 2230
24 North Roman Street was Larry Boatner. He identified --
25 Larry -- he identified the Petitioner after having

1 searched the faces of 72 individuals who were presented
2 to him in photo line-ups, one after the other. And,
3 yes, Justice Sotomayor, several of the -- those faces or
4 several of those individuals bore short fade haircuts.
5 And, yes, some of the individuals who were pictured in
6 those photo line-ups were other suspects. The record
7 reflects that Mr. Boatner scrutinized those 72 faces.
8 At one point, line-up 11 was shown to him on March 22nd,
9 and he remarked about the haircut. He said: My
10 assailant wore his hair like this --

11 JUSTICE GINSBURG: Does this -- was this
12 line-up -- was this after Boatner saw the photograph in
13 the newspaper?

14 MS. ANDRIEU: No, it was not. I believe
15 the -- Mr. Smith's photograph was pictured in the
16 Times-Picayune newspaper on June 7th, and this
17 particular line-up was shown to Mr. Boatner on March
18 22nd. So, at that point, line-up 8, he stopped and
19 remarked about the hair --

20 JUSTICE SOTOMAYOR: Could you tell me why
21 Boatner waited 2 weeks to -- or never told the police
22 that the face that he saw in the newspaper was the face
23 of his assailant? I -- as I understand the facts, he
24 says he saw the newspaper, recognized his assailant, and
25 remained silent.

1 MS. ANDRIEU: Yes, he did.

2 JUSTICE SOTOMAYOR: It wasn't until they
3 presented him with the line-up including Mr. Smith's
4 face that he identified Mr. Smith. What's the reason
5 for the delay?

6 MS. ANDRIEU: His reason, Your Honor, is --
7 it's contained most specifically on page 191 of the
8 joint appendix, and it is frankly that he was afraid.
9 He -- and I think the jury would have understood that.
10 He obviously knew what Mr. Smith was capable of. He --
11 I'm sure he feared --

12 JUSTICE SOTOMAYOR: And so what turned --
13 what changed his mind once the police showed him the
14 line-up?

15 MS. ANDRIEU: Well, I don't know that he
16 changed his mind, but he was presented with a line-up,
17 and when he was presented with the line-up, he very
18 quickly identified Juan Smith and said: That is him; I
19 will never forget his face. So --

20 JUSTICE GINSBURG: And that was before or
21 after the picture in the paper?

22 MS. ANDRIEU: That was after. And all of
23 this, by the way, was vetted during -- during a motion
24 to suppress hearing. When the trial judge learned or --
25 that the photograph had been shown in the newspaper, he

1 reopened the hearing on the motion to suppress to
2 determine -- and over the State's objection. We argued
3 that this was not State action. But he reopened the
4 motion to suppress to determine for himself whether or
5 not that newspaper had in any way tainted the later
6 identification of Juan Smith.

7 JUSTICE BREYER: What is this? I mean, I
8 thought -- I may -- I thought the issue is that there
9 were some notes, and the first note, which was made on
10 the day, the policeman says that Boatner said he could
11 not supply a description of the perpetrator, other than
12 to say they were black males. Then he said they had
13 golden teeth and a low-cut haircut.

14 And 5 days later, he said he could not ID
15 anyone because he couldn't see faces. Then he said he'd
16 only glanced at the first man. He couldn't tell if they
17 had their faces covered and didn't see anyone. Then he
18 said, I could not ID, would not know them if I saw them.
19 And another set of police notes says he said that he
20 could not identify any of the perpetrators of the
21 murder.

22 So, I guess those are all notes that the --
23 the prosecution did not give to the defense. So, if you
24 were a defense lawyer, whatever this other stuff is, I
25 guess you would have been pretty happy to have those

1 notes because you might have tried to impeach his
2 identification.

3 MS. ANDRIEU: Yes, and --

4 JUSTICE BREYER: And so, what are -- you're
5 saying that I guess it would have made no difference?

6 MS. ANDRIEU: That's correct, Your Honor.

7 JUSTICE BREYER: Then I'd like to hear that
8 because it seems on its face that it certainly could
9 have made a difference, that if he had those notes that
10 he could have tried to impeach him and said where did
11 this sudden recognition come from.

12 MS. ANDRIEU: And I can appreciate your
13 concern. This Court has held that favorable evidence --
14 well, this Court has held that favorable evidence which
15 is not material need not be turned over to the defense.
16 And if I could --

17 JUSTICE GINSBURG: But how could it not be
18 material? Here is the only eyewitness --

19 MS. ANDRIEU: Yes.

20 JUSTICE GINSBURG: -- and we have
21 inconsistent statements. Are you really urging that the
22 prior statements were immaterial?

23 MS. ANDRIEU: Yes, Your Honor. If I may put
24 them in perspective. Mr. Boatner provided two
25 statements -- I'm sorry. Mr. Boatner provided a

1 statement on the scene, two statements the day of the
2 incident. To a first responding officer who was not
3 Detective Ronquillo, he gave a description, and that
4 description was heavy built, with a hair with a fade
5 with a little small top, with a lot of gold in his
6 mouth. That was while he was at the scene.

7 Later, homicide Detective John Ronquillo
8 arrived at the scene, and apparently, according to his
9 notes and, most importantly, according to his
10 postconviction testimony, he asked Larry -- he asked
11 Larry Boatner for a description. And Larry Boatner
12 said, I can't give you a description.

13 I'll put them all in perspective and then go
14 back to what Detective Ronquillo and Mr. Boatner had to
15 say about that. But in any case, Mr. Boatner's severe
16 laceration was treated, and then he was escorted to the
17 homicide office, where he gave his formal statement.
18 And in that statement, part of which has been reproduced
19 here by opposing counsel, Mr. Boatner said: I can tell
20 you about the one, the one who put the pistol in my
21 face. He was a black male with a low cut, golds in his
22 mouth. I don't know how many; that's all. I was too
23 scared to look at anybody. All of them had guns, one
24 with an AK; one with a TEC-9. The one who hit me had a
25 chrome automatic. It was big. So --

1 CHIEF JUSTICE ROBERTS: Well, and you
2 could argue, presumably you did argue, that before the
3 jury, and that would be compelling evidence for the
4 jury. And if you were the defense lawyer, you really
5 would like to have that statement where he said: I
6 couldn't identify them.

7 MS. ANDRIEU: You would like to have it, but
8 it's not material because, sandwiched between two
9 descriptions -- and he's -- between two descriptions, he
10 says, I can't identify. And taken in --

11 JUSTICE GINSBURG: How does that make it not
12 material? You can argue that it should be given
13 diminished weight. But an inconsistent statement by the
14 only eyewitness seems to me most material and useful to
15 the defense in cross-examining the eyewitness. I really
16 don't understand how you can -- you can argue that the
17 jury shouldn't put much weight on it because there were
18 these other things; but to say that it's immaterial I
19 find that that is -- is not plausible.

20 JUSTICE SCALIA: And not only the only
21 eyewitness but, if I understand it correctly, the only
22 evidence against the defendant. This was the only
23 evidence against him, this one eyewitness
24 identification, right? Was there anything else?

25 MS. ANDRIEU: There was -- the

1 identification of Juan Smith was bolstered by evidence,
2 by testimony of the brother of Phillip Young. The
3 perpetrator who was left at the scene is an aphasic
4 amnesiac. So, he established a link that the two were
5 known to each other, Juan Smith and --

6 JUSTICE SCALIA: Well --

7 MS. ANDRIEU: -- but yes.

8 JUSTICE KENNEDY: But just on the
9 materiality point, I -- I just have to agree with
10 Justice Ginsburg. What you're telling us is that when
11 the defense stands up and said, and isn't it true that,
12 in this statement which you just have testified to on
13 direct and which the police have put in on direct, you
14 also said you could not identify any perpetrators of the
15 murder -- and then the prosecutor says immaterial, and
16 the judge says strike it.

17 MS. ANDRIEU: But that's not --

18 JUSTICE KENNEDY: I just can't believe that.

19 MS. ANDRIEU: But that's not what he says.
20 He says: I can tell you about the one, the one who put
21 the pistol in my face.

22 JUSTICE BREYER: So, I take it that your --

23 JUSTICE KENNEDY: I'm talking about the
24 Boatner statement of 3/6/95, in which Boatner told
25 police he could not identify any of the perpetrators of

1 the murder, JA 259-60.

2 MS. ANDRIEU: Yes.

3 JUSTICE KENNEDY: And you say that's
4 immaterial. I find that just incredible.

5 JUSTICE BREYER: Is it that you mean
6 immaterial, or is it that you mean that it wasn't
7 prejudicial because there's so much other evidence,
8 there was no reasonable probability it would have made a
9 difference in the trial?

10 MS. ANDRIEU: That is what I mean, yes.

11 JUSTICE BREYER: Okay. So, we can forget
12 the word "material."

13 Now, you're saying there's so much other
14 evidence here against him that it wouldn't have made any
15 difference.

16 MS. ANDRIEU: Yes.

17 JUSTICE BREYER: Now, I can understand that
18 argument.

19 JUSTICE KAGAN: Well, I --

20 JUSTICE BREYER: But I don't know if it's
21 right. That is -- that is -- now I think I can go back
22 to Justice Kennedy's question, put it in those terms,
23 and say, well, why wouldn't -- this could have made a
24 difference. I mean, here, we have this witness who said
25 all of these great things for your side, and within a

1 space of hours, he has been telling the policemen that
2 he can't identify anybody, he doesn't know. I mean,
3 what -- that sounds like there's a probability that
4 would have made a difference. Why not?

5 MS. ANDRIEU: The -- among the most
6 important evidence in this case is the testimony or the
7 transcript from the postconviction relief hearing. John
8 Ronquillo, whose notes these are, was asked about the
9 March 6th statement. And I guess we are
10 fast-forwarding. The next -- the statement after the
11 statement made -- the one made in the homicide office
12 was made on March 6th. And at that time, Detective
13 Ronquillo called Larry Boatner, and Larry Boatner said,
14 I can't identify anyone.

15 Based -- and what Detective Ronquillo had to
16 say about that -- first of all, Larry Boatner didn't
17 remember saying that. But what Detective Ronquillo had
18 to say about it -- and he was the person who was --
19 whose impressions -- about whose impressions we're
20 speaking -- was that at that point, Mr. Boatner, like
21 many murder witnesses, was retreating, temporarily
22 equivocating, as we wrote in brief. He was retreating
23 somewhat from his assistance with the police. Not an --
24 not an abnormal phenomenon --

25 JUSTICE SOTOMAYOR: What if -- what if --

1 could the jury be entitled to reject that conclusion?
2 They have four statements by this man who Ronquillo
3 described as very coherent, very with it at the scene of
4 the crime. Would a jury be entitled to -- to reject
5 that excuse by Ronquillo?

