No. 18-8687

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Melanie A. Ogle — PETITIONER
(Your Name)

vs.

Ohio Department of Rehabilitation and Corrections, Adult Parole Authority — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Melanie A. Ogle
(Your Name)

11575 Donaldson Road
(Address)

Rockbridge, Ohio 43149
(City, State, Zip Code)

740-385-5959
(Phone Number)

QUESTION(S) PRESENTED

1. Has this Court amended its previous decision that the Schlup gateway standard (Schlup v. Delo, 513 U.S. 298, 327 (1995), does not require absolute certainty about the petitioner's guilt or innocence decided in House v. Bell, 547 U.S. at 538, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006)?

2. Does a circuit split exist between the Sixth Circuit's decision's citing of Calderon v. Thompson, 523 U.S. 538, 563 (1998) in this case, and the Ninth Circuit's decision in Gandarela v. Johnson,286 F.3d 1080, 1086 (9th Cir.2002), stating that, "[] new evidence that undermines [or impeaches] the credibility of the prosecution's case may alone suffice to get an otherwise barred petitioner through the Schlup gateway.", in that the circuits are conflicting in their "impeachment evidence" conclusions in regard to the Schlup gateway standard?

3. Have the district court and Sixth Circuit misapplied the term and/or misinterpreted "impeachment evidence" of this Court, to the facts and new impeachment evidence presented by Petitioner in this case, by relying on Calderon v. Thompson, 523 U.S. 538, 563 (1998), a case which makes no reference to impeachment evidence of a state's sole witness to an alleged crime, (but rather, impeaching the credibility of "jailhouse informants"), in regard to her Schlup gateway claim when it was determined in this habeas case that:
"None of the evidence she relied on was of the type required by Schlup, i.e., exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence. Id. at 324. Indeed, Ogle herself stated that the evidence "calls into question the credibility of the [S]tate's witnesses."?

4. When the testimony of a state's single witness for the prosecution of an alleged crime and where the state's case rested solely on the testimony of such a witness, and the same was entirely uncorroborated by any other witness and unsupported by any other evidence, said witness subsequently provides contradictory and conflicting testimony of the state's facts and theory, can the same meet the "type" of evidence gateway standard required by Schlup?

5. Can impeachment evidence – in particular, evidence that could undermine the credibility of the testimony of a state's sole witness to an alleged crime, (such as evidence that would substantiate a Brady v. Maryland, 373 U.S. 83 (1963) violation), have a sufficient impact that could also satisfy the standard to pass through the Schlup gateway?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"Type" (language used by lower courts) of evidence required by Schlup (Schlup v. Delo, 513 U.S. 298, 330, 115 S.Ct. 851, 130 L.Ed.2d 808 (2003) [(1995)]) to meet the gateway standard, "type" of evidence not previously addressed by this Court.

STATEMENT OF THE CASE

Petitioner Melanie A. Ogle was falsely accused, wrongfully convicted, unlawfully sentenced, and unlawfully imprisoned 180 days, following a second trial against Petitioner for allegedly committing a felony assault on a peace officer in the performance of his official duties against an alleged victim, Trent Woodgeard. Woodgeard falsely testified that on September 9, 2009 Petitioner got out of the Ogles' pickup truck and ran at and charged Woodgeard in the Ogles' driveway. Woodgeard falsely testified that he was assaulted by Petitioner by being "kicked" in the "genitals" while he was arresting Petitioner for an alleged crime of disorderly conduct between the Ogles' truck and Woodgeard's cruiser, and prior to pepper-spraying the Ogles. Woodgeard additionally falsely testified that Petitioner's husband assisted Woodgeard in handcuffing his wife and putting her into his cruiser after pepper-spraying him twice. Aside from such absurdity, Petitioner was never ever in Woodgeard's SUV cruiser.

Petitioner did not commit any of the crimes charged against her "*on or about the 9th day of September, 2009*". Every single answer and statement sworn to by Woodgeard on direct examination by the state to the jury on August 10, 2011 as recorded in the transcript from p. 193, line 21 through p. 201, line 12, is a completely fabricated story, and the state made no effort to seek the truth or justice.

