FILED, Clerk of the Supreme Court, 17 Dec 2025, **090853**

Supreme Court of New Jersey

Docket No. 090853 (A-7-25)

STATE OF NEW JERSEY, *Plaintiff-Respondent,* vs. YUSEF B. ALLEN, *Defendant-Petitioner.*	CRIMINAL ACTION ON PETITION FOR CERTIFICATION FROM A FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION 482 N.J. Super. 142 (App. Div. 2025) Sat Below: HON. RONALD SUSSWEIN, J.A.D. HON. LISA PEREZ FRISCIA, J.A.D. HON. STANLEY L. BERGMAN, Jr., J.A.D.

BRIEF ON BEHALF OF AMICUS CURIAE THE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS OF NEW JERSEY

Of Counsel and On the Brief:
LEE VARTAN (041252006)
JEFFREY P. MONGIELLO (017262011)
BRITTANY MANNA (334162021)
LIAM RYAN (539402025)

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Amicus Curiae, ACDL-NJ
105 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 325-1500
lvartan@csglaw.com
jmongiello@csglaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

PRELIMINARY STATEMENT

The Appellate Division explained that the materiality standard for Brady claims for withheld exculpatory evidence and Carter claims for newly discovered evidence were the same. It is true that no court has explicitly said this before. But such a comment is justified when analyzing the overlapping history of these two tests (as well as the test for ineffective assistance of counsel). Over 20 years ago in a newly discovered evidence case, this Court interchangeably used Carter's "probably" language and Brady's "reasonable probability" language to assess whether the newly discovered evidence "undermines our confidence in the verdict."

Each test asks a straight-forward (though sometimes difficult to assess) question: are we confident in the verdict given this deficiency? That is the key concern in post-conviction relief. The difference in these tests lays in the other prongs. Brady evidence must be exculpatory and within the control of law enforcement. Newly discovered evidence must not have been discoverable before trial with due diligence. But the core is the same.

This standard of review is not new for reviewing courts. On direct appeal, not all errors require reversal. Errors that are harmless beyond a reasonable doubt are tolerated because they do not undermine confidence in the jury's verdict. So too with post-conviction relief. Whether labeled as materiality or prejudice, a deficiency only warrants a new trial if the deficiency "undermines our confidence in the verdict."

STATEMENT OF AMICUS CURIAE

Amicus curiae, the Association of Criminal Defense Lawyers of New Jersey (ACDL-NJ), is a non-profit corporation organized under the laws of this State to, among other things, "protect and ensure by rule of law, those individual rights guaranteed by the New Jersey and United States Constitutions; to encourage cooperation among lawyers engaged in the furtherance of such objectives through educational programs and other assistance; and through such cooperation, education and assistance, to promote justice and the common good." ACDL-NJ By-Laws, Article II(a), http://www.acdlnj.org/about/bylaws. The ACDL-NJ is comprised of over 500 members of the criminal defense bar of this State, including attorneys in private practice and public defenders.

Over the years, the ACDL-NJ has participated as amicus curiae in numerous cases in this Court and in the Appellate Division. See, e.g., State v. Bragg, 260 N.J. 387 (2025); State v. Hill, 256 N.J. 266 (2024); State v. Olenowski, 255 N.J. 529 (2023); State v. Bookman, 251 N.J. 600 (2022). Indeed, on various occasions, the ACDL-NJ has affirmatively been invited to file amicus briefs on matters of importance to the courts. See, e.g., State v. Hernandez, 225 N.J. 451 (2016); State v. Scoles, 214 N.J. 236 (2013); State v. Bishop, 429 N.J. Super. 533 (App. Div. 2013); State v. Cohen, 431 N.J. Super. 256 (App. Div. 2009).

Amicus seeks to participate in this matter to provide a historical analysis of the standards for granting post-conviction relief. This perspective supplements the analysis performed by the Appellate Division and will aid in the Court's resolution of the matter. Amicus thus seeks to "assure [] that all recesses of the problem will be earnestly explored." See Whelan v. N.J. Power & Light Co., 45 N.J. 237, 244 (1965). Amicus's participation in this matter would certainly "assist in the resolution of an issue of public importance." See R. 1:13-9.

STATEMENT OF PROCEDURAL HISTORY AND FACTS

The ACDL-NJ, as amicus curiae, respectfully incorporates by reference the statement of procedural history and facts set forth in Petitioner-Defendant Yusef B. Allen's brief.

