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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

Appellate Case No. 2026-000924

The Honorable Paul M. Burch, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

MICHAEL LAMONT WATTS,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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PETITION

Petitioner, Michael Lamont Watts, respectfully petitions this Court, pursuant to Rule 242, SCACR, to issue a writ of certiorari to review the decision of the Court of Appeals in *State v. Watts*, Op. No. 2026-UP-032 (Ct. App. filed Feb. 4, 2026).

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that a contemporaneous written reprimand from the Pageland Chief of Police to Detective Larry Brown—establishing that Brown was working private security at the Matrix on the night of the shooting in violation of departmental policy and his chief's explicit instructions—is not "favorable" and not "material" under *Brady v. Maryland*, 373 U.S. 83 (1963), where Brown served as both a key State witness and the lead investigator who controlled every aspect of the investigation challenged at trial?

2. Should this Court grant certiorari to clarify South Carolina prosecutors' *Brady* obligations with respect to impeaching information contained in police personnel and discipline files, including material revealing conflicts of interest and policy violations tied to a specific investigation, where the Court of Appeals applied *State v. Durant*, 430 S.C. 98, 844 S.E.2d 49 (2020), and *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996), to deny relief and where South Carolina law otherwise provides only piecemeal guidance through cases such as *State v. Burgess*, 393 S.C. 396, 712 S.E.2d 1 (Ct. App. 2011); *State v. Dial*, 405 S.C. 247, 746 S.E.2d 710 (Ct. App. 2013); and *State v. Davis*, 438 S.C. 444, 884 S.E.2d 185 (Ct. App. 2022)?

3. Did the trial court and the Court of Appeals misapply Rule 29(b), SCRCrimP, and this Court's decisions in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999), and *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993), by concluding that the Sowell letter was "merely cumulative or impeaching" and would not probably change the result, despite the undisputed record that Petitioner's defense theory centered on the inadequacy and bias of Brown's investigation and that the letter and Setree affidavit provide the first objective explanation for the very investigative deficiencies the jury heard about at trial?

STATEMENT OF THE CASE

On November 28, 2004, a shooting at the Matrix nightclub in Pageland left one man dead and two others wounded. The Chesterfield County grand jury indicted Petitioner for murder, assault and battery with intent to kill, discharging a firearm into an occupied building, escape, and possession of a weapon during the commission of a violent crime. ROA Vol. 2, pp. 521–30. From July 30 to August 1, 2007, Petitioner was tried before the Honorable Paul M. Burch. ROA 1–417.

At trial, the State presented multiple eyewitnesses, including David Evans, Kevin Johnson, several members of the Miller family, club owner Michael Tresdale, security guard Angelo Mason, and Sergeant/Investigator Larry Brown. ROA 43–77, 79–116, 128–69, 179–230. Brown testified not only as a percipient witness, but as the lead investigator who arrived on scene, took control of the crime scene, collected all physical evidence, transported the firearm and casings to and from SLED, and made the key forensic decisions—including not requesting SLED's crime-scene team, not taking photographs of the positions of casings and bullets, not conducting a trajectory analysis, and not securing the club promptly after the shooting. ROA 185–203, 211–19, 223–25; ROA Vol. 2, pp. 533–44.

Petitioner testified in his own defense. He acknowledged retrieving a handgun from a car, re-entering the club armed, firing a shot, and later firing additional rounds outside. ROA 302–43. However, his testimony, and defense counsel's argument, focused on two themes: that he did not intend to shoot anyone and fired only in fear, and that there were multiple shooters whose conduct was never adequately investigated. ROA 323–29, 332, 339–41, 347–63. Counsel emphasized, in closing, that Brown's investigation was incomplete and biased, that it made "only half a case," and

that the State's theory rested on a deeply flawed investigation that ignored other evidence of additional shots and shooters. ROA 353–63.

The jury convicted Petitioner on all submitted charges, and the circuit court imposed a life-without-parole sentence for murder with concurrent terms on the remaining counts. ROA 410–17. Petitioner's direct appeal was dismissed by unpublished opinion. He later sought post-conviction relief; that application was denied by order dated October 18, 2013, and this Court denied certiorari on February 19, 2015. ROA Vol. 2, pp. 516–20.

