NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KYLES *v.* WHITLEY, WARDEN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 93–7927. Argued November 7, 1994—Decided April 19, 1995

Petitioner Kyles was convicted of first-degree murder by a Louisiana jury and sentenced to death. Following the affirmance of his conviction and sentence on direct appeal, it was revealed on state collateral review that the State had never disclosed certain evidence favorable to him. That evidence included, *inter alia,* (1) contemporaneous eyewitness statements taken by the police following the murder; (2) various statements made to the police by an informant known as ``Beanie,'' who was never called to testify; and (3) a computer print-out of license numbers of cars parked at the crime scene on the night of the murder, which did not list the number of Kyles's car. The state trial court nevertheless denied relief, and the State Supreme Court denied Kyles's application for discretionary review. He then sought relief on federal habeas, claiming, among other things, that his conviction was obtained in violation of *Brady* v. *Maryland*, 373 U. S. 83, 87, which held that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment. The Federal District Court denied relief, and the Fifth Circuit affirmed.

Held:

1. Under *United States* v. *Bagley,* 473 U. S. 667, four aspects of materiality for *Brady* purposes bear emphasis. First, favorable evidence is material, and constitutional error results from its suppression by the government, if there is a ``reasonable probability'' that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Thus, a showing of materiality does not require

demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. 473 U. S., at 682, 685. *United States* v. *Agurs,* 427 U.S. 97, 112–113, distinguished. Second, *Bagley* materiality is not a sufficiency of evidence test. One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Third, contrary to the Fifth Circuit's assumption, once a reviewing court applying *Bagley* has found constitutional error, there is no need for further harmless-error review, since the constitutional standard for materiality under *Bagley* imposes a higher burden than the harmless-error standard of *Brecht* v. *Abrahamson*, 507 U. S. ___, ___. Fourth, the state's disclosure obligation turns on the cumulative effect of all suppressed evidence favorable to the defense, not on the evidence considered item-by-item. 473 U. S., at 675, and n. 7. Thus, the prosecutor, who alone can know what is undisclosed, must be assigned the responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of ``reasonable probability'' is reached. Moreover, that responsibility remains regardless of any failure by the police to bring favorable evidence to the prosecutor's attention. To hold otherwise would amount to a serious change of course from the *Brady* line of cases. As the more likely reading of the Fifth Circuit's opinion shows a series of independent materiality evaluations, rather than the cumulative evaluation required by *Bagley,* it is questionable whether that court evaluated the significance of the undisclosed evidence in this case under the correct standard. Pp. 13–22.

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2. Because the net effect of the state-suppressed evidence favoring Kyles raises a reasonable probability that its disclosure would have produced a different result at trial, the conviction cannot stand, and Kyles is entitled to a new trial. Pp. 22–37.

(a) A review of the suppressed statements of eyewitnesses — whose testimony identifying Kyles as the killer was the essence of the State's case—reveals that their disclosure not only would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense, but also would have substantially reduced or destroyed the value of the State's two best witnesses. Pp. 22–26.

(b) Similarly, a recapitulation of the suppressed statements made to the police by Beanie—who, by the State's own admission, was essential to its investigation and, indeed, ``made the case'' against Kyles—reveals that they were replete with significant inconsistencies and affirmatively self-incriminating assertions, that Beanie was anxious to see Kyles arrested for the murder, and that the police had a remarkably uncritical attitude toward Beanie. Disclosure would therefore have raised opportunities for the defense to attack the thoroughness and even the good faith of the investigation, and would also have allowed the defense to question the probative value of certain crucial physical evidence. Pp. 26–31.

(c) While the suppression of the prosecution's list of the cars at the crime scene after the murder does not rank with the failure to disclose the other evidence herein discussed, the list would have had some value as exculpation of Kyles, whose license plate was not included thereon, and as impeachment of the prosecution's arguments to the jury that the killer left his car at the scene during the investigation and that a grainy photograph of the scene showed Kyles's car in the background. It would also have lent support to an argument that the police were irresponsible in relying on inconsistent statements made by Beanie. Pp. 32–33.

(d) Although not every item of the State's case would have been directly undercut if the foregoing *Brady* evidence had been disclosed, it is significant that the physical evidence remaining unscathed would, by the State's own admission, hardly have amounted to overwhelming proof that Kyles was the murderer. While the inconclusiveness of that evidence does not prove Kyles's innocence, and the jury might have found the unimpeached eyewitness testimony sufficient to convict, confidence that the verdict would have been the same cannot survive a recap of the suppressed evidence and its significance for the prosecution. Pp. 33–37.

9 F. 3d 806, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS,

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O'CONNOR, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, in which GINSBURG and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY and THOMAS, JJ., joined.