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Living in a Material World:

Materiality from *Brady* to *Watkins*

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I. Introduction: Two standards for materiality in criminal discovery

When the Texas Court of Criminal Appeals decided *Watkins v. State* in March 2021,[1] it nailed down a definition of "material" in the Texas criminal discovery statute that differed from the definition used in federal due process cases. After considering both legislative history and the Court's own precedents, the Court construed the word "material" in Texas Code of Criminal Procedure article 39.14(a) to mean "having a logical connection to a consequential fact" or, simply, "relevant."[2] In contrast, the word "material" as it relates to the guarantee of due process under the U.S. Constitution means there is "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[3] The discovery obligation under Texas Code of Criminal Procedure article 39.14 is broader than the obligation under federal due process because evidence need not have a logical connection to the *outcome* of the case to be considered material.[4]

A defendant or appellant who discovers suppressed evidence in her case may have the option of making a state statutory claim, federal constitutional claim, or both. But how is her attorney to know whether the evidence is material under the statute or federal due process? How should the State evaluate whether its failure to disclose the evidence violated the statute or the defendant's right to due process? To answer these questions, this paper will first discuss when evidence is material under federal due process. Then, *Watkins v. State* will be explored in detail. Finally, this paper will consider how evidence that is not material under federal due process might be material under the Texas statute.

II. Constitutional due process claim: The suppressed evidence undermines confidence in the outcome.

Underlying criminal discovery requirements is the importance of conducting a fair trial. The Fourteenth Amendment to the U.S. Constitution forbids a state from depriving any person of life, liberty, or property without due process of law. In 1963, the United States Supreme Court stated in *Brady v. Maryland*:

> The principle . . . is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.[5]

[1] 619 S.W.3d 265 (Tex. Crim. App. 2021).
[2] *Id*. at 290.
[3] United States v. Bagley, 473 U.S. 667, 682 (1985).
[4] *Watkins*, 619 S.W.3d at 280, 288–89.
[5] 373 U.S. 83, 87 (1963).

Brady established that when the government suppresses favorable evidence that is material to guilt or punishment, the government violates the accused's right to due process.[6] In Texas, this is not just a trial right. A prosecutor is required to disclose favorable material to a defendant even if he decides not to go to trial but pleads guilty instead.[7] In *Ex parte Lewis*, the Court of Criminal Appeals reasoned, "The requirement of due process and due course of law extends to guilty pleas as well as to contested cases."[8] The Court of Criminal Appeals has granted relief in habeas proceedings for defendants who argued that suppression of *Brady* material rendered their guilty pleas involuntary.[9]

Texas state law diverges from federal law on this issue. The U.S. Court of Appeals for the Fifth Circuit has said the defendant has a right to exculpatory and impeachment evidence only when going to trial, not when pleading guilty.[10] As recently as March 2022, the Fifth Circuit confirmed its precedent on this issue.[11] In dismissing a claim under 42 U.S.C. § 1983 in *Mansfield v. Williamson County*, the Fifth Circuit held that the defendant had no *Brady* claim even after a state habeas court granted him relief on *Brady* grounds.[12] The habeas court had followed Texas's long-standing precedent of permitting *Brady* claims related to involuntary guilty pleas.[13]

Two decades after *Brady*, in *United States v. Bagley*, the Supreme Court defined "material" in the discovery context as "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[14] It

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[6] *Id*. at 87. Originally, the rule from *Brady* applied when the defense specifically requested the information. *Id*. Later, the Supreme Court held that the same disclosure obligation exists whether or not there was a request. United States v. Agurs, 427 U.S. 97, 107 (1976); *Bagley*, 473 U.S. at 682.

[7] *See Ex parte* Lewis, 587 S.W.2d 697, 701 (Tex. Crim. App. 1979) (finding that if defendant's counsel has been aware of a letter from a psychiatrist questioning the defendant's competence, counsel would have advised defendant not to plead guilty to murder).

[8] *Id.* at 700.

[9] *See, e.g., Ex parte* Hirschler, No. WR-85,904-01, 2016 WL 6778197, at *1 (Tex. Crim. App. Nov. 16, 2016) (per curiam) (not designated for publication) (State failed to disclose evidence that robbery victim could not identify the defendant in a photo line-up) and *Ex parte* Johnson, No. AP-76,153, 2009 WL 1396807, at *1 (Tex. Crim. App. May 20, 2009) (per curiam) (not designated for publication) (prosecution withheld evidence that victim of alleged sexual assault recanted her story and was considered "a great liar" by school officials).

[10] Alvarez v. City of Brownsville, 904 F.3d 382, 392, 394 (5th Cir. 2018) (citing United States v. Ruiz, 536 U.S. 622, 633 (2002)).

[11] Mansfield v. Williamson Co., 30 F.4th 276, 280–81 (5th Cir. Mar. 31, 2022) ("*Brady* focuses on the integrity of trials and does not reach pre-trial guilty pleas."); *but see id.* at 282–83 (Costa, J., concurring) ("The outcome of this case is yet another injustice resulting from our mistaken view that *Brady* does not require turning over exculpatory evidence before a guilty plea.").

[12] *Id*. at 278, 281 (State knew complainant had trouble remembering her story but did not disclose this information to the defense prior to guilty plea; state habeas court vacated the conviction, holding that the prosecutors violated the defendant's due process rights by lying to conceal exculpatory material).

[13] *Id.* at 283 (Costa, J., concurring).

[14] 473 U.S. at 682.

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