On June 3, 2022, within one year of obtaining the after-discovered evidence at issue, Petitioner filed a motion for a new trial pursuant to Rule 29(b), SCRCrimP, supported by the sworn affidavit of private investigator Paul Brian Setree and attaching a December 4, 2004, letter from Pageland Chief of Police John W. Sowell, Jr. to Sgt. Larry Brown. The State filed a written response opposing relief, arguing that the motion was untimely, that there was no *Brady* violation, and that the Sowell letter was not material.

The circuit court conducted a hearing on April 26, 2023. ROA Vol. 2, pp. 531–47. At that hearing, the court admitted the Sowell letter and other personnel-file documents as Defendant's Exhibits, heard testimony from Investigator Setree, and entertained argument from both parties.

On March 11, 2024, the court entered a written order denying the Rule 29(b) motion, finding the motion untimely, rejecting the *Brady* claim, and concluding that the letter would not have changed the outcome and was merely cumulative or impeaching within the meaning of *Spann* and *Clark*.

Petitioner appealed that order to the Court of Appeals, arguing that the Sowell letter constituted favorable, material impeachment and exculpatory evidence suppressed in violation of

Brady and that it satisfied Rule 29(b)'s after-discovered evidence criteria. On February 4, 2026, the Court of Appeals affirmed in an unpublished *per curiam* opinion, holding that the officer's testimony "was cumulative to other eyewitnesses," that forensic evidence corroborated those accounts, that Petitioner testified he fired the gun multiple times, and that "the after-discovered letter was not favorable to Watts, not material to his guilt, and would not have changed the result of the trial." Op. No. 2026-UP-032 at 2–3. Petitioner timely filed a Rule 221 petition for rehearing, which the Court of Appeals denied.

This Petition for Writ of Certiorari follows.

STATEMENT OF RELEVANT FACTS

Sergeant/Investigator Larry Brown's role was singular in this case. Brown was working security at the Matrix, a small nightclub in Pageland, on the night of the shooting, and claims to have seen the end of the initial fight. ROA 184–87. After the shooting, Brown became the lead investigator, collected the firearm from the vehicle in which Watts was apprehended, seized Watts's distinctive green jacket, and personally collected all the shell casings and bullets that were admitted into evidence at trial. ROA 185–203, 194–99, 217, 223–25; ROA Vol. 2, pp. 533–44. He transported these items to and from SLED and decided not to request SLED's crime-scene unit, conceding on cross-examination that he had "very little" forensic training. ROA 217, 224.

Brown testified that he took no contemporaneous notes on the night of the homicide; instead, the first notes he prepared were dated March 7, 2005, and were based solely on his memory months after the incident. ROA 211–13, 225. He acknowledged that he took no photographs of the locations of shell casings and bullets before collecting them, performed no trajectory analysis, failed to include his search of the walls in his notes, and did not secure or search club patrons for other

weapons notwithstanding reports from several witnesses of additional shots after Watts had been handcuffed. ROA 193–99, 215–19, 222–25; ROA Vol. 2, pp. 533–44.

The trial record reflects that multiple defense witnesses, including Crystal Jones and Officer Ferman Mackey, testified to hearing what sounded like additional gunshots after Watts was already in police custody, and that Mackey heard four small-caliber "pops" from the east side of the club while Watts lay handcuffed on the ground. ROA 285–99, 320–27. Brown, by contrast, categorically dismissed these reports as confusion with a car backfiring and testified that he did not search patrons or detain anyone else because "he didn't see a need to do so." ROA 192–93, 208, 213–19. Brown also testified that he never conducted photographic lineups for witnesses to identify Watts for events occurring inside the club, relying instead on his own belief that he had personally seen Watts outside. ROA 217, 220–21.

Trial counsel seized on these deficiencies in the closing argument, characterizing the investigation as "sloppy," "incomplete," and "half a case," and arguing that the State's failure to investigate other potential shooters and to document the physical evidence left reasonable doubt as to whether Watts fired the fatal shot or caused Evans's injury. ROA 347–63.