6 MS. ANDRIEU: They would, Your Honor.

7 And --

8 JUSTICE SOTOMAYOR: And if they were
9 entitled to do that, why would the absence of four
10 statements that I can't identify someone not have been
11 an argument that defense counsel could have used, number
12 one, and that had a reasonable probability of making a
13 difference?

14 MS. ANDRIEU: First of all, there were not
15 four statements that were made where Boatner said he
16 couldn't identify anyone, again. He gave two statements
17 the day of where he described, and one statement --

18 JUSTICE SOTOMAYOR: At different hours.

19 MS. ANDRIEU: I'm sorry.

20 JUSTICE SOTOMAYOR: At different hours.

21 MS. ANDRIEU: Yes.

22 JUSTICE SOTOMAYOR: And to different
23 officers.

24 MS. ANDRIEU: Yes.

25 JUSTICE SOTOMAYOR: So, that's two

1 statements. My math is wrong?

2 MS. ANDRIEU: I'm sorry. Those are
3 statements where he inculcated the defendant. There are
4 two statements. Starting on the scene, there is a
5 statement provided to the first responding officer,
6 where he provides a description. Larry Boatner provides
7 a description --

8 JUSTICE GINSBURG: But it is a description
9 that others, other suspects, fit. The close-cut hair,
10 the gold teeth. That didn't identify Smith, as opposed
11 to the other suspects who had those same
12 characteristics.

13 MS. ANDRIEU: Yes. And those other
14 suspects' photographs were all contained -- were
15 contained in photo IDs -- in photo line-ups, and
16 Mr. Boatner never selected one of them.

17 The other thing is he -- gold teeth. He
18 knew that his perpetrator had gold teeth. The next time
19 he saw Mr. Smith was at trial in court. Mr. Smith
20 revealed his teeth, and he had gold teeth. But as far
21 as the other suspects having the haircut or physical --
22 similar physical attributes --

23 JUSTICE GINSBURG: It was a prior
24 inconsistent statement, and we can argue about whether
25 there were more consistent statements than inconsistent

1 statements, but to say that this was not Brady material,
2 we -- we're not saying that Larry Boatner made up a
3 story on the stand that wasn't -- didn't conform to the
4 truth. The question is, should the prosecutor -- should
5 the defense attorney have access to a prior inconsistent
6 statement?

7 MS. ANDRIEU: And this Court has said that
8 Brady is a reflective -- is a reflective analysis. He
9 did not --

10 JUSTICE ALITO: Well, can you explain how
11 this -- how this took place? You have a case in which
12 you're -- you're relying almost entirely on the
13 testimony of one witness, and you have these notes that
14 were taken by, and are presumably in the possession of,
15 the lead investigator. Wouldn't any prosecutor ask the
16 lead -- the lead investigator, do you have any
17 statements of this witness?

18 MS. ANDRIEU: Absolutely.

19 JUSTICE ALITO: They have to be examined,
20 and if there's anything in them that's -- that is
21 impeachment material, they have to be turned over to the
22 defense. And under Louisiana law, is there are a rule
23 that requires the turning over of statements by
24 witnesses, prior statements by witnesses?

25 MS. ANDRIEU: Under Louisiana law, prior

1 statements of witnesses are not discoverable. But of
2 course, under this Court's decision in Brady v.
3 Maryland, if the prosecutor makes a determination that
4 they would materially affect the outcome of --

5 JUSTICE SOTOMAYOR: But you have to --

6 MS. ANDRIEU: -- guilt or innocence --

7 JUSTICE SOTOMAYOR: You have to supply
8 statements by a witness when they take the stand, don't
9 you? Those are immaterial? Don't you have to turn
10 over --

11 MS. ANDRIEU: No. No.

12 JUSTICE SOTOMAYOR: Not in the State of
13 Louisiana?

14 MS. ANDRIEU: No. Not --

15 JUSTICE SOTOMAYOR: You don't have to turn
16 over witness statements when they're taking the stand?

17 MS. ANDRIEU: No. And these statements were
18 provided in camera. There was -- defense filed a motion
19 for discovery, and he asked for Brady material. He
20 asked specifically for the supplemental report, which is
21 where these statements are contained.

22 JUSTICE SOTOMAYOR: So, you -- are you
23 claiming that the judge's failure to catch these
24 inconsistencies excuses your Brady obligation?

25 MS. ANDRIEU: Not at all. The Brady

1 obligation is ours. In fact, we believe that that's
2 actually a poor practice. But it is one --

3 JUSTICE KAGAN: Ms. Andrieu, if I could go
4 back to Justice Alito's question, was the problem here
5 that the prosecutors never received these statements
6 from the police officers, or did the prosecutors make a
7 determination similar to the kind of argument that
8 you're making today -- make a determination that these
9 statements simply should not be turned over because they
10 are not material?

11 MS. ANDRIEU: The prosecutor in this case
12 actually turned them over to the trial court for an in
13 camera inspection. And article -- Louisiana Code of
14 Criminal Procedure article 718 actually provides for
15 that practice.

16 JUSTICE BREYER: It's so odd that -- I mean,
17 look, it seems like here it is 5 days after the shooting
18 and well before, I guess, that this witness saw any mug
19 shots or did anything. And he says, I could not
20 identify anyone, because he couldn't see the faces of
21 the people. And now you're saying later, which you
22 introduce into trial, his having looked at the faces of
23 people and identified them from their faces.

24 Now, previously, he said he couldn't see
25 their faces. All right. And in Louisiana, the State of

1 Louisiana, the prosecution and the judges say that
2 isn't -- you don't have to turn over that statement that
3 he couldn't see the faces made earlier.

4 MS. ANDRIEU: No. What he --

5 JUSTICE BREYER: What?

6 MS. ANDRIEU: I'm sorry. When he's saying
7 that he could not see the faces, he is not referring to
8 Juan Smith. He and Detective Ronquillo testified at
9 postconviction that he always said he could identify the
10 one, the one whose face appeared a handgun's length from
11 his own, unmasked, when he opened that front door at
12 2230 North Roman.

13 Detective Ronquillo put this in perspective
14 at postconviction. And as I said, he --

15 JUSTICE BREYER: Oh, you mean all these --
16 all these statements that we have here, you're saying,
17 all referred to people other than the defendant.

18 MS. ANDRIEU: Juan. Yes.

19 JUSTICE BREYER: All right. Well, was there
20 a finding on that?

21 MS. ANDRIEU: There was -- the judge did not
22 give express findings of fact or finding of law, but --

23 JUSTICE BREYER: Perhaps the defense would
24 have liked to say they did apply to the defendant.

25 JUSTICE SCALIA: You don't say all of them.

1 All of them didn't apply to the --

2 MS. ANDRIEU: No. The one at the scene,
3 when he says I can't describe anyone here, clearly --

4 JUSTICE BREYER: This was not at the scene.

5 JUSTICE SCALIA: That applied to everyone,
6 right?

7 MS. ANDRIEU: I'm sorry.

8 JUSTICE SCALIA: The one at the scene
9 applied to everyone.

10 MS. ANDRIEU: To everyone.

11 JUSTICE SCALIA: "I can't identify anyone."

12 MS. ANDRIEU: March 6th --

13 JUSTICE SCALIA: Yes.

14 MS. ANDRIEU: -- applied to everyone --
15 everyone except Juan Smith.

16 JUSTICE SCALIA: Okay.

17 JUSTICE BREYER: So, you're --

18 CHIEF JUSTICE ROBERTS: Wait, wait. I'm
19 sorry. You've lost me there. When he says I can't
20 identify anyone, Smith is out of that group already?

21 MS. ANDRIEU: Oh, I'm sorry. No. He's --

22 CHIEF JUSTICE ROBERTS: Okay.

23 MS. ANDRIEU: I'm sorry. In both
24 circumstances, he is saying -- the first time, he's
25 saying, I can't describe. The second time, he is

1 saying, I can't help you; I can't identify everyone.

2 But the jury would have --

3 JUSTICE BREYER: All right. He says, I
4 can't identify --

5 CHIEF JUSTICE ROBERTS: Excuse me. I can't
6 identify everyone or everyone?

7 MS. ANDRIEU: Anyone.

8 CHIEF JUSTICE ROBERTS: Okay.

9 MS. ANDRIEU: And the jury would have
10 heard --

11 JUSTICE BREYER: He says, I can't identify
12 anyone because I couldn't see faces. Okay? That's what
13 it says here, at least in my notes that my law clerks
14 gathered. And --

15 (Laughter.)

16 JUSTICE BREYER: All right, I -- and my
17 point then is this seems very odd, I mean, really
18 unusual that in the State of Louisiana that they have
19 some kind of system that doesn't turn that statement
20 over to the defense.

21 MS. ANDRIEU: It was turned over to the
22 judge under article 718 for in-camera inspection.

23 JUSTICE ALITO: Where's that reflected in
24 the record? I --

25 MS. ANDRIEU: That's on October 31st of

1 1995. There is a hearing.

2 JUSTICE ALITO: What you said in your brief
3 was that the judge determined that the supplemental
4 report relating to the North Roman Street murders
5 contains no Brady material.

6 MS. ANDRIEU: Yes. Mr. Smith --

7 JUSTICE ALITO: I didn't understand the
8 record to be that all of Boatner's statements -- that
9 all the statements of Boatner that we're concerned about
10 now were examined by the judge before--

11 MS. ANDRIEU: Yes.

12 JUSTICE ALITO: -- trial?

13 MS. ANDRIEU: Yes.

14 JUSTICE ALITO: And the record reflects that
15 where?

16 MS. ANDRIEU: The transcript of October
17 31st, 1995. The --

18 JUSTICE KAGAN: And is it the view of the
19 prosecutor's office that because those materials were
20 turned over to the judge, assuming that they were turned
21 over to the judge, that that obviates the Brady
22 obligation?

23 MS. ANDRIEU: Not at all.

24 JUSTICE KAGAN: Is that the view of the
25 prosecutor's office?

1 MS. ANDRIEU: Not at all. We believe it's a
2 bad practice. But it is --

3 JUSTICE KENNEDY: Did you concede there was
4 a Brady violation in this case?

5 MS. ANDRIEU: Did we concede?

6 JUSTICE KENNEDY: Do you now concede--

7 MS. ANDRIEU: No.

8 JUSTICE KENNEDY: -- there was a Brady
9 violation in the case?

10 MS. ANDRIEU: No. If the --

11 JUSTICE KENNEDY: You're telling the Court
12 that this should have been kept from the defense, all of
13 it?

14 MS. ANDRIEU: Under this --

15 JUSTICE KENNEDY: Under Brady.

16 MS. ANDRIEU: -- Court's decision in Kyles,
17 I believe a prudent prosecutor would have disclosed it.
18 I do not --

19 JUSTICE GINSBURG: But Kyles is a decision
20 saying what the prosecutor must disclose, not it's a
21 good practice.

22 MS. ANDRIEU: No. But --

23 JUSTICE SOTOMAYOR: So, is there a violation
24 under our holding in Kyles?

25 MS. ANDRIEU: I'm sorry.

1 JUSTICE SOTOMAYOR: Is there a Brady
2 violation under our holding in Kyles?

3 MS. ANDRIEU: No, there is not.

4 JUSTICE SOTOMAYOR: So, explain why what is
5 on its face seemingly inconsistent statements are not
6 required to be turned over.