ARGUMENT

THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT THE MATERIALITY STANDARD IS THE SAME FOR BRADY AND CARTER CLAIMS BUT ERRED IN CONDUCTING THE MATERIALITY ANALYSIS ITEM BY ITEM RATHER THAN COLLECTIVELY.

In New Jersey, post-conviction relief is "the last line of defense against a miscarriage of justice." State v. Nash, 212 N.J. 518, 526 (2013). "The purpose of a PCR hearing is to provide a procedure to uncover mistakes that may have caused an unjust result." State v. Hannah, 248 N.J. 148, 156 (2021) (citing State v. Hess, 207 N.J. 123, 144-45 (2011)). The remedy of post-conviction relief exists "to provide a safeguard in the system for those who are unjustly convicted of a crime." State v. Ways, 180 N.J. 171, 187–88 (2004) (citing State v. Afanador, 151 N.J. 41, 49 (1997)).

There are three mechanisms justifying post-conviction relief: (1) the State's failure to produce exculpatory evidence (Brady); (2) newly discovered evidence (Carter); and (3) ineffective assistance of counsel (Strickland/Fritz). While the Appellate Division's opinion focused on the materiality standard as it relates to Brady and Carter, a historical review benefits from the inclusion of ineffective assistance of counsel too. The materiality (or prejudice in Strickland/Fritz) standards have been interwoven across all three paradigms.

While each of these methods for post-conviction relief has different requirements (Brady evidence must be exculpatory and within the custody of the State; newly discovered evidence must not have been readily discoverable before trial with due diligence; and ineffective assistance of counsel requires an objectively unreasonable and deficient performance by counsel), the through line is ensuring that justice was done. That a defendant received a fair trial. This is what the materiality/prejudice prong focuses on in each test. Was there an error at trial that undermines our confidence in the jury's verdict? This standard has been consistent in the post-conviction relief caselaw—whether labeled as "materiality" (Brady and newly discovered evidence) or "prejudice" (ineffective assistance of counsel).

The historical development of all three tests demonstrates this. All paradigms derive from constitutional principles of due process and fundamental fairness. The United States Supreme Court developed its ineffective assistance counsel standard by adopting the then-existing Brady materiality standard. The Court then pulled the present Brady materiality standard directly from Strickland. This Court has often relied on the prejudice prong of ineffective assistance of counsel in assessing the materiality of newly discovered evidence. Here, the Appellate Division completed the triangle by connecting the materiality prongs for Brady and newly discovered evidence. The connective tissue long pre-dates the decision here, though.

A. The development of the materiality standard for post-conviction relief proceedings.

1. Materiality in Brady and Carter.

The Brady rule—a fundamental principle in American criminal law that prosecutors must produce exculpatory evidence to a defendant—originated from the United States Supreme Court's decision in Brady v. Maryland, 373 U.S. 83 (1963). The Brady rule is grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments and is designed to ensure fairness in criminal proceedings. Id. at 87. In that case, the Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Ibid. However, the Court did not define "materiality."

In State v. Carter, 85 N.J. 300, 311-12 (1981), this Court considered how the newly discovered evidence rule interacts with the Brady rule. This Court identified that the newly discovered evidence test is "more stringent" than merely meeting the Brady materiality standard because a defendant must meet all "three tests" of the newly discovered evidence standard. Id. at 314. The Brady standard this Court applied in Carter was the multi-tiered approach from Agurs. Id. at 313 (if defendant made specific request for evidence, as Carter did, materiality question is whether omitted evidence "might have affected the outcome of the trial" (citing United States v. Agurs, 427 U.S. 97, 104 (1976))). After a remand for a PCR hearing, this Court

evaluated the evidence in Carter II. State v. Carter, 91 N.J. 86 (1982). There, this Court expressly relied on its Brady analysis to complete the materiality analysis for the newly discovered evidence test as if the two standards for materiality were identical. Id. at 121. ("For the reasons outlined in our discussion of the Brady violation, we hold that the evidence of [the witness's] oral report is neither material nor of the sort that would lead to a change in the jury's verdict.").