Years later, in 2021, private investigator Setree obtained Brown's personnel file from the Town of Pageland via a Freedom of Information Act request. Setree Affidavit ¶¶ 3–7; ROA Vol. 2, pp. 533–41. The file contained a letter from Chief of Police John W. Sowell, Jr., dated December 4, 2004—barely one week after the Matrix shooting. Defense Exhibit 1, 29(b) Hearing; ROA Vol. 2, pp. 538–39. In that letter, the Chief "confirm[s] a conversation we had on December 02 regarding the Matrix Club," notes that he had "addressed an issue of you working private security at that location without my authorization or knowledge which was in violation of department policy,"

recounts Brown's attempt to claim that he had informed the Chief, and ultimately directs Brown that "you will do no security work at the Matrix in the future" because "[t]here are liability issues on your part and the Town's part in which both parties could be potential losers and the business not lose a thing." *Id*.

In his Rule 29(b) motion and at the hearing, Petitioner argued that this letter was never disclosed to trial counsel, that it reveals Brown was working security at the Matrix that night in express violation of policy and his superior's directions, and that it supplies the missing explanation for Brown's truncated and biased investigation. 29(b) Hearing Tr. at 4–15. Petitioner further argued that had the jury known that the lead investigator's conduct was so problematic that his own chief issued a written reprimand citing "liability issues," there is a reasonable probability the jury would have viewed Brown's investigative decisions and his categorical rejection of any "second shooter" differently, thus undermining confidence in the verdict. Petition for Rehearing at 4–8.

The State did not dispute at the hearing or in its written response that the Sowell letter was not produced to trial counsel. State's Response to 29(b) Motion at 1–3; 29(b) Hearing Tr. at 14–19. Instead, the State characterized the letter as reflecting a mere "misunderstanding" between Brown and the Chief and argued that it was not material in light of what the State described as "overwhelming evidence," including Watts's admissions and other eyewitness testimony. State's Response at 2–3; Final Br. of Respondent at 12–25.

ARGUMENT

A. The Court of Appeals misapplied *Brady* and its South Carolina progeny by holding that the Sowell letter is neither "favorable" nor "material," despite its direct impeachment of the lead investigator's neutrality and integrity in this specific case.

Under *Brady* and its progeny, the State must disclose evidence that is favorable to the accused, whether exculpatory or impeaching, and material either to guilt or to punishment. *Brady*, 373 U.S. at 87; *Kyles v. Whitley*, 514 U.S. 419, 433–34 (1995); *United States v. Bagley,* 473 U.S. 667, 676–82 (1985). South Carolina has consistently adopted this standard. See, *e.g.*, *Von Dohlen*, 322 S.C. at 241, 471 S.E.2d at 693; *State v. Bryant*, 372 S.C. 305, 316, 642 S.E.2d 582, 588 (2007); *Durant*, 430 S.C. at 107–10, 844 S.E.2d at 53–55.

The Court of Appeals nonetheless concluded that the Sowell letter "was not favorable to Watts, not material to his guilt, and would not have changed the result of the trial." Op. No. 2026-UP-032 at 3. That conclusion is irreconcilable with both the record and the controlling law. The letter provides two distinct categories of favorable evidence. First, it is classic impeachment: it demonstrates that Brown, the linchpin of the State's investigation, had violated departmental policy and a direct instruction from his chief by working private security at the Matrix, and that his superior recognized that conduct created "liability issues" for both Brown and the Town. ROA Vol. 2, pp. 538–39; Setree Affidavit ¶¶ 5–7. Second, it is exculpatory in the *Brady* sense because it supports the defense theory that the investigation was compromised and incomplete, thus undermining confidence in the State's proof that Watts was the sole shooter and that his gun fired the fatal shot. See *Kyles*, 514 U.S. at 437–38 (evidence undermining "thoroughness and even the good faith of the investigation" is exculpatory and material).

The Court of Appeals' materiality analysis appears to have been driven by the quantity of evidence against Watts rather than the effect of the undisclosed evidence on the overall fairness of the trial. It emphasized that multiple eyewitnesses identified Watts as the shooter, that forensic evidence linked his firearm to shell casings near the victim, and that Watts admitted firing his gun

multiple times. Op. No. 2026-UP-032 at 2–3. However, as this Court recognized in *Von Dohlen* and *Durant*, the proper question is not whether the untainted evidence was sufficient to convict, but whether there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different or, at least, that confidence in the verdict is undermined. *Von Dohlen*, 322 S.C. at 241, 471 S.E.2d at 693; *Durant*, 430 S.C. at 107–10, 844 S.E.2d at 53–55; *see also Kyles*, 514 U.S. at 433–34.