7 MS. ANDRIEU: With regard to the March 6th
8 statement where Larry Boatner tells John Ronquillo at
9 that point, I can't identify anyone, what Mr. -- what
10 Detective Ronquillo had to say about that is
11 dispositive. And he said, at that point Larry Boatner
12 was withdrawing from -- he was afraid -- he was
13 withdrawing from police assistance.

14 JUSTICE SOTOMAYOR: I don't understand how
15 he becomes the arbiter of what's Brady. You said to me
16 earlier that a jury would be entitled to reject his
17 conclusion. All right? Tell me what -- how his
18 conclusion makes it non-Brady if a juror could decide
19 differently.

20 MS. ANDRIEU: The -- the postconviction
21 testimony is pivotal because there is a petition that's
22 filed with attachments, with exhibits. That is what
23 gets, and that is what got, Mr. Smith his day in court,
24 his four-day postconviction hearing testimony --
25 postconviction hearing. Larry Boatner took the stand.

1 What Larry Boatner had to say and what John Ronquillo
2 had to say -- because after all, these are John
3 Ronquillo's notes -- I think they are important. And I
4 think they're important in a Brady analysis because
5 those are --

6 JUSTICE SOTOMAYOR: There are two components
7 to Brady. Should they have been turned over? And if
8 they had, is there a reasonable probability of a
9 different outcome?

10 MS. ANDRIEU: There is not.

11 JUSTICE SOTOMAYOR: Should they have been
12 turned over? That's the question that I think my
13 colleague asked you, and you're saying no.

14 MS. ANDRIEU: No. I believe that a prudent
15 prosecutor would have. I believe we're tacking a little
16 bit too close to the wind, but a prudent prosecutor
17 would have. I also think that --

18 JUSTICE SOTOMAYOR: All right. Now
19 articulate what legal theory --

20 MS. ANDRIEU: Because it -- because Mr. --

21 JUSTICE SOTOMAYOR: -- would say these are
22 not -- these are not materials that needed to be turned
23 over, when they say: Could not ID; would not know them
24 if I saw them; can't tell if had faces covered; didn't
25 see anyone. That's one of the notes. The other one: I

1 don't know how many, that's all; I was too scared to
2 look at anybody. And --

3 What makes any of those statements --

4 MS. ANDRIEU: If Mr. Boatner could not
5 identify anyone, Mr. Boatner would not have viewed 15
6 lineups. When the lineups were presented to him --

7 JUSTICE SOTOMAYOR: This is all a jury
8 argument.

9 MS. ANDRIEU: I'm sorry --

10 JUSTICE SOTOMAYOR: Tell me why they didn't
11 on their face constitute Brady materials that needed to
12 be turned over. What's the legal principle that doesn't
13 make them Brady?

14 MS. ANDRIEU: Because if they had been
15 presented -- if those statements had been presented to
16 defense -- or presented to a jury, the -- the outcome
17 would have remained the same. The jury --

18 JUSTICE GINSBURG: How do you know? How do
19 you know? How can you possibly know? The jury is
20 supposed to decide on the credibility of this witness.
21 There's a statement that he made a prior inconsistent
22 statement. The -- Mr. Shanmugam outlined five
23 categories of what he called Brady material. Is -- are
24 you maintaining that none of those categories, that
25 there was no Brady material at all in this case?

1 MS. ANDRIEU: Yes. You're speaking of the
2 other pieces of evidence?

3 JUSTICE GINSBURG: Yes.

4 MS. ANDRIEU: Yes. Well, I'm -- I'm not
5 sure if the Charity Hospital's medical records of
6 Mr. Boatner are still being urged to this Court as --

7 JUSTICE GINSBURG: I'm talking about Mims
8 and -- what was the woman's name? Russell?

9 MS. ANDRIEU: Shelita Russell. Well --

10 JUSTICE GINSBURG: And Young and the snitch,
11 the one who said that his cellmate told him that his
12 cellmate was the perpetrator.

13 MS. ANDRIEU: Well, to be clear, Ms. Russell
14 never made a dying declaration. What the defense is
15 presenting to this Court as evidence of a dying
16 declaration are words and dashes of Detective Ronquillo
17 written at some point where he -- written at some
18 point --

19 JUSTICE GINSBURG: Was it a determination by
20 the judge that it wasn't a dying declaration?

21 MS. ANDRIEU: The judge, again, did not make
22 specific facts of finding or law. The judge -- I'm
23 sorry.

24 JUSTICE GINSBURG: And how about Mims?

25 JUSTICE KENNEDY: Because it was not --

1 because it was not turned over. And with all respect, I
2 think you misspoke when you -- you were asked what is --
3 what is the test for when Brady material must be turned
4 over. And you said whether or not there's a reasonable
5 probability -- a reasonable likelihood -- pardon me -- a
6 reasonable probability that the result would have been
7 different. That's the test for when there has been a
8 Brady violation. You don't determine your Brady
9 obligation by the test for the Brady violation. You're
10 transposing two very different things.

11 And so, that's incorrect.

12 MS. ANDRIEU: And I'm sorry, Justice
13 Ginsburg, your -- Shelita Russell did not give a dying
14 declaration. The notes are --

15 JUDGE GINSBURG: All right. Let's go to
16 Mims, who said, I saw them -- I saw the perpetrators go
17 to their car when they were exiting. They had ski
18 masks.

19 MS. ANDRIEU: And that information -- Dale
20 Mims testified at postconviction. He testified he did
21 not see the assailants arrive. He did not see them --

22 JUSTICE GINSBURG: But isn't it most
23 unlikely, as your -- as Mr. Shanmugam said, that
24 robbers -- I mean, the people who are entering,
25 intruding on another's premises to rob, or whatever else

1 they're going to do, would wear masks going out but not
2 going in? I mean, they don't want anybody -- they don't
3 want anybody to be able to identify them.

4 MS. ANDRIEU: And it's plausible that
5 Mr. Boatner -- I'm sorry -- that Mr. Smith masked
6 himself upon escape after --

7 JUSTICE GINSBURG: Well, is that maybe --

8 CHIEF JUSTICE ROBERTS: I thought -- I'm
9 sorry. I thought the idea was they were going to kill
10 everybody who might have seen them inside. Their only
11 worry would be someone who would see them outside,
12 right?

13 MS. ANDRIEU: Yes. So worried that the car
14 that they arrived in had no license plate. They were
15 definitely looking not to be identified.

16 JUSTICE KAGAN: Ms. Andrieu, did your office
17 ever consider just confessing error in this case?

18 MS. ANDRIEU: I'm sorry.

19 JUSTICE KAGAN: Did your office ever
20 consider just confessing error in this case? You've had
21 a bunch of time to think about it. You know? We took
22 cert a while ago. I'm just wondering whether you've
23 ever considered confessing error.

24 MS. ANDRIEU: Your Honor, we believe that we
25 have an argument that these statements of Larry Boatner

1 are not material. The other evidence that Mr. Shanmugam
2 has put before this Court were either not suppressed or
3 not favorable. The -- Larry Boatner gave several -- he
4 -- he did describe Juan Smith. He described him on
5 several occasions, and he ultimately identified him, and
6 he identified him after scrupulously viewing 13
7 line-ups.

8 So, the suggestion that he said at one
9 point -- because he's equivocating because his name is
10 on -- his name, address, contact information are on the
11 police report. It is not a surprise -- and I don't
12 think it would be a surprise to Orleans Parish jurors --
13 to find that, early in an investigation, a murder
14 witness equivocates. He --

15 JUSTICE GINSBURG: But you're taking that
16 judgment away from the jury. There was a prior
17 inconsistent statement. Shouldn't that be the end of
18 it? A prior inconsistent statement, one that is
19 favorable to the defense, has to be turned over, period.
20 I thought was what Brady requires.

21 MS. ANDRIEU: And in this case --

22 JUSTICE SCALIA: I -- may I suggest that --

23 MS. ANDRIEU: Yes.

24 JUSTICE SCALIA: -- you stop fighting as to
25 whether it should be turned over? Of course, it should

1 have been turned over. I think the case you're making
2 is that it wouldn't have made a difference.

3 MS. ANDRIEU: Made a difference. Yes.

4 JUSTICE SCALIA: And -- and that's a closer
5 case, perhaps, but surely it should have been turned
6 over. Why don't you give that up?

7 MS. ANDRIEU: Well, I -- and I actually
8 thought I had when I said a prudent prosecutor would,
9 but in making a sort of over-the-shoulder, rear-window
10 Brady analysis, I don't think that these statements --
11 that the statements made to -- the statement made to
12 Ronquillo at the scene where he's all shook up and he
13 says, I can't describe anybody; then he goes to the
14 hospital, gets his severe laceration taken care of --

15 JUSTICE SOTOMAYOR: Counsel, my worry is the
16 following: You've read Cullen.

17 MS. ANDRIEU: I'm sorry?

18 JUSTICE SOTOMAYOR: You read Cullen.

19 MS. ANDRIEU: Yes.

20 JUSTICE SOTOMAYOR: You read the dissent in
21 Cullen. There has been serious accusations against the
22 practices of your office, not yours in particular but
23 prior ones. It is disconcerting to me that when I asked
24 you the question directly should this material have been
25 turned over, you gave an absolute no. It didn't need to

1 be. It would have been prudent, but it didn't need to
2 be. That's really troubling.

3 MS. ANDRIEU: And I think I misunderstood
4 your question -- I think I misunderstood your question.
5 Should it have been turned over? Yes. Now that we are
6 here 16 years later, and the Court is making --

7 JUSTICE SOTOMAYOR: That's the second prong
8 of Brady. I said there were two prongs to Brady. Do
9 you have to turn it over, and, second, does it cause
10 harm. And the first one you said not. That -- it is
11 somewhat disconcerting that your office is still
12 answering equivocally on a basic obligation as one that
13 requires you to have turned these materials over --

14 MS. ANDRIEU: Your Honor --

15 JUSTICE SOTOMAYOR: -- whether it caused
16 harm or not.

17 MS. ANDRIEU: If -- if I may explain. I
18 obviously misunderstood your question. Present-day
19 prosecutors -- oh, I'm sorry. May I --

20 CHIEF JUSTICE ROBERTS: You can, very
21 briefly.

22 MS. ANDRIEU: We would have -- today we turn
23 all of this over. Our only concern is redacting victim
24 information, identifying information, so that -- for
25 victims' safety. But it -- it should have been turned

1 over. I guess what I was addressing or attempting to
2 address was the materiality prong of Brady.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 MS. ANDRIEU: Thank you.