2. The materiality standard evolves, and the U.S. Supreme Court ties it to ineffective assistance of counsel.

Following Brady, the Supreme Court expanded and attempted to define "materiality" across several key decisions. First, in United States v. Agurs, 427 U.S. 97 (1976), the prosecutor had not disclosed the victim's prior criminal record, and the defense had not specifically requested its production before trial. Agurs, 427 U.S. at 99–101. The United States Supreme Court enumerated three separate scenarios for the standard of materiality for determining whether a Brady violation was material and thus required a new trial. The first scenario was where the prosecution knowingly used perjured testimony; the Court noted it had previously held convictions under these facts should be set aside if there is a "reasonable likelihood that the false testimony could have affected the judgment of the jury." Id. at 103. The second situation, illustrated by the facts in Brady, was where the defendant made a specific request for the withheld evidence; the Court determined that a conviction must be vacated if "the suppressed evidence might have affected the outcome of the

trial." Id. at 104. Finally, the third scenario was where the defendant made no request, or only a general one, for the undisclosed material; in that setting, a reversal is required if the "omitted evidence creates a reasonable doubt that did not otherwise exist." Id. at 112. In other words, the "mere possibility" that the evidence might have aided the defense or affected the outcome was not enough to establish materiality. Id. at 109.

In Strickland v. Washington, 466 U.S. 668, 687 (1984), the Supreme Court adopted a two-part test for a claim of ineffective assistance of counsel. The second prong, prejudice, was adopted from the Brady materiality standard set forth in Agurs for exculpatory information withheld from the defense by the prosecution. Id. at 694. Specifically, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Ibid. In State v. Fritz, 105 N.J. 42 (1987), this Court adopted the Supreme Court's Brady-centered materiality standard for the prejudice prong of ineffective assistance of counsel. This Court explained that, to establish a claim for ineffective assistance of counsel, "a defendant whose counsel performed below a level of reasonable competence must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id. at 60–61 (quoting Strickland, 466 U.S. at 694).

The Supreme Court subsequently abandoned Brady's multi-tiered standard of materiality based on the type of evidence and whether it was requested. In so doing, the Supreme Court adopted one materiality test to apply in all Brady situations. In United States v. Bagley, 473 U.S. 667 (1985), the Supreme Court unified the materiality standard by announcing the "reasonable probability" test for materiality, holding that evidence is "material" if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. Bagley, 473 U.S. at 682. The Court defined "reasonable probability" as a probability sufficient to undermine confidence in the outcome. Ibid. The Court went on to explain that the omission must be "of sufficient significance to result in the denial of the defendant's right to a fair trial." Id. at 676.

In setting forth this materiality standard, the Supreme Court explicitly tied the prejudice prong of Strickland to the Brady materiality prong.

> We find the Strickland formulation of the Agurs test for materiality sufficiently flexible to cover the "no request," "general request," and "specific request" cases of prosecutorial failure to disclose evidence favorable to the accused: The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability" is a probability sufficient to undermine confidence in the outcome.
>
> [Id. at 682 (citing Strickland, 466 U.S. at 694).]

A decade later, in Kyles v. Whitley, 514 U.S. 419, 432-33 (1995), the Supreme Court reaffirmed that the prosecution's Brady obligation is rooted in due process and applies even absent a defense request. The Court reiterated that the materiality of suppressed evidence is determined by whether there is a "reasonable probability" that, had the evidence been disclosed, the result of the proceeding would have been different, meaning that the suppression undermines confidence in the outcome of the trial. Id. at 434-35. The Court emphasized that the test is not about sufficiency of the evidence; the defendant need not show that there would not have been enough evidence left to convict, but rather that the suppressed evidence could reasonably put the whole case in a different light. Id. at 435. Importantly, for the first time, the Court required the evaluation of materiality of suppressed evidence to be done collectively, not item by item, and held that the cumulative effect of all suppressed evidence determines whether the Brady materiality standard is met. Id. at 436-37.

This Court has recognized the United States Supreme Court's Brady materiality standard is binding under the federal constitution. To date, this Court has not considered whether state law considerations compel applying a more protective standard for defendants seeking a new trial when the State failed to provide exculpatory evidence. In State v. Knight, 145 N.J. 233, 246 (1996), this Court adopted the federal standard from Bagley: evidence is material if there is a reasonable probability that, had it been disclosed, the result of the proceeding would

have been different. One year later, in State v. Marshall, 148 N.J. 89, 156 (1997), this Court adopted the unified materiality standard from Bagley, holding that evidence is "material" for Brady purposes if there is a reasonable probability that, had it been disclosed, the result of the proceeding would have been different. Ibid. (citing Bagley, 473 U.S. 667). This Court also noted that the cumulative effect of all suppressed evidence must be considered—not each item in isolation. Id. at 155-156 (citing Kyles, 514 U.S. 419).