The only record that was provided by the state of any type of "investigation" regarding what took place on September 9, 2009, was made by former deputy Kevin Groves, who was thereafter, demoted for lying in two unrelated cases and subsequently resigned. Groves was then later indicted for numerous felony crimes in Hocking County Common Pleas Court, Case Nos. 13CR0249 and 14CR0230, which ended in a plea bargain and agreement to pay half of the money regard fraud upon the government with the Ohio Attorney General. Groves also filed a false report and two misdemeanor charges against Petitioner on or about November 26, 2009, while unlawfully occupying the Ogles' property. Those false charges were used by the state in two failed attempts to revoke bond in the fabricated assault case and in an attempt to have Petitioner mentally evaluated. Those two charges were dismissed without prejudice after one year.

The first malicious trial in 2010 for the fabricated assault case against Petitioner resulted in a hung jury. The Hocking County Prosecutor was aware during that trial that Woodgeard and state witness, Jason Stacy, gave conflicting testimony regarding what took place on Donaldson Road, and failed to seek the truth of the matter. The Hocking County Prosecutor and Common Pleas Judge both recused themselves after the Hocking County Prosecutor filed notice for a retrial against Petitioner. The Hocking County Prosecutor then personally

selected a special prosecutor, Timothy P. Gleeson. The Hocking County Commissioners have paid him at least $7,000.00, during which time Charles and Melanie Ogle were plaintiffs in a §1983 federal lawsuit against Woodgeard, et al., that was regularly discussed by the Hocking County Prosecuting Attorney with the Hocking County Commissioners.

The state then withheld new medical evidence in regard to Woodgeard's 2010 trial testimony it acquired and was in its possession during the 2011 trial, and egregiously solicited testimony from Woodgeard regarding an alleged injury and surgery that it was fully aware, was contrary to the withheld medical evidence.

During the 2011 trial, Woodgeard conveniently could no longer recall the few truthful facts he testified to occurring on Donaldson Road regarding trucks blocking the public road and being moved that he testified to in 2010. It is apparent that Woodgeard was made abreast in some way or by someone that his 2010 testimony contradicted the 2010 false testimony of state witness, Jason Stacy.

Gleeson maliciously presented "facts" to the appellate court that were not before the jury that he claimed occurred prior to Woodgeard's hot pursuit, in order to establish what he stated was "*probable cause for an arrest for disorderly conduct, as a fourth degree misdemeanor*". The appellate court made up "facts" that are not of record, omitted conflicting testimony of the state, and relied on its own theory with "facts" to establish an element of the alleged crime that were never before the jury.

October 15 and 16, 2013 new evidence testimony in *Ogles v. North*, et al., Hocking County Common Pleas Court, 10CV0224, regarding Woodgeard's official capacity on September 9, 2009, (as presented by the state and instructed to the jury), disproves the state's theory to establish an element of the alleged crime and the appellate court's reliance thereon to confirm the conviction, since Sheriff North testified therein that he did not authorize Woodgeard to leave his special duty assignment.

On January 29, 2015 in *Ogles v. Woodgeard, (fka North, et al.)*, USDC, SD Ohio, Case No. 2:10cv806, the Honorable Elizabeth Preston Deavers, Magistrate Judge instructed the federal civil rights jury as to the parties in the case, that, "*It is undisputed between the parties [Charles and Melanie Ogle and Trent Woodgeard] that* ***Charles Ogle had the right to drive away from Officer Woodgeard on Donaldson Road and to enter their property***.", establishing the Constitutional rights of Petitioner, as a passenger in the vehicle, to not acquiesce to Woodgeard's attempt to get her out of the vehicle, which had never been before the state jury and which defeats Gleeson argument the jury that Petitioner had committed a crime by not doing so. "***You can't cause a scene and disturb the peace and yes, commit violations five hundred feet from your house and***

drive off real fast right when the deputy is trying to address it". (TR 2011, p. 394, line 17)

Petitioner and her husband's testimonies are the **truth** as to what transpired on September 9, 2009, each from their own awareness and senses.

Petitioner was falsely accused of criminal acts by Woodgeard and others chose to follow his lead and participated in the malicious prosecution and wrongful conviction of an innocent person.

The whole state court record taken together with Petitioner's actual innocence gateway new evidence, prove the veracity of Petitioner's Amended Petition and incorporated memorandums.