5 CHIEF JUSTICE ROBERTS: Mr. Shanmugam, 4
6 minutes.

7 REBUTTAL ARGUMENT OF KANNON K. SHANMUGAM

8 ON BEHALF OF THE PETITIONER

9 MR. SHANMUGAM: Thank you, Mr. Chief
10 Justice.

11 Just three very quick points. First of all,
12 with regard to Larry Boatner's statements on March the
13 6th, Justice Breyer, you'll be happy to know that your
14 law clerks' notes were correct. Boatner on March the
15 6th said -- and this is at page 308 of the joint
16 appendix -- could not ID anyone because couldn't see
17 faces; can't tell if had faces covered; didn't see
18 anyone; would not know them if I saw them.

19 JUSTICE BREYER: I'm not surprised they're
20 correct.

21 (Laughter.)

22 MR. SHANMUGAM: It is quite clear that that
23 statement applies to all of the perpetrators. The State
24 advances the argument today, as it did in its brief,
25 that Boatner must have been too scared to cooperate by

1 March the 6th, but that is utterly belied by the record
2 in this case. Boatner continued to cooperate with the
3 police investigation in the following weeks, reviewing
4 police line-ups. He even testified that he wanted to go
5 looking for Petitioner after seeing his photograph in
6 the New Orleans newspaper, pages 489 and 494 of the
7 joint appendix. He didn't leave New Orleans until June,
8 3 months later, and he actually returned to New Orleans
9 before Petitioner was even apprehended. So, again --

10 JUSTICE ALITO: It is your understanding
11 that the -- that all of Boatner's -- all the notes about
12 Boatner's statements were turned over to the judge
13 before trial for in camera inspection?

14 MR. SHANMUGAM: Justice Alito, it is
15 entirely unclear based on this record. Counsel for
16 Respondent cites the transcript from October 31st, 1995,
17 a transcript that wasn't even prepared until after cert
18 was granted in this case.

19 It's clear that the court reviewed
20 something, but it is entirely unclear from that
21 transcript what the court reviewed. And, of course,
22 even if the court had made an in camera determination,
23 it would no way -- in no way affect our claim after the
24 fact here.

25 My second point: The State today for the

1 first time says, in response to the question from
2 Justice Scalia, that there was more evidence here
3 linking Petitioner to the crime and relies on the
4 testimony of Eddie Young, the brother of Phillip Young,
5 the individual who was found at the scene. But the sole
6 substance of that testimony was that Phillip Young knew
7 Petitioner. And we would respectfully submit that that
8 is scarcely inculpatory, and if it was, anyone in New
9 Orleans who knows a felon ought to be worried. And,
10 therefore, we really don't think that that adds anything
11 to the evidence in this case. The sole evidence linking
12 Petitioner to the crime was the statement -- the
13 testimony of Larry Boatner.

14 Third, there has been some discussion about
15 the language in this Court's cases in Kyles and Agurs
16 suggesting that prosecutors should err on the side of
17 caution. That is part of the constitutional standard
18 because, after all, the materiality requirement is part
19 of the requirement for a constitutional violation under
20 Brady. But all of the evidence at issue here, including
21 Boatner's statements, was withheld from the defense,
22 leaving aside this question of what the trial court may
23 have reviewed in camera.

24 And the prosecutor's conduct in this case,
25 with all due respect to Ms. Andrieu, was not, quote, "a

1 little too close to the wind." The Orleans Parish
2 district attorney's office acted with flagrant disregard
3 for its obligations under Brady in this case. The Brady
4 standard has been around for half a century. There is
5 no real ambiguity about what that standard requires, and
6 we think that the conduct in this case was in fact
7 egregious and clearly violated that standard. We think
8 that the trial court erred by rejecting Petitioner's
9 Brady claim, and for that reason, we think that its
10 judgment should be reversed.

11 Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel,
13 counsel.

14 The case is submitted.

15 (Whereupon, at 12:12 p.m., the case in the
16 above-entitled matter was submitted.)

17

18

19

20

21

22

23

24

25

A	<p>ambiguity 57:5</p> <p>amicus 16:4 24:23</p> <p>amnesiac 32:4</p> <p>analysis 37:8 46:4 52:10</p> <p>Andrieu 1:17 2:6 25:17,18 25:20 26:14 27:1,6,15,22 29:3,6,12,19 29:23 31:7,25 32:7,17,19 33:2,10,16 34:5 35:6,14 35:19,21,24 36:2,13 37:7 37:18,25 38:6 38:11,14,17,25 39:3,11 40:4,6 40:18,21 41:2 41:7,10,12,14 41:21,23 42:7 42:9,21,25 43:6,11,13,16 43:23 44:1,5,7 44:10,14,16,22 44:25 45:3,7 45:20 46:10,14 46:20 47:4,9 47:14 48:1,4,9 48:13,21 49:12 49:19 50:4,13 50:16,18,24 51:21,23 52:3 52:7,17,19 53:3,14,17,22 54:4 56:25</p> <p>another's 49:25</p> <p>answer 22:9</p> <p>answering 53:12</p> <p>anybody 6:4,10 6:20 9:21 17:14 24:9 30:23 34:2 47:2 50:2,3 52:13</p>	<p>aphasic 32:3</p> <p>apparently 30:8</p> <p>appear 12:17</p> <p>APPEARAN... 1:14</p> <p>appeared 40:10</p> <p>appears 13:10</p> <p>appendix 9:10 17:13 18:9,11 27:8 54:16 55:7</p> <p>applied 41:5,9 41:14</p> <p>applies 54:23</p> <p>apply 40:24 41:1</p> <p>appreciate 29:12</p> <p>apprehended 55:9</p> <p>appropriate 13:7</p> <p>approximately 8:24 13:17</p> <p>arbiter 45:15</p> <p>argue 7:17 15:11 31:2,2 31:12,16 36:24</p> <p>argued 28:2</p> <p>argues 4:18</p> <p>arguing 5:11,13 11:6</p> <p>argument 1:12 2:2,5,8 3:3,6 5:18 9:1 10:25 14:12,19 19:15 24:5 25:18 33:18 35:11 39:7 47:8 50:25 54:7,24</p> <p>arguments 12:18</p> <p>armed 14:15,21</p> <p>arrive 49:21</p> <p>arrived 30:8 50:14</p> <p>article 5:6 16:11 39:13,14 42:22</p>	<p>articulate 46:19</p> <p>articulated 8:12 9:8 10:17</p> <p>aside 17:18 56:22</p> <p>asked 9:19 22:7 30:10,10 34:8 38:19,20 46:13 49:2 52:23</p> <p>asking 15:17</p> <p>assailant 25:23 26:10,23,24</p> <p>assailants 11:9 13:25 14:3,7 49:21</p> <p>assistance 8:12 34:23 45:13</p> <p>Assistant 1:17</p> <p>assuming 43:20</p> <p>asterisks 18:9</p> <p>attachments 45:22</p> <p>attempted 9:13</p> <p>attempting 54:1</p> <p>attorney 1:17 37:5</p> <p>attorney's 3:15 3:25 57:2</p> <p>attributes 36:22</p> <p>automatic 23:3 24:10,16 30:25</p> <p>aware 15:21</p> <p>a.m 1:13 3:2</p>	<p>based 3:18 9:13 34:15 55:15</p> <p>basic 53:12</p> <p>basis 5:3,19</p> <p>bear 15:12</p> <p>behalf 1:16,18 2:4,7,10 3:7 25:19 54:8</p> <p>belied 55:1</p> <p>believe 5:23 11:25 13:20 19:11 21:1 25:2,12 26:14 32:18 39:1 44:1,17 46:14 46:15 50:24</p> <p>believed 13:19 23:11</p> <p>best 7:12 11:12</p> <p>big 6:7 9:18 30:25</p> <p>bit 6:1 14:4 17:18 18:15 24:14 46:16</p> <p>black 12:4 28:12 30:21</p> <p>Boatner 4:16,25 5:14 6:2 7:3 9:1,3,8,12 10:16 14:16 15:6 16:1 17:9 23:9,16 24:8 25:24 26:7,12 26:17,21 28:10 29:24,25 30:11 30:11,14,19 32:24,24 34:13 34:13,16,20 35:15 36:6,16 37:2 43:9 45:8 45:11,25 46:1 47:4,5 48:6 50:5,25 51:3 54:14,25 55:2 56:13</p> <p>Boatner's 4:22 5:4 14:25 15:2</p>
		B		
		<p>back 20:14 22:7 24:4 30:14 33:21 39:4</p> <p>bad 20:14 44:2</p> <p>balance 22:11 25:14</p> <p>ballistics 23:12 24:6</p> <p>Bannister 21:1</p> <p>barge 12:3</p> <p>Bartholomew 12:25 13:4</p>		