Here, the undisclosed evidence strikes at the heart of the State's case. Every piece of physical evidence that purportedly connects Watts's firearm to the fatal shot and to the interior shooting was collected, handled, and framed for the jury by Brown. ROA 193–203, 223–25. The State asked the jury to credit Brown's investigative conclusions—including his insistence that there was no second shooter and that reports of additional gunfire were mistaken—based on his credibility as a law enforcement officer. ROA 364–79. The Sowell letter would have allowed defense counsel to demonstrate, through the State's own chief of police, that Brown's presence at the club was unauthorized, that he had a personal and institutional incentive to close the case quickly and focus blame on Watts alone, and that his investigative decisions cannot simply be assumed to have been neutral.

In *Gibson v. State*, this Court recognized that impeachment of a crucial prosecution witness can be material for *Brady* purposes. 334 S.C. 515, 524, 514 S.E.2d 320, 325 (1999). The Court of Appeals' cursory conclusion that Brown's testimony was "cumulative" to that of other eyewitnesses ignores the record and this Court's precedent. Op. No. 2026-UP-032 at 2–3. Brown was no mere bystander; he was the architect of the investigation who chose which leads to pursue and which to disregard. In these circumstances, the Sowell letter is plainly favorable impeachment

under *Brady*, and there is, at a minimum, a reasonable probability that competent use of that letter at trial would have led at least one juror to harbor reasonable doubt.

B. This case presents an appropriate vehicle for this Court to clarify the State's *Brady* obligations regarding police personnel and discipline files.

South Carolina law has begun to address, piecemeal, the prosecutor's obligation to seek out favorable evidence beyond the four corners of the solicitor's file. In *Durant*, this Court held that a prosecutor's failure to run an accurate criminal-history report on a key State's witness can constitute a *Brady* violation, rejecting the notion that such an inquiry is a "fishing expedition." 430 S.C. at 108–10, 844 S.E.2d at 54–55. In *Von Dohlen*, the Court explained that *Brady* does not require the State to "search for exculpatory evidence not in its possession or control" and disavowed generalized "fishing expeditions" into unrelated material. 322 S.C. at 241, 471 S.E.2d at 693.

Lower courts have addressed access to police personnel files primarily through the lens of evidentiary and discovery law rather than *Brady*. In *Burgess*, the Court of Appeals approved an *in camera* review procedure for officer personnel files to screen for impeachment material. 393 S.C. at 403–04, 712 S.E.2d at 4–5. Similar approaches appear in *Dial*, 405 S.C. at 262–64, 746 S.E.2d at 718–19, and *Davis*, 438 S.C. at 462–64, 884 S.E.2d at 194–95. Yet none of these decisions squarely addresses whether, and under what circumstances, the State has an affirmative duty under *Brady* to seek and disclose impeaching material contained in a lead investigator's personnel or discipline file, particularly when that discipline arises from the very incident under prosecution.

The State's briefing below urged the Court of Appeals to construe *Von Dohlen* broadly and to hold that *Brady* does not extend to police personnel files absent a specific request and prior knowledge by the prosecutor. State's Response to 29(b) Motion at 2–3; Final Br. of Respondent at 16–22. The Court of Appeals' unpublished affirmance, which adopted the State's position *sub*

silentio, leaves prosecutors, defense counsel, and trial courts without clear guidance regarding the intersection of *Brady* and police personnel files. Op. No. 2026-UP-032 at 2–3.

This case squarely presents that issue in a concrete, compelling factual context. The Sowell letter was not some remote allegation of off-duty misconduct unrelated to the case; it was a contemporaneous reprimand describing Brown's unauthorized security work at the very club where the homicide occurred and acknowledging the resulting liability concerns. ROA Vol. 2, pp. 538–39; Setree Affidavit ¶¶ 5–7. Brown was the lead investigator whose decisions framed the entire evidentiary record. ROA 185–203, 211–19, 223–25; Final Br. of Respondent at 9–13. Under these facts, this Court should clarify that when discipline or reprimand in an officer's personnel file arises directly from the incident under prosecution, and the officer serves as a key State witness, the State has an obligation under *Brady* to disclose that material or, at a minimum, to submit the file for i*n camera* review.