Petitioner's 110-page memorandum (Doc. #21-1, PAGEID# 2853) specifically quotes and references some of the discrepancies in Woodgeard's testimony and written statements in the two state assault trials against Petitioner and the federal civil rights trial filed by the Ogles against Woodgeard for their claims (not barred by *Heck*). After Woodgeard's testimony in USDC, SD Ohio, Case No. 2:10cv806, wherein his attempted manipulation of his facts and storytelling is obvious, as evidenced by the new evidence transcripts attached to Petitioner's amended habeas petition (Doc. #15-1, PAGEID #1312), the Ogles agreed to an offered settlement for those claims.

Additional evidence attached to Petitioner's amended habeas not before the state jury include documentation of Groves, the only "investigator" as to what took place on September 9, 2009, a written statement by Groves on November 26, 2009 and Petitioner's audio recording which proves that Groves' fabricated a story to justify calling for backup to search for and arrest Petitioner on her own property; Groves' personnel record of his lying in two unrelated cases and demotion; Groves' criminal court records; and Woodgeard's criminal court records (on September 9, 2009, Woodgeard was a convicted criminal for vehicular manslaughter in Fairfield County, which was a fact never before the jury as a motive to file a false report to protect his employment); and the actual audio recording made by Groves of Charles Ogle proves that the state appellate court's "facts" regarding the same are not correct and therefore, cannot be presumed as correct (Doc. #24, PAGEID #2992 – Petitioner's rebuttal to state court's findings of facts).

The sheriff's photographs taken by deputy Skinner admitted into evidence at the state assault trial against Petitioner were not provided by respondent for the record, despite Petitioner's objections. Those photographs prove that none of Woodgeard's stories are true, but support Petitioner and her husband's testimonies that they were attacked with pepper-spray by Woodgeard at the end of their sidewalk after Petitioner did nothing more than walk away from him. The record shows that the state and courts have refused to address the facts that the items

on the ground in the sheriff's photographs are not in any location Woodgeard swore his facts occurred.

Not only was Petitioner brutally attacked, then framed and prosecuted for a felony crime of assault for which the state asserted took place prior to Petitioner being grabbed from behind and pepper-sprayed by Woodgeard, which never occurred -- the only "investigation" ever into the alleged crime was made by Groves, a deputy the sheriff demoted for lying.

Petitioner was "offered" a "deal" in where she would have had to admit to Woodgeard's false written statement as true, in exchange for a minor misdemeanor charge of disorderly conduct versus being prosecuted for a felony crime – sworn by Woodgeard in his false written statement. In other words, put simply...the prosecutor "offered" a "plea deal" to Petitioner to lie against herself, so that she would not be able to file a civil rights lawsuit for the unprovoked, brutal attack she endured at the hands of Woodgeard. Petitioner was again "offered" the same "deal" after the 2010 hung jury wherein Woodgeard fabricated overwhelming false testimony than in his initial written false statement.

Petitioner knew practically nothing about the criminal justice system's workings, but having since been educated and imprisoned, she would not make a different decision to "take" the "plea deal".

In addition to Petitioner's Christian moral values, she, her husband, and their sons have sworn an oath to defend the Constitution of the United States against all enemies. One who bears false witness against another for whatever his influences and/or reason(s) were, is an enemy of the very Constitution for which my husband came close to giving their lives for, and many other good men we personally knew who did. The severe emotional distress that Petitioner has endured for refusing to bear false witness against herself, so that all Woodgeard's lies would be swept under some other paperwork, has caused her ongoing physiological dysfunctions. A "fair" criminal justice system is not one that allows for a state actor to frame someone as Woodgeard has done to Petitioner.

Unbeknownst to Petitioner, there was a civil rights lawsuit pending on September 9, 2009 against other deputies – *Akers v. Grove, et al.* in 2:09cv669, USDC SD OH, claims that were settled after Mr. Akers' death.

Trial counsel retained by Petitioner's family failed to make objections to preserve for appeal, failed to file motions after trial, and the appellate counsel retained by Petitioner's family (while she was unlawfully imprisoned) was ineffective in at least the several ways stated in Petitioner's amended habeas petition.