<p>24:14 30:15 43:8 54:12 55:11,12 56:21 bodily 22:24 bolstered 32:1 bore 26:4 Brady 3:10 4:11 7:21 12:9,21 12:22 13:1,8 18:5 20:8,12 20:14,16 25:5 37:1,8 38:2,19 38:24,25 43:5 43:21 44:4,8 44:15 45:1,15 46:4,7 47:11 47:13,23,25 49:3,8,8,9 51:20 52:10 53:8,8 54:2 56:20 57:3,3,9 Breyer 28:7 29:4,7 32:22 33:5,11,17,20 39:16 40:5,15 40:19,23 41:4 41:17 42:3,11 42:16 54:13,19 brief 7:8 11:1,6 16:4 22:12 23:6 24:23 34:22 43:2 54:24 briefly 8:21 11:19 53:21 broadly 4:4 7:10 12:19 brother 32:2 56:4 built 30:4 bunch 50:21 burden 10:22 15:9,13 BURL 1:6</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1</p>	<p>Cain 1:6 3:4 California 8:18 call 24:9 called 22:17 34:13 47:23 calling 7:24 camera 19:16,18 38:18 39:13 55:13,22 56:23 candor 14:4 capable 27:10 car 14:9 49:17 50:13 care 52:14 carrying 23:11 23:18,19 case 3:4,13 4:1,9 5:8,19 7:9,13 9:7 12:15 16:5 17:17,25 18:1 19:22 20:1,4 30:15 34:6 37:11 39:11 44:4,9 47:25 50:17,20 51:21 52:1,5 55:2,18 56:11,24 57:3 57:6,14,15 cases 20:13 56:15 casings 23:14,20 24:7 cast 4:4 catch 38:23 categorical 20:4 categories 22:8 22:13 47:23,24 category 24:3,20 cause 53:9 caused 53:15 caution 56:17 cellmate 48:11 48:12 century 57:4 cert 50:22 55:17 certainly 15:16 25:2 29:8</p>	<p>chances 10:14 14:18 changed 27:13 27:16 Chapman 8:17 characteristic 21:7 characteristics 7:8 20:25 22:5 36:12 Charity 48:5 Chief 3:3,8 25:16,20 31:1 41:18,22 42:5 42:8 50:8 53:20 54:3,5,9 57:12 chrome 24:16 30:25 circumstances 5:16,24 41:24 cite 23:5 cites 55:16 claim 4:11 12:21 55:23 57:9 claiming 38:23 claims 7:21 8:13 clarify 11:7 clear 5:10 7:20 8:9 13:15 20:12,13 48:13 54:22 55:19 clearly 4:22 5:18 7:14 8:14 41:3 57:7 clerks 42:13 54:14 client 11:4 close 13:13 46:16 57:1 closer 52:4 closest 12:24 close-cut 36:9 cloth 12:4 Code 39:13 coherent 9:8 10:16 35:3</p>	<p>colleague 46:13 collected 9:19 come 15:10 23:20 29:11 comfortably 13:23 25:5 commit 14:15 committing 14:20 common 22:2 compelling 31:3 completely 4:9 components 46:6 concede 44:3,5,6 concededly 18:5 concedes 4:17 concern 29:13 53:23 concerned 43:9 conclude 4:13 conclusion 35:1 45:17,18 conduct 56:24 57:6 confessing 50:17 50:20,23 confession 21:4 24:22 confessions 24:25 confident 4:22 8:1 17:11,22 conform 37:3 confronted 16:8 16:14 conjunction 25:4 connection 5:6 consider 4:15 50:17,20 consideration 15:22 considered 25:4 50:23 considering 12:20</p>	<p>consistent 24:7 36:25 consistently 14:5 consists 24:21 conspicuously 23:14 constitute 24:25 47:11 constitutional 56:17,19 constitutionally 5:12 contact 51:10 contained 19:10 19:23 27:7 36:14,15 38:21 contains 43:5 context 13:14 16:7 continued 55:2 contradict 8:1 17:22 contradicted 4:22 contradicting 14:25 converged 23:16 convicted 3:18 cooperate 54:25 55:2 correct 5:3 6:12 6:13 8:8 10:11 24:11 29:6 54:14,20 correctly 31:21 counsel 8:13 18:13 20:9,19 25:16 30:19 35:11 52:15 54:3 55:15 57:12,13 Counselor 10:20 10:25 couple 9:18 course 15:9 16:9 17:4 19:13</p>
--	--	--	--	--

20:15 38:2 51:25 55:21 court 1:1,12 3:9 3:10 4:10,14 5:9 7:20 8:9,11 12:14,20,20,21 12:22,25 13:1 13:8 15:21 17:25 19:5,16 19:18 20:11,13 22:10 25:7,11 25:13,21 29:13 29:14 36:19 37:7 39:12 44:11 45:23 48:6,15 51:2 53:6 55:19,21 55:22 56:22 57:8 courts 24:24 court's 12:11 13:3 19:4 38:2 44:16 56:15 covered 17:6 28:17 46:24 54:17 co-defendant 22:15 credibility 7:25 47:20 credit 10:2,22 crime 5:20 11:3 11:4 13:16 16:13 35:4 56:3,12 Criminal 39:14 critical 17:2 24:1 cross-examined 9:13 cross-examini... 31:15 Cullen 52:16,18 52:21 culture 22:2 curiam 13:5 cut 30:21	cuts 20:21 21:7 <hr/> D D 3:1 Dale 11:23 49:19 dashes 48:16 dating 20:14 day 6:10 28:10 30:1 35:17 45:23 days 10:5,9 28:14 39:17 decide 12:11 17:24 45:18 47:20 deciding 12:8 decision 38:2 44:16,19 declaration 12:1 12:8,12 48:14 48:16,20 49:14 declarations 13:20 defeat 8:3 defendant 5:20 31:22 36:3 40:17,24 defense 3:12,17 3:20 4:8,18 15:5,11,18 18:13,18,23,25 19:19 20:9 23:23 28:23,24 29:15 31:4,15 32:11 35:11 37:5,22 38:18 40:23 42:20 44:12 47:16 48:14 51:19 56:21 defense's 15:9 deference 12:10 definitely 50:15 degree 11:15 24:15 delay 27:5	depicts 16:11 describe 41:3,25 51:4 52:13 described 35:3 35:17 51:4 describing 5:6 description 6:15 6:16,22 9:20 9:25 16:19 17:15 28:11 30:3,4,11,12 36:6,7,8 descriptions 31:9,9 desire 16:2 detailed 6:22 details 7:3,5 16:23 17:10 Detective 30:3,7 30:14 34:12,15 34:17 40:8,13 45:10 48:16 determination 12:11,15,23 13:8,9 38:3 39:7,8 48:19 55:22 determine 12:8 28:2,4 49:8 determined 43:3 determines 12:7 difference 29:5 29:9 33:9,15 33:24 34:4 35:13 52:2,3 different 4:9 8:7 13:21 22:21 35:18,20,22 46:9 49:7,10 differently 45:19 diminished 31:13 direct 32:13,13 directly 8:1 14:24 52:24 disclose 4:19	44:20 disclosed 4:8 19:14 44:17 disconcerting 52:23 53:11 discoverable 38:1 discovery 38:19 discussing 25:9 discussion 56:14 dismiss 9:22 dispositive 45:11 dispute 19:18 disregard 57:2 dissent 52:20 distinction 23:1 23:5,7 district 1:17 3:15,25 19:5 57:2 document 19:1 19:3,10,11,16 19:19 documents 18:14 20:5,6 doing 16:25 DONNA 1:17 2:6 25:18 door 6:17 7:6 11:22 12:4 40:11 doubt 4:5 14:2 15:13 23:24 24:1 draw 23:6 drawing 23:1 due 56:25 duty 20:16 dying 11:25 12:8 12:12 13:19,20 48:14,15,20 49:13 D.C 1:8,15 <hr/> E E 2:1 3:1,1	earlier 40:3 45:16 early 51:13 Eddie 56:4 effect 6:4,19,25 16:6 egregious 57:7 either 13:2 21:25 51:2 element 24:1 engaged 4:1 entered 14:15 entering 49:24 entire 11:10 entirely 37:12 55:15,20 entitled 4:14 35:1,4,9 45:16 equivocally 53:12 equivocates 51:14 equivocating 34:22 51:9 Eric 24:21 err 56:16 erred 4:10 57:8 error 8:17 50:17 50:20,23 escape 50:6 escorted 30:16 ESQ 1:15,17 2:3 2:6,9 essential 22:19 essentially 8:11 17:25 established 3:10 8:14 32:4 establishing 22:19 evening 6:9,11 6:23 16:20,22 event 6:23 16:20 16:23 events 9:9 10:17 everybody 50:10
---	---	--	--	--

<p>evidence 3:12,16 5:21 6:2 7:14 7:22 11:4,13 13:3,10 15:15 15:22 22:8,13 24:20 25:1,5,9 25:13 29:13,14 31:3,22,23 32:1 33:7,14 34:6 48:2,15 51:1 56:2,11 56:11,20 evidentiary 12:16,23 exaggerating 6:1,24 examined 37:19 43:10 exceedingly 8:2 14:20 exculpatory 7:15 24:25 excuse 35:5 42:5 excuses 38:24 exhibits 45:22 exiting 49:17 expert 23:12 24:6 explain 8:20 22:12 37:10 45:4 53:17 explains 16:5 explanation 8:3 10:2,23,24 explanations 7:12 8:20,21 exposed 16:10 exposure 16:6 express 40:22 extraordinary 5:23 eyewitness 3:19 3:20 4:3,16 5:21,22 15:22 15:24,25 18:2 18:3 29:18 31:14,15,21,23</p>	<p>eyewitnesses 11:19</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 7:14,24 11:10 12:4 17:5 26:22,22 27:4,19 29:8 30:21 32:21 40:10 45:5 47:11 faces 26:1,3,7 28:15,17 39:20 39:22,23,25 40:3,7 42:12 46:24 54:17,17 fact 5:14 6:21 7:6 9:4 10:16 14:16 15:23 23:25 39:1 40:22 55:24 57:6 facts 26:23 48:22 fade 26:4 30:4 faded 20:20 21:6 failed 23:14 failure 4:19 9:14 11:2 38:23 faith 16:2 20:14 20:15 familiarity 21:19 far 36:20 fast-forwarding 34:10 favorable 3:12 29:13,14 51:3 51:19 feared 27:11 Federal 13:22 felon 56:9 fighting 51:24 filed 38:18 45:22 files 19:23 finally 24:3,20 find 31:19 33:4</p>	<p>51:13 finding 40:20,22 48:22 findings 40:22 firearm 23:25 firing 23:13 first 6:3,17 7:6 8:22 11:21 12:4 14:16 15:8,11,20 16:10,17 18:10 18:17 28:9,16 30:2 34:16 35:14 36:5 41:24 53:10 54:11 56:1 first-degree 3:18 22:20 fit 36:9 five 6:5 9:15 10:9 20:22 47:22 five-page 19:1 flagrant 3:13 57:2 floor 6:7 9:17 focus 17:16 follow 15:23 following 52:16 55:3 forget 27:19 33:11 formal 30:17 forth 10:18 found 17:12 56:5 four 14:3 35:2,9 35:15 four-day 45:24 frame 20:25 frankly 8:21 10:13 27:8 friends 9:16 16:3 front 40:11 further 4:3 14:10 22:11</p>	<p style="text-align: center;">G</p> <hr/> <p>G 3:1 gang 20:20 gash 6:7 9:18 gathered 42:14 getting 14:9 Ginsburg 4:24 5:10 10:4,9,12 26:11 27:20 29:17,20 31:11 32:10 36:8,23 44:19 47:18 48:3,7,10,19 48:24 49:13,15 49:22 50:7 51:15 give 12:10 17:14 20:9 28:23 30:12 40:22 49:13 52:6 given 18:13,18 18:23,25 31:12 glanced 28:16 go 14:20 24:4 30:13 33:21 39:3 49:15,16 55:4 goes 52:13 going 9:17 14:24 50:1,1,2,9 gold 7:7 16:23 17:17 20:20,23 21:7,15,17,25 30:5 36:10,17 36:18,20 golden 28:13 golds 30:21 good 16:2 20:14 44:21 granted 55:18 great 22:24 33:25 greater 21:20 group 20:20 41:20 guess 28:22,25 29:5 34:9</p>	<p>39:18 54:1 guilt 38:6 guilty 7:19 gun 24:10 guns 30:23</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hair 20:20 21:6 26:10,19 30:4 36:9 haircut 7:7 16:24 17:17 26:9 28:13 36:21 haircuts 20:23 26:4 half 8:24 13:17 57:4 hand 3:12 20:16 23:2 handed 19:19,24 20:2,3 handgun 23:2 23:15,18,19,22 24:10,16,18 handgun's 40:10 handwritten 13:15 14:6 19:9,20,22 happy 10:13 14:18 22:9 28:25 54:13 harm 22:24 53:10,16 harmful 12:10 harmless 8:17 head 6:8 9:18 11:10 hear 3:3 21:22 29:7 heard 42:10 hearing 9:4 14:7 27:24 28:1 34:7 43:1 45:24,25 heavily 11:2</p>
--	--	--	---	--

