

## **Criminal Procedure Discovery**

*Smith v. Cain*, 565 U.S. \_\_\_ (Jan. 10, 2012). The Court reversed petitioner Smith's conviction on grounds of a *Brady* violation. At Smith's trial, a single witness, Larry Boatner, linked Smith to the crime. Boatner testified that Smith and two other gunmen entered a home, demanded money and drugs, and then began shooting, killing five people. At trial, Boatner identified Smith as the first gunman through the door and claimed that he had been face to face with Smith during the initial moments of the robbery. No other witnesses and no physical evidence implicated Smith. Smith was convicted of five counts of murder. After an unsuccessful direct review, Smith sought post-conviction relief in the state courts. In connection with this effort he obtained notes of the lead police investigator. These notes contained statements by Boatner that conflicted with his testimony identifying Smith as a perpetrator. Specifically, they state that Boatner "could not . . . supply a description of the perpetrators other than [sic] they were black males." The investigator also made a handwritten account of a conversation he had with Boatner five days after the crime, in which Boatner said he "could not ID anyone because [he] couldn't see faces" and "would not know them if [he] saw them." The investigator's typewritten report of that conversation states that Boatner told the officer he "could not identify any of the perpetrators of the murder." Smith argued that the prosecution's failure to disclose the notes violated *Brady*. The State did not dispute that Boatner's statements were favorable to Smith and that they were not disclosed. The sole question for the Court thus was whether the statements were material. The Court noted that evidence impeaching an eyewitness may not be material if the State's other evidence is strong enough to sustain confidence in the verdict. However, it concluded the State's evidence was not sufficiently strong in this case. Boatner's testimony was the only evidence linking Smith to the crime. Also, Boatner's undisclosed statements directly contradicted his testimony. Boatner's undisclosed statements, the Court concluded, were plainly material. The Court went on to reject various reasons advanced by the State and the dissent regarding why the jury might have discounted Boatner's undisclosed statements. Justice Thomas dissented.