Petitioner prepared a state supreme court appeal and at the 11th hour arrived at the clerk's office, but was told she had to have a copy of the reconsideration entry. Since the entry was not available online and the appellate clerk's office closed earlier, she had no way to get a copy of the entry and she was turned away. Petitioner soon thereafter, filed motions for leave to file a delayed appeal which were rejected 4-3.

As soon as Petitioner acquired transcripts from *Ogles v. Woodgeard*, in USDC, SD Ohio, Case No. 2:10cv806, she filed a habeas petition in the federal district court and then amended the same. Petitioner's appendices attached hereto, include her objections to show the issues and errors she raised, which the court did not address. The appellate court also gave no responses or any explanations to the issues and errors of fact that she raised her motion in response to its February 27, 2018 Order denying her a certificate of appealability.

NOTE: State-court factual findings are rebutted by clear and convincing evidence (Doc. #24, PAGEID# 2992).

REASONS FOR GRANTING THE PETITION

Petitioner's first QUESTION presented is:

1. Has this Court amended its previous decision that the *Schlup* gateway standard (*Schlup v. Delo*, 513 U.S. 298, 327 (1995), does not require absolute certainty about the petitioner's guilt or innocence decided in *House v. Bell*, 547 U.S. at 538, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006)?

Petitioner has read many opinions which state that *Schlup* does not require absolute certainty about the petitioner's guilt or innocence...and that's it, before denying *99.999%* of *Schlup* actual innocence claims, even those with new evidence, including Petitioner's. The district and appellate court's included the above *House v. Bell* reference in its decisions in this case, but without further comment.

Petitioner submits that *House v. Bell,* aside from a citation, was not considered at all in her case and that a writ be granted for that reason.

Petitioner's second QUESTION presented is:

2. Does a circuit split exist between the Sixth Circuit's decision's citing of *Calderon v. Thompson*, 523 U.S. 538, 563 (1998) in this case, and the Ninth Circuit's decision in *Gandarela v. Johnson*,286 F.3d 1080, 1086 (9th Cir.2002), stating that, "[] new evidence that undermines [or impeaches] the credibility of the prosecution's case may alone suffice to get an otherwise barred petitioner through the *Schlup* gateway.", in that the circuits are conflicting in their "impeachment evidence" conclusions in regard to the *Schlup* gateway standard?

Petitioner's pleadings also include additional references regarding the language above in *Gandarela v. Johnson* and other similar cases. No such language that "new evidence that undermines [or impeaches] the credibility of the prosecution's case may alone suffice to get an otherwise barred petitioner through the *Schlup* gateway." was considered part of any decisions in this case, and in fact, went in the opposite direction by relying on *Calderon v. Thompson*, 523 U.S. 538, 563 (1998). (*See*

QUESTION 3.)

Petitioner submits that there is a circuit split between at least two circuits regarding whether or not new evidence that undermines or impeaches the credibility of the prosecution's case can satisfy the *Schlup* gateway standard, and therefore, the grant of a writ is requested.

Petitioner's third QUESTION presented is:

3. Have the district court and Sixth Circuit misapplied the term and/or misinterpreted "impeachment evidence" of this Court, to the facts and new impeachment evidence presented by Petitioner in this case, by relying on *Calderon v. Thompson*, 523 U.S. 538, 563 (1998), a case which makes no reference to impeachment evidence of a state's sole witness to an alleged crime, (but rather, impeaching the credibility of "jailhouse informants"), in regard to her *Schlup* gateway claim when it was determined in this habeas case that: "None of the evidence she relied on was of the type required by Schlup, i.e., exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence. Id. at 324. Indeed, Ogle herself stated that the evidence "calls into question the credibility of the [S]tate's witnesses."?

The Sixth Circuit further cited, "[I]mpeachment evidence provides no basis for finding a miscarriage of justice" because it "is a step removed from evidence pertaining to the crime itself."

Petitioner challenges the appellate court's reliance on *Calderon v. Thompson*, 523 U.S. 538, 563 (1998), for the reason that it is a case which makes no reference to impeachment evidence of a state's sole witness to an alleged crime, but rather, impeaching the credibility of "jailhouse informants", not the state's sole witness to an alleged crime, and requests this Court clarify *Calderon v. Thompson* in this regard and reverse the Sixth Circuit's decision denying Petitioner a certificate of appealability and her *Schlup* actual innocence claim.