3. This Court ties the materiality prong of the newly discovered evidence test to the Brady and Strickland standard.

In State v. Ways, 180 N.J. 171, 192 (2004), this Court explicitly compared the materiality standard for newly discovered evidence to Strickland and the ineffective assistance of counsel prejudice standard. More importantly, Ways interchangeably used the "probably" language from Carter and the "probability" language from Brady/Strickland when conducting a newly discovered evidence analysis demonstrating the standards are the same.

This Court identified that a reviewing court "must engage in a thorough, fact-sensitive analysis to determine whether the newly discovered evidence would probably make a difference to the jury." Id. at 191 (emphasis added); see also id. at 189 ("Therefore, the focus properly turns to prong three of the Carter test, whether the evidence is 'of the sort that would probably change the jury's verdict if a new trial were granted.'" (quoting Carter, 85 N.J. at 314) (emphasis added)). Ultimately,

this Court concluded that the newly discovered evidence at issue "creates a probability that a jury would return a verdict different from the one reached at the first trial." Id. at 197 (emphasis added); see also ibid. ("We conclude that there is a probability—not a certainty—that a new jury would find Anthony Ways not guilty of the crime for which he is imprisoned, and, therefore, we grant a new trial." (emphasis added)). Ways' "probability—not a certainty—that a new jury" would reach a different result, ibid., is indistinguishable from Brady's well-worn "reasonable probability of a different result" standard, Kyles, 514 U.S. at 434.

In fact, Ways put the uniformity of the standards in the opening paragraph by declaring the question presented as "We must determine whether that newly discovered evidence undermines our confidence in the verdict, thus compelling the grant of a new trial." Ways, 180 N.J at 173. It is axiomatic that the definition of "reasonable probability," in the Brady and Strickland/Fritz context, "'is a probability sufficient to undermine confidence in the outcome.'" Marshall, 148 N.J. at 157 (quoting Strickland, 466 U.S. at 694); Kyles 514 U.S. at 434 ("A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" (quoting Bagley, 473 U.S. at 678)). Ways made plain that this standard also applied in the newly discovered evidence context.

Before Ways, there may have been some doubt about the interchangeability of the standards. For example, this Court's opinion in Ways relied heavily upon the Appellate Division's Henries decision. In State v. Henries, 306 N.J. Super. 512 (App. Div. 1997), while discussing both Brady and Carter, the appellate panel remarked that "we are not sure that the standard of materiality is any different" under either test. Henries, 306 N.J. Super. at 534 (citing Carter II, 91 N.J. at 121).

But, after Ways, there should be no dispute that materiality is the same whether the claim is for failure to produce exculpatory evidence (Brady), newly discovered evidence (Carter), or ineffective assistance of counsel (Strickland). "Material evidence is any evidence that would 'have some bearing on the claims being advanced.'" Ways, 180 N.J. at 188 (quoting Henries, 306 N.J. Super. at 531).

This Court has explained that in Ways, "we further refined the newly discovered evidence standard." Nash, 212 N.J. at 549–50 (2013) (citing Ways, 180 N.J. at 187-93). Since Ways, this Court has recognized the uniformity of the materiality analyses. For example, in State v. Allegro, 193 N.J. 352 (2008), this Court directly tied the prejudice standard of Strickland to the Ways materiality standard for newly discovered evidence by relying on Ways to conduct an ineffective assistance of counsel analysis. "Further, in determining whether those additional witnesses are sufficient to prove to a reasonable probability that, absent counsel's failure to call those witnesses, the outcome of defendant's trial would have been

different, we are guided, in part, by the standard applicable to claims of newly discovered evidence, that is, 'that the evidence would probably change the jury's verdict if a new trial were granted.'" Id. at 370 (quoting Ways, 180 N.J. at 187). More recently, in State v. Gideon, 244 N.J. 538, 552 (2021) (quoting Allegro, 193 N.J. at 370), this Court reiterated that connective principle.