heavy 30:4	25:22 28:20	56:8	24:9 28:8	17:8 18:7,8,20
held 24:24 29:13	31:6,10 32:14	indicate 7:7	56:20	20:7,19 21:6
29:14	32:25 34:2,14	indicated 13:1	issues 12:16	21:10,12,15,20
help 42:1	35:10,16 36:10	15:3		21:22 22:6,25
high 7:14	39:20 40:9	indicating 11:20	J	24:4 25:8,16
hip-hop 22:1	41:11,20 42:1	individual 15:7	JA 33:1	25:20 26:3,11
hit 30:24	42:4,6,11 45:9	16:7,10,12,12	Jackson 7:21	26:20 27:2,12
hold 10:24	47:5 50:3	16:14,16 56:5	John 30:7 34:7	27:20 28:7
holding 44:24	identifying 7:3,5	individuals	45:8 46:1,2	29:4,7,17,20
45:2	53:24	20:24 26:1,4,5	joint 9:10 17:13	31:1,11,20
home 25:23	IDs 36:15	ineffective 8:12	18:10 27:8	32:6,8,10,18
homicide 30:7	immaterial	inflict 22:24	54:15 55:7	32:22,23 33:3
30:17 34:11	29:22 31:18	information 4:7	Juan 1:3 27:18	33:5,11,17,19
Honor 27:6 29:6	32:15 33:4,6	49:19 51:10	28:6 32:1,5	33:20,22 34:25
29:23 35:6	38:9	53:24,24	40:8,18 41:15	35:8,18,20,22
50:24 53:14	immediate 12:1	initial 8:25	51:4	35:25 36:8,23
hospital 13:17	impact 15:15	18:25 19:4	judge 27:24	37:10,19 38:5
52:14	impeach 9:13	initially 8:25	32:16 40:21	38:7,12,15,22
Hospital's 48:5	29:1,10	19:2	42:22 43:3,10	39:3,4,16 40:5
hour 8:24 13:17	impeaching	innocence 16:5	43:20,21 48:20	40:15,19,23,25
hours 9:18 34:1	7:15	38:6	48:21,22 49:15	41:4,5,8,11,13
35:18,20	impeachment	inside 50:10	55:12	41:16,17,18,22
house 14:15	6:2 11:2 15:15	inspection 39:13	judges 40:1	42:3,5,8,11,16
	37:21	42:22 55:13	judge's 38:23	42:23 43:2,7
I	implanted 21:16	intent 22:20,23	judgment 4:11	43:12,14,18,24
ID 28:14,18	implants 22:1	intervening 10:5	25:7 51:16	44:3,6,8,11,15
46:23 54:16	important 14:23	interview 24:21	57:10	44:19,23 45:1
idea 50:9	17:7 34:6 46:3	Intratec 23:21	June 26:16 55:7	45:4,14 46:6
identification	46:4	introduce 39:22	juror 7:18 9:12	46:11,18,21
4:4,23 5:4,9,11	importantly	intruding 49:25	10:2,22 15:16	47:7,10,18
5:13,16,17 8:2	30:9	investigation	45:18	48:3,7,10,19
9:2,14 14:25	impressions	19:14 51:13	jurors 9:22	48:24,25 49:12
15:24 16:1	34:19,19	55:3	51:12	49:22 50:7,8
17:12,20,22,23	incident 30:2	investigator	jury 4:8 10:14	50:16,19 51:15
18:2,4 28:6	including 11:21	37:15,16	14:19 27:9	51:22,24 52:4
29:2 31:24	27:3 56:20	involved 22:16	31:3,4,17 35:1	52:15,18,20
32:1	inconsistencies	involvement 4:5	35:4 42:2,9	53:7,15,20
identified 9:24	38:24	21:4 24:23	45:16 47:7,16	54:3,5,10,13
23:10,12 25:24	inconsistent	involves 20:4	47:17,19 51:16	54:19 55:10,14
25:25 27:4,18	14:5 29:21	in-camera 42:22	Justice 3:3,9	56:2 57:12
39:23 50:15	31:13 36:24,25	in-court 8:1	4:24 5:10,25	justifies 3:25
51:5,6	37:5 45:5	14:25 17:22	6:14 7:2 8:5,23	
identify 3:21	47:21 51:17,18	irrelevant 20:15	9:11 10:1,4,9	K
5:23 6:4,10,19	incorrect 49:11	issue 7:11 11:14	10:11,20,25	K 1:15 2:3,9 3:6
7:1 9:21,23	incredible 33:4	12:7,22 19:24	11:12 12:6,19	54:7
10:6,10 15:3,7	inculpatd 36:3	22:13 23:9,14	13:24 15:5,8	KAGAN 25:8
15:19 16:2,8	inculpatory	23:15,20 24:2	15:14 16:17,25	33:19 39:3

43:18,24 50:16 50:19 KANNON 1:15 2:3,9 3:6 54:7 KENNEDY 8:5 18:8,20 20:7 32:8,18,23 33:3 44:3,6,8 44:11,15 48:25 Kennedy's 33:22 Kenneth 23:12 kept 44:12 key 4:16 kill 22:24 50:9 killed 6:6 9:16 16:3 kind 21:17 39:7 42:19 kitchen 12:3 knew 6:6 27:10 36:18 56:6 know 3:22 6:17 6:18,22 24:7 27:15 28:18 30:22 33:20 34:2 46:23 47:1,18,19,19 50:21 54:13,18 known 16:6 32:5 knows 56:9 Kyles 7:20 8:9 44:16,19,24 45:2 56:15	Laughter 21:11 21:14,23 42:15 54:21 law 13:19,21 22:21 37:22,25 40:22 42:13 48:22 54:14 lawyer 28:24 31:4 lay 11:18 lead 13:3 37:15 37:16,16 learned 27:24 Leary 23:12,19 Leary's 24:13 leave 55:7 leaving 56:22 led 5:8,16 25:23 left 14:1 32:3 legal 46:19 47:12 length 40:10 Let's 49:15 license 50:14 lie 15:6,17 light 4:10 5:1,14 5:15 6:21 10:15 liked 40:24 likelihood 49:5 limited 5:15 7:5 16:23 limiting 17:9 lineups 47:6,6 line-up 16:9,15 26:8,12,17,18 27:3,14,16,17 line-ups 26:2,6 36:15 51:7 55:4 link 32:4 linking 5:20 56:3,11 little 6:1 14:4 18:15 24:14 30:5 46:15 57:1	long 16:19 18:14 look 17:14 30:23 39:17 47:2 looked 39:22 looking 18:8 50:15 55:5 lost 41:19 lot 30:5 Louisiana 1:18 13:21 22:21,21 37:22,25 38:13 39:13,25 40:1 42:18 low 30:21 lower 12:10,14 low-cut 7:7 16:24 17:17 20:23 28:13 lying 6:7 9:16,24 15:25	masks 11:22 14:8,10,11,14 49:18 50:1 massacre 25:23 material 3:12 13:1 20:2 29:15,18 31:8 31:12,14 33:12 37:1,21 38:19 39:10 43:5 47:23,25 49:3 51:1 52:24 materiality 8:4 14:13 18:5 25:5 32:9 54:2 56:18 materially 38:4 materials 11:3 12:9 18:23 20:2,17,18 43:19 46:22 47:11 53:13 math 36:1 matter 1:11 57:16 mean 28:7 33:5 33:6,10,24 34:2 39:16 40:15 42:17 49:24 50:2 meaningless 23:1,5 medical 48:5 men 14:14 mention 11:5 midnight 6:11 millimeter 23:15 Mims 11:23 13:24 14:4,23 48:7,24 49:16 49:20 Mims's 14:13 mind 27:13,16 minimum 13:9 23:23 25:3 minutes 54:6	misspoke 49:2 mistaken 15:24 16:1 misunderstood 53:3,4,18 mixed 11:8 months 55:8 morning 3:4 motion 27:23 28:1,4 38:18 motive 15:18 mouth 30:6,22 mouthpiece 21:17 mug 16:6,7,10 16:19 39:18 multiple 3:21 5:22 12:2 22:4 25:2 murder 3:18 20:25 22:20 28:21 32:15 33:1 34:21 51:13 murders 43:4
<hr/> L <hr/> laceration 30:16 52:14 language 56:15 Larry 4:16 25:24,25 30:10 30:11,11 34:13 34:13,16 36:6 37:2 45:8,11 45:25 46:1 50:25 51:3 54:12 56:13	<hr/> M <hr/> MAC 24:10 machine 23:20 MAC-11 23:21 main 11:16 maintaining 47:24 making 35:12 39:8 52:1,9 53:6 male 30:21 males 28:12 man 7:6 11:21 14:16 28:16 35:2 March 10:12,15 18:11 26:8,17 34:9,12 41:12 45:7 54:12,14 55:1 Maryland 3:10 38:3 mask 11:9 15:20 17:1,4 masked 16:18 50:5	<hr/> N <hr/> N 2:1,1 3:1 NACDL 24:24 name 48:8 51:9 51:10 narrative 19:3,8 19:9,12 necessarily 15:23 need 4:15 17:25 29:15 52:25 53:1 needed 46:22 47:11 neighbor 13:25 never 26:21 27:19 36:16 39:5 48:14 new 1:17 3:25 4:14 5:5 55:6,7 55:8 56:8		