The Ninth Circuit is at least one circuit to Petitioner's knowledge that is obviously in disagreement with the Sixth Circuit's ruling, as the Ninth Circuit has stated on more than one occasion that, "[] new evidence that undermines [or impeaches] the credibility of the prosecution's case may alone suffice to get an otherwise barred petitioner through the *Schlup* gateway." as well as other

similar language.

Not only does Petitioner's new evidence undermine the theory of the state's case and impeach the credibility of the state's sole witness to the alleged crime, the state's case rested solely on the testimony of such a witness, and the same was entirely uncorroborated by any other witness and unsupported by any other evidence.

In addition to documentation withheld by the state, Woodgeard's criminal record as a possible motive for covering up his civil rights violations against the Ogles by writing a false statement, Groves' demotion for lying and his criminal records, as new evidence provided by Petitioner, in her 110-page memorandum (Doc. #21-1, PAGEID# 2853), Petitioner specifically quotes and references some of the discrepancies in Woodgeard's testimony and written statements in the two state assault trials against Petitioner and the federal civil rights trial filed by the Ogles against Woodgeard for their claims (not barred by *Heck*). After Woodgeard's testimony in USDC, SD Ohio, Case No. 2:10cv806, wherein his attempted manipulation of his facts and storytelling is obvious, as evidenced by the new evidence transcripts attached to Petitioner's amended habeas petition (Doc. #15-1, PAGEID #1312), the Ogles agreed to an offered settlement for those claims.

How would such facts fall under "[I]mpeachment evidence provides no basis for finding a miscarriage of justice" because it "is a step removed from evidence pertaining to the crime itself." in *Calderon v. Thompson* – impeaching the credibility of "jailhouse informants" as the appellate court asserts?

Petitioner submits that there is a circuit split between at least two circuits regarding the application and/or interpretation of *Calderon v. Thompson*, as the appellate court has relied on the same in this case to deny Petitioner's *Schlup* gateway claim, and therefore, the grant of a writ is requested.

Petitioner's fourth QUESTION presented is:

4. When the testimony of a state's single witness for the prosecution of an alleged crime and where the state's case rested solely on the testimony of such a witness, and the same was entirely

uncorroborated by any other witness and unsupported by any other evidence, said witness subsequently provides contradictory and conflicting testimony of the state's facts and theory, can the same meet the "type" of evidence gateway standard required by *Schlup*?

As this case's decision regarding *Schlup* is noted above, the Sixth Circuit has relied on this Court's decision in *Calderon v. Thompson.*

One "type" of evidence the appellate court has designated as being in line with *Schlup* is "trustworthy eyewitness accounts", and that, "None of the evidence she relied on was of the type required by *Schlup*".

Petitioner provided hundreds of pages of new evidence transcripts and sworn statements by Woodgeard that are contradictory and conflicting to his testimony before the state jury against Petitioner for assault, as well as referenced some of the specific discrepancies in Woodgeard's testimony and written statements in her 110-page memorandum (Doc. #21-1, PAGEID# 2853).

Does this Court accept that any "eyewitness accounts" that Woodgeard has given about the same initially alleged facts, as the state's sole witness (entirely uncorroborated by any other witness and unsupported by any other evidence), equates to "trustworthy eyewitness accounts" as set forth in *Schlup,* and that therefore, any testimony or written statements by Woodgeard are considered "trustworthy eyewitness accounts" for the purpose of identifying Petitioner's new evidence of Woodgeard's testimony and written statements that were not before the state jury against Petitioner as the "type" of new evidence required by *Schlup*?

Petitioner submits that at least the Sixth Circuit Appellate Court has taken "trustworthy eyewitness accounts" "type" of new evidence required by *Schlup* as not to identifiable to Petitioner's new evidence testimony and written statements of the state's sole witness to the alleged crime (a witness who himself is the state), and that because it is rare that a person who has been framed by a law enforcement officer is able to obtain such new evidence, that this Court brief the lower courts in what defines "trustworthy eyewitness accounts", and a writ be granted.

Petitioner's fifth QUESTION presented is:

5. Can impeachment evidence – in particular, evidence that could undermine the credibility of the testimony of a state's sole witness to an alleged crime, (such as evidence that would substantiate a *