Based on this extensive history, the appellate panel correctly concluded that there is "no practical difference between the materiality/harmless error elements set forth in the Brady and Carter formulations." State v. Allen, 482 N.J. Super. 142, 164 (App. Div. 2025). While the tests have different elements, some of which may make the newly discovered evidence test "more stringent" overall, the core question of materiality is the same under any formulation. Ibid. ("Putting aside Carter's due diligence element, which is not part of the Brady test, we do not believe that the Carter test is more stringent than the one prescribed in Brady with respect to the question of materiality and whether the trial outcome would have been different if the evidence at issue had been disclosed to the defense prior to trial." (citing Carter II, 91 N.J. at 121)).

* * *

Brady, newly discovered evidence, and ineffective assistance of counsel claims have been interwoven for decades. Though various aspects of the tests differ, the fundamental core is the same for each—a determination of whether the defendant

received a fair trial and if there is confidence in the verdict. When an error "undermines our confidence in the verdict," it is material for Brady purposes, just as it is material for Carter purposes and prejudicial for Strickland/Fritz purposes.

B. A materiality analysis must be conducted collectively based on all withheld evidence, and not on an item-by-item basis.

A materiality analysis must analyze the cumulative impact of error; the United States Supreme Court prohibits this analysis from being done on an item-by-item basis. Kyles, 514 U.S. at 436-37. But this is what the panel did here. The opinion analyzes the materiality of one piece of Brady evidence (the cooperation agreement) while simultaneously ordering a remand to develop facts on whether another piece of Brady evidence exists (Crime Stoppers) and directing a second materiality analysis to be conducted if the evidence exists.[1]

"[W]here multiple items of evidence have been suppressed, the prosecution's Brady obligation 'turns on the cumulative effect' of such evidence. Thus, courts are obligated to consider the State's non-disclosures 'collectively, not item-by-item.'" Knight, 145 N.J. at 246 (quoting Kyles, 514 U.S. at 436) (emphasis added). The

[1] While the merits of the remand order are outside the scope of this Court's grant of Certification (i.e., whether the Appellate Division properly reversed the motion court's order denying the motion to enforce the Crime Stoppers subpoena), the way the panel conducted the materiality analysis is. State v. Allen, 261 N.J. 605, 605 (2025) (granting Certification to review "the proper measure of 'materiality' for a [Brady] claim"). As discussed infra, "the proper measure of 'materiality'" in a Brady claim must be made cumulatively based on all Brady evidence—and not on an item-by-item basis.

order in which the appellate panel proceeded violated this "obligat[ion]." See ibid.

In directing the motion court's remand, the Appellate Division said:

> [W]e decline to put the cart before the proverbial horse by considering the potential impact that evidence of a cash reward paid to [the witness] would have under the Brady/Carter doctrines. We thus offer no opinion on whether and to what extent any such reward arrangement, if established, would constitute a material fact bearing on defendant's right to a new trial. Nor do we consider at this juncture whether any evidence [the witness] received a cash reward for her cooperation would be cumulative with the other evidence the defense used to challenge her credibility at trial. Rather, we leave that analysis for the motion judge to make in the first instance if and when evidence [the witness] received a cash reward is revealed.
>
> [Allen, 482 N.J. Super. at 169.]

Despite not wanting "to put the cart before the proverbial horse" that is what the Appellate Division ultimately did.

We do not know at this point whether "records that [the witness] received a payment do exist" or whether "no such records exist." Id. at 168. But if it is established that the records do exist, federal law requires that a cumulative materiality analysis be conducted based on both the cooperation agreement and the Crime Stoppers payment. The materiality analysis cannot be bifurcated. Indeed, given this outstanding uncertainty, it is not clear the Appellate Division should have analyzed the materiality of the cooperation agreement without waiting to determine if the Crime Stoppers payment also would need to be included in the materiality analysis. Rather, the fact-finding should have proceeded on remand first so that the

scope of the materiality analysis would have been crystallized.

CONCLUSION

For the foregoing reasons, this Court should declare that the "reasonable probability" standard for Brady and the "probably" standard for Carter are the same materiality standard, as both assess whether the missing evidence undermines confidence in the verdict. This Court should also reiterate that a materiality analysis must consider the impact of all missing evidence collectively rather than individually assessing the materiality of any single piece of evidence.

CHIESA SHAHINIAN & GIANTOMASI PC

By: *s/ Jeffrey Mongiello*

Dated: December 8, 2025

Lee Vartan (041252006)
Jeffrey P. Mongiello (017262011)
Brittany Manna (334162021)
Liam Ryan (539402025)
105 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 325-1500
Attorneys for Amicus Curiae ACDL-NJ