<p>newspaper 4:25 5:5 16:11 26:13,16,22,24 27:25 28:5 55:6 night 7:4 10:7,7 non-Brady 45:18 North 25:24 40:12 43:4 note 28:9 notes 13:15 14:6 19:9,20,22 24:21 25:3 28:9,19,22 29:1,9 30:9 34:8 37:13 42:13 46:3,25 49:14 54:14 55:11 noteworthy 23:8 November 1:9 now-familiar 3:11 number 11:8 19:21 35:11 numerous 4:2 6:24 7:8 23:5</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 objection 28:2 obligation 20:8 20:13 38:24 39:1 43:22 49:9 53:12 obligations 57:3 obviates 43:21 obviously 27:10 53:18 occasions 3:21 5:22 51:5 occurred 13:18 October 42:25 43:16 55:16 odd 24:14 39:16 42:17</p>	<p>offense 24:2 offenses 25:1 office 3:16 4:1 30:17 34:11 43:19,25 50:16 50:19 52:22 53:11 57:2 officer 9:6 10:16 19:12 30:2 36:5 officers 8:25 19:1 35:23 39:6 oh 40:15 41:21 53:19 Okay 33:11 41:16,22 42:8 42:12 once 27:13 ones 19:24 52:23 one-page 19:2 opened 40:11 opinion 13:6 18:1 opportunity 5:15 opposed 24:10 36:10 opposing 30:19 oral 1:11 2:2,5 3:6 25:18 order 4:13 17:24 Orleans 1:18 3:15 5:5 51:12 55:6,7,8 56:9 57:1 ought 56:9 outcome 38:4 46:9 47:16 outlined 47:22 outside 50:11 over-the-shou... 52:9</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3:1 page 2:2 17:13</p>	<p>27:7 54:15 pages 9:9 18:15 19:6 55:6 paper 27:21 pardon 49:5 Parish 3:15 51:12 57:1 part 12:17 17:5 30:18 56:17,18 particular 26:17 52:22 particularly 13:13 parts 18:12 people 6:5 12:3 39:21,23 40:17 49:24 percent 11:6 period 51:19 perpetrator 23:10,17,18 28:11 32:3 36:18 48:12 perpetrators 3:22 5:15 11:21 24:25 25:2 28:20 32:14,25 49:16 54:23 person 6:16 15:20 16:2,8 16:18 17:1,4,5 34:18 perspective 29:24 30:13 40:13 persuasive 8:2 petition 45:21 Petitioner 1:4 1:16 2:4,10 3:7 3:17 4:4,14,23 5:5,7 17:23 22:15,18 23:11 25:25 54:8 55:5,9 56:3,7 56:12 Petitioner's 3:17</p>	<p>4:5,11 22:14 57:8 phenomenon 16:6 34:24 Phillip 22:14 32:2 56:4,6 Phillips 21:1 photo 26:2,6 36:15,15 photograph 5:5 16:15 26:12,15 27:25 55:5 photographs 36:14 physical 36:21 36:22 pick 16:15 picture 4:24,25 27:21 pictured 26:5,15 piece 11:4 15:2 pieces 48:2 pistol 23:3,20 24:10 30:20 32:21 pivotal 45:21 place 19:3,13 37:11 plate 50:14 plausible 7:12 8:22 31:19 50:4 please 3:9 20:9 25:21 point 6:14 14:5 17:2 22:25 26:8,18 32:9 34:20 42:17 45:9,11 48:17 48:18 51:9 55:25 points 24:24 54:11 police 3:20 5:1 6:12 9:20,25 11:20 16:21 18:25 19:23</p>	<p>20:18 26:21 27:13 28:19 32:13,25 34:23 39:6 45:13 51:11 55:3,4 policeman 28:10 policemen 34:1 poor 39:2 possessed 23:24 possession 20:17 20:18 37:14 possible 10:2 12:5 14:13 17:5 possibly 47:19 postconviction 9:4 14:7 25:11 25:13 30:10 34:7 40:9,14 45:20,24,25 49:20 practice 21:19 22:3 39:2,15 44:2,21 practices 52:22 precisely 23:6 prejudice 8:12 prejudicial 4:20 33:7 premeditation 22:22 premises 49:25 prepared 19:1 19:12 55:17 presented 11:13 25:10 26:1 27:3,16,17 47:6,15,15,16 presenting 48:15 presents 3:13 Present-day 53:18 presumably 31:2 37:14 pretty 6:22 28:25</p>
--	---	---	--	---

previously 23:17 24:18 39:24	29:24,25 36:5 38:18	56:10	45:16	respectfully 7:4 56:7
primarily 20:24	provides 36:6,6 39:14	rear-window 52:9	rejecting 4:10 57:8	responded 8:25 19:2
principle 3:11 3:14 47:12	prudent 44:17 46:14,16 52:8 53:1	reason 13:20 25:6 27:4,6 57:9	related 15:15 relating 43:4 relatively 7:5 19:10,21 22:2	Respondent 1:18 2:7 4:17 7:16 12:16,18 19:15 25:19 55:16
prior 5:9 15:2 24:16 29:22 36:23 37:5,24 37:25 47:21 51:16,18 52:23	put 3:22 29:23 30:13,20 31:17 32:13,20 33:22 40:13 51:2	reasonable 8:6,7 15:13 33:8 35:12 46:8 49:4,5,6	relayed 24:22 relevant 3:16 18:19,24 19:21 20:6,9	Respondents 11:5
probability 8:6 8:7 33:8 34:3 35:12 46:8 49:5,6	p.m 57:15	reasonably 13:2 13:10 21:2	reliable 5:18 relief 34:7 relies 56:3 relying 11:1 19:24 37:12	responding 30:2 36:5 response 56:1 responsible 23:13
problem 39:4	Q	reasoning 13:4	remained 26:25 47:17	result 7:19 8:6 49:6
problematic 5:12	question 7:25 9:20 12:24 13:13 16:12 17:18,20 22:17 33:22 37:4 39:4 46:12 52:24 53:4,4 53:18 56:1,22	REBUTTAL 2:8 54:7	remaining 22:8 remarked 26:9 26:19	retreating 34:21 34:22
Procedure 39:14	questionable 5:13	recalled 9:5 39:5	remember 14:23 34:17	retrial 10:3 15:10
produced 3:16	questioned 6:8 6:11 16:21	recognition 29:11	remotely 18:24	return 7:19
Project 16:5	questions 22:9 22:11	recognized 26:24	reopened 28:1,3 repeatedly 17:21	returned 55:8 revealed 36:20
prong 53:7 54:2	quick 25:8 54:11	record 19:5 22:4 26:6 42:24 43:8,14 55:1 55:15	report 18:25 38:20 43:4 51:11	reversal 13:5 reversed 4:12 25:7 57:10
prongs 53:8	quickly 27:18	records 48:5	reports 18:21 20:10	reviewed 19:16 19:18 55:19,21 56:23
prosecution 3:11 15:12 28:23 40:1	quite 8:14 12:21 54:22	redacting 53:23	reproduced 30:18	reviewing 55:3
prosecution's 22:18	quote 9:8 56:25	reference 19:4	request 20:12	right 5:1 9:14 14:1 18:7 21:16 24:12 31:24 33:21 39:25 40:19 41:6 42:3,16 45:17 46:18 49:15 50:12
prosecutor 20:15,16 32:15 37:4,15 38:3 39:11 44:17,20 46:15,16 52:8	R	referred 8:23 18:12 40:17	require 22:22,23 required 8:17 22:20 45:6	rob 49:25
prosecutors 39:5,6 53:19 56:16	R 1:17 2:6 3:1 25:18	referring 40:7	requires 8:15 37:23 51:20 53:13 57:5	robbers 49:24
prosecutor's 20:17 43:19,25 56:24	rational 7:18	reflected 42:23	reserve 22:11 25:14	robbery 14:15 14:21
provenance 22:3	reach 7:18	reflective 37:8,8 37:8	respect 49:1 56:25	Robert 21:3 24:22
provide 6:15,21 11:2	read 52:16,18 52:20	reflects 26:7 43:14		ROBERTS 3:3
provided 7:3 9:20,24 16:18 16:23 17:9	real 57:5 realize 17:7 really 7:13,25 13:12 20:3 29:21 31:4,15 42:17 53:2	regard 7:10 8:4 8:22 10:14 11:24 13:1,13 14:12,22 17:8 19:7,20 22:7 23:9 24:13,14 25:1 45:7 54:12		
		regarding 6:2		
		reject 35:1,4		

25:16 31:1 41:18,22 42:5 42:8 50:8 53:20 54:3,5 57:12 Rogers 24:22 role 4:5 12:20 Roman 25:24 40:12 43:4 Ronquillo 10:16 19:12 30:3,7 30:14 34:8,13 34:15,17 35:2 35:5 40:8,13 45:8,10 46:1 48:16 52:12 Ronquillo's 46:3 routinely 24:24 rule 37:22 Russel 11:23 Russell 11:25 12:2 13:14,16 14:22 48:8,9 48:13 49:13 R1907 19:6	44:20 46:13 says 17:13 23:1 26:24 28:10,19 31:10 32:15,16 32:19,20 39:19 41:3,19 42:3 42:11,13 52:13 56:1 Scalia 21:10,12 21:15,20,22 31:20 32:6 40:25 41:5,8 41:11,13,16 51:22,24 52:4 56:2 scarcely 56:8 scared 17:14 30:23 47:1 54:25 scene 6:4,5,8 8:24,25 9:15 9:23 12:1 13:16 14:1 19:2 30:1,6,8 32:3 35:3 36:4 41:2,4,8 52:12 56:5 score 13:5 scrupulously 51:6 scrutinized 26:7 searched 26:1 second 41:25 53:7,9 55:25 see 5:15 28:15 28:17 39:20,24 40:3,7 42:12 46:25 49:21,21 50:11 54:16,17 seeing 16:11 55:5 seemingly 45:5 seen 50:10 sees 16:7 selected 20:5 36:16 selective 20:1	semipermanent 22:1 sense 15:1 17:16 serious 52:21 set 19:12 22:8 28:19 sets 7:11 severe 30:15 52:14 Shanmugam 1:15 2:3,9 3:5 3:6,8 5:3 6:13 7:2 8:8 10:1,8 10:11,21 11:11 11:15 12:14 14:2 15:8,21 16:22 17:3 18:17,22 20:11 20:22 21:8,18 21:24 23:4 24:12 25:8,12 47:22 49:23 51:1 54:5,7,9 54:22 55:14 shared 7:8 Shelita 11:23,24 13:14,16 48:9 49:13 shook 52:12 shooters 22:19 shooting 39:17 shootings 4:6 5:7 13:18 21:5 22:16 24:23 short 21:6 26:4 shot 9:17 12:2 16:6,7,10 shots 16:19 39:19 show 10:22 showed 11:13 27:13 showing 8:3,15 8:17 shown 26:8,17 27:25 side 33:25 56:16	silent 26:25 similar 36:22 39:7 simply 7:5,17,24 10:23 15:11,12 20:5 39:9 single 3:19 5:21 5:21 18:2 ski 49:17 ski-type 14:11 slightly 8:16 small 19:21 25:23 30:5 Smith 1:3 3:4 27:4,10,18 28:6 32:1,5 36:10,19,19 40:8 41:15,20 43:6 45:23 50:5 51:4 Smith's 26:15 27:3 snitch 48:10 sole 4:3 5:19 56:5,11 solely 3:18 10:14 somebody 15:19 somewhat 6:22 13:4 19:17 22:21 34:23 53:11 sorry 21:22 29:25 35:19 36:2 40:6 41:7 41:19,21,23 44:25 47:9 48:23 49:12 50:5,9,18 52:17 53:19 sort 52:9 Sotomayor 10:20,25 11:12 12:6,19 13:24 18:7 20:19 21:6 22:6 24:4 26:3,20 27:2 27:12 34:25	35:8,18,20,22 35:25 38:5,7 38:12,15,22 44:23 45:1,4 45:14 46:6,11 46:18,21 47:7 47:10 52:15,18 52:20 53:7,15 sounds 34:3 sources 23:6 sown 23:24 24:1 space 34:1 spare 13:4 speaking 34:20 48:1 specific 12:22 19:7 22:23 48:22 specifically 27:7 38:20 specificity 24:15 spend 11:5 spoken 12:21 stand 37:3 38:8 38:16 45:25 standard 7:20 7:22 8:5,10,11 8:14 12:12 25:6 56:17 57:4,5,7 stands 32:11 Starting 36:4 State 23:1 25:10 25:13 28:3 38:12 39:25 42:18 54:23 55:25 statement 6:3 7:4 8:22,23 9:5 9:6,7 10:13,15 11:23,24 13:14 13:15 14:13,17 17:8,12 18:11 22:14 30:1,17 30:18 31:5,13 32:12,24 34:9 34:10,11 35:17
<hr/> S <hr/>				
S 2:1 3:1 safety 53:25 sandwiched 31:8 satisfied 18:6 satisfies 25:5 satisfy 13:23 saw 3:23 4:24,25 5:4 12:3 13:25 14:9,16 16:19 17:19 26:12,22 26:24 28:18 36:19 39:18 46:24 49:16,16 54:18 saying 17:1 29:5 33:13 34:17 37:2 39:21 40:6,16 41:24 41:25 42:1				