A clear rule would harmonize *Durant*'s recognition that certain routine inquiries (such as criminal-history checks) are part of the prosecutor's *Brady* responsibilities with *Von Dohlen's* caution against generalized fishing, and it would give effect to *Burgess*, *Dial*, and *Davis* by framing *in camera* review of personnel files as one means by which prosecutors can satisfy *Brady* obligations in appropriate cases.

C. The lower courts misapplied Rule 29(b), *Spann*, and *Clark* by characterizing the Sowell letter as "merely cumulative or impeaching" and by refusing to recognize that the new evidence probably would change the result when considered in light of the defense theory.

To obtain a new trial based on after-discovered evidence, a defendant must show that the evidence (1) would probably change the result if a new trial were granted, (2) has been discovered since trial, (3) could not have been discovered earlier with due diligence, (4) is material, and (5) is

not merely cumulative or impeaching. *Spann,* 334 S.C. at 619–20, 513 S.E.2d at 99; *Clark*, 315 S.C. at 387–88, 434 S.E.2d at 268. The trial court concluded, and the Court of Appeals agreed, that Petitioner failed these standards because, in their view, the Sowell letter was solely impeachment and would not alter what they regarded as overwhelming evidence of guilt. Order Denying Rule 29(b) Motion at 2–3; Op. No. 2026-UP-032 at 2–3.

That reasoning gives the "cumulative or impeaching" language a breadth that swallows *Spann*'s rule. The Sowell letter does far more than add another inconsistency to Brown's cross-examination. It supplies an objective, documentary explanation—endorsed by the chief of police—for why Brown's investigation was so incomplete and why alternative leads were ignored. It connects the widely documented investigative deficiencies recounted in the trial record (no SLED crime-scene team, no photographs, no trajectory analysis, no search of patrons, no photo line-ups) to a structural conflict of interest and a policy violation that would have been highly significant to a reasonable juror assessing Brown's credibility and judgment.

Moreover, *Spann* and *Clark* both contemplate that even impeaching evidence can merit a new trial when it bears on the credibility of a central State witness and when, in context, it would probably change the outcome. *Spann*, 334 S.C. at 620, 513 S.E.2d at 99–100; *Clark*, 315 S.C. at 387–88, 434 S.E.2d at 268. Here, the defense theory at trial did not contest that Watts fired a weapon; the issue was whether he fired the fatal shot, whether there were other shooters, and whether the investigation was so flawed that the jury could not exclude reasonable doubt. ROA 323–29, 347–63. It is in that context that the Court must assess whether the Sowell letter "would probably change the result."

With the benefit of the letter, counsel could have cross-examined Brown along lines that were simply unavailable at trial: (1) that he worked security that night in express violation of policy and a direct order from his chief; (2) that his own chief considered that arrangement to present "liability issues" for Brown and the Town; (3) that he knew, when he took control of the scene, that his conduct created potential administrative and civil exposure; and (4) that his decisions not to request outside forensic assistance, not to document the scene, and not to investigate reports of additional shooters cannot be divorced from that personal and institutional stake. See 29(b) Hearing Tr. at 4–15; Petition for Rehearing at 4–8. This line of impeachment would have shifted the jury's perspective from a generic attack on competence to a focused demonstration of bias and self-interest. It reasonably would have led a jury to reject Brown's testimony that there was no second shooting, to discount the State's argument that the absence of physical evidence of other shooters proves there were none, and to accept the possibility that another shooter caused the fatal or injurious shots.

In combination with the existing evidence that other witnesses heard additional shots after Watts was in custody and that one witness reported seeing another armed man inside the club—all of which was presented at trial—the Sowell letter "tips the balance" in precisely the way *Spann* and *Clark* recognize as sufficient for a new trial. See *Spann*, 334 S.C. at 620, 513 S.E.2d at 99–100; *Clark*, 315 S.C. at 387–88, 434 S.E.2d at 268. The Court of Appeals' summary affirmance, which treated the letter as a minor impeachment footnote, fails to grapple with the record or with the governing standards and warrants this Court's review.

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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