36:5,24 37:6 40:2 42:19 45:8 47:21,22 51:17,18 52:11 54:23 56:12 statements 3:24 4:2,3,16,17,19 4:21 6:19,25 7:11,12,18,23 7:24,25 8:3,20 10:13 11:17,18 11:20,22 14:23 14:24 15:1,2 17:10,21 18:3 18:4,10,13,14 18:18,21,22 19:8,8,9 22:17 23:9,24 24:17 24:19 29:21,22 29:25 30:1 35:2,10,15,16 36:1,3,4,25 37:1,17,23,24 38:1,8,16,17 38:21 39:5,9 40:16 43:8,9 45:5 47:3,15 50:25 52:10,11 54:12 55:12 56:21 States 1:1,12 13:22 22:22 State's 7:11 8:19 9:1 10:23 14:12 23:11 28:2 station 6:12 9:20 9:25 16:21 stop 51:24 stopped 26:18 story 37:3 Street 25:24 43:4 Strickland 8:13 strike 32:16 stuff 28:24 submit 7:4 56:7	submitted 57:14 57:16 subsequent 15:10 16:9 17:19 subsequently 20:6 substance 56:6 sudden 24:15 29:11 suddenly 23:16 23:21 sufficiency 7:22 sufficient 5:24 7:16 suggest 17:3 51:22 suggesting 5:7 17:10 22:15 56:16 suggestion 5:2 51:8 suggests 11:1 16:12 summary 13:5 supplemental 38:20 43:3 supply 28:11 38:7 support 17:19 supposed 12:22 47:20 suppress 27:24 28:1,4 suppressed 4:15 17:20 18:5 51:2 suppression 3:24 4:2 25:3 Supreme 1:1,12 sure 24:5 27:11 48:5 surely 4:8 52:5 surprise 51:11 51:12 surprised 54:19 surrounding	18:23 survivor 25:22 suspect 16:13 21:2,3,4 suspects 5:8 7:9 20:23 22:4 26:6 36:9,11 36:14,21 system 13:22 42:19 <hr/> T <hr/> T 2:1,1 tacking 46:15 tainted 28:5 take 8:2 10:14 11:12 14:18 32:22 38:8 taken 13:16,17 31:10 37:14 52:14 takes 7:15 talking 11:17 32:23 48:7 TEC-9 30:24 teeth 7:7 16:24 17:17 20:20,23 21:7,15,25 28:13 36:10,17 36:18,20,20 tell 18:15 20:7 26:20 28:16 30:19 32:20 45:17 46:24 47:10 54:17 telling 32:10 34:1 44:11 tells 45:8 temporarily 34:21 temporary 21:25 terms 12:19 33:22 test 49:3,7,9 testified 9:4,6,12 32:12 40:8	49:20,20 55:4 testify 9:3 testimonies 23:16 testimony 3:19 5:20 10:15 11:8,9 14:6 24:13,14 30:10 32:2 34:6 37:13 45:21,24 56:4,6,13 Thank 3:8 25:14 25:16 54:3,4,9 57:11,12 theoretically 12:5 theory 15:6,10 15:18 22:18,19 46:19 thing 18:24 22:6 24:13 36:17 things 11:5,7,7 31:18 33:25 49:10 think 7:10,13 8:21 9:22 10:1 10:21,23 12:19 13:7,12 14:23 17:7,16,24 19:16 20:3 23:4,8 24:13 25:6 27:9 33:21 46:3,4 46:12,17 49:2 50:21 51:12 52:1,10 53:3,4 56:10 57:6,7,9 Third 56:14 thought 9:17 28:8,8 50:8,9 51:20 52:8 three 13:25 14:3 20:24 21:1 22:12 54:11 threshold 18:6 ties 11:4 time 6:9 9:2,7	16:11,17 22:11 25:15 34:12 36:18 41:24,25 50:21 56:1 times 6:24 12:2 Times-Picayune 26:16 today 5:11,18 25:10 39:8 53:22 54:24 55:25 told 3:20 13:18 26:21 32:24 48:11 top 30:5 total 14:1 touch 8:19 Trackling 21:3 Trackling's 24:22 transcript 34:7 43:16 55:16,17 55:21 transpired 9:9 10:17 transposing 49:10 traumatized 9:2 treated 30:16 trial 3:13,17,25 4:8,10,14,18 4:23 9:7 15:12 19:15,17,25 23:16 24:6,17 25:7 27:24 33:9 36:19 39:12,22 43:12 55:13 56:22 57:8 tried 29:1,10 trigger 20:12 troubling 53:2 true 7:2 9:11 17:9 32:11 truth 37:4 Tuesday 1:9 turn 20:6 38:9
---	---	---	--	---

<p>38:15 40:2 42:19 53:9,22 turned 4:25 27:12 29:15 37:21 39:9,12 42:21 43:20,20 45:6 46:7,12 46:22 47:12 49:1,3 51:19 51:25 52:1,5 52:25 53:5,13 53:25 55:12 turning 37:23 two 11:19 13:18 13:25 14:1 18:10 29:24 30:1 31:8,9 32:4 35:16,25 36:4 46:6 49:10 53:8 type 7:21 23:21</p> <hr/> <p style="text-align: center;">U</p> <p>ultimately 51:5 Unbeknownst 3:19 unclear 19:17 55:15,20 uncommon 21:8 21:12 unconventional 14:20 undermined 4:3 understand 24:5 26:23 31:16,21 33:17 43:7 45:14 understanding 6:3 21:21,24 55:10 understood 27:9 undisputed 22:4 unique 21:7 United 1:1,12 unmasked 14:17 40:11 unnecessary</p>	<p>20:12 unusual 16:14 42:18 urged 48:6 urging 29:21 useful 31:14 utterly 55:1</p> <hr/> <p style="text-align: center;">V</p> <p>v 1:5 3:4,10 7:20 7:21 8:9,13,17 12:25 13:4 38:2 validity 5:14 value 6:1 values 7:15 variation 11:16 verdict 7:19 vetted 27:23 victim 53:23 victims 53:25 view 4:13 14:24 15:1 43:18,24 viewed 4:9 47:5 viewing 51:6 violated 57:7 violation 3:13 44:4,9,23 45:2 49:8,9 56:19 Virginia 7:21 volume 19:4 voluminous 19:10</p> <hr/> <p style="text-align: center;">W</p> <p>wait 41:18,18 waited 26:21 want 8:19 11:7 11:18 22:7,8 50:2,3 wanted 55:4 WARDEN 1:6 Washington 1:8 1:15 8:13 wasn't 5:1 6:10 10:4 16:18 17:1 27:2 33:6</p>	<p>37:3 48:20 55:17 water 10:24 way 14:20 27:23 28:5 55:23,23 weapon 23:10 23:13,15 wear 50:1 wearing 11:22 14:8,14 17:1,4 weeks 16:15 26:21 55:3 weight 31:13,17 We'll 3:3 we're 5:11,12 11:17 19:24 34:19 37:2 43:9 46:15 Whitley 7:20 8:9 wholesale 4:1 wind 46:16 57:1 wish 17:14 withdrawing 45:12,13 withheld 4:17 11:18 21:5 24:19 56:21 withholding 12:9 20:4,5 witness 10:18 11:3 33:24 37:13,17 38:8 38:16 39:18 47:20 51:14 witnesses 4:2 11:16 13:18 34:21 37:24,24 38:1 witness's 7:24 woman's 48:8 wondering 50:22 Wood 12:25 13:4 word 33:12 words 48:16 wore 11:9 26:10</p>	<p>work 20:8 worn 21:25 worried 50:13 56:9 worry 50:11 52:15 wouldn't 33:14 33:23 37:15 52:2 written 48:17,17 wrong 36:1 wrote 34:22</p> <hr/> <p style="text-align: center;">X</p> <p>x 1:2,7</p> <hr/> <p style="text-align: center;">Y</p> <p>years 53:6 Young 21:2 22:14 32:2 48:10 56:4,4,6 y'all 17:14</p> <hr/> <p style="text-align: center;">1</p> <p>1st 10:15 10 19:4 10-8145 1:5 3:4 11 26:8 11:11 1:13 3:2 12:12 57:15 13 51:6 137 9:9 138 9:10 15 47:5 16 53:6 191 27:7 1911 19:6 1990s 21:9 22:2 1995 43:1,17 55:16</p> <hr/> <p style="text-align: center;">2</p> <p>2 26:21 2nd 18:11 20 18:15 2011 1:9 22nd 26:8,18 2230 25:23</p>	<p>40:12 25 2:7 252 18:10 259-60 33:1 296 17:13 18:12</p> <hr/> <p style="text-align: center;">3</p> <p>3 2:4 55:8 3/6/95 32:24 30 18:15 308 54:15 31st 42:25 43:17 55:16</p> <hr/> <p style="text-align: center;">4</p> <p>4 54:5 489 55:6 49 13:22 494 55:6</p> <hr/> <p style="text-align: center;">5</p> <p>5 10:5 28:14 39:17 54 2:10</p> <hr/> <p style="text-align: center;">6</p> <p>6th 10:12 34:9 34:12 41:12 45:7 54:13,15 55:1</p> <hr/> <p style="text-align: center;">7</p> <p>7th 26:16 718 39:14 42:22 72 26:1,7</p> <hr/> <p style="text-align: center;">8</p> <p>8 1:9 26:18 83-page 19:11</p> <hr/> <p style="text-align: center;">9</p> <p>9 23:15 9-millimeter 23:2,3,19,22 24:7,8,17 90 11:6</p>
--	--	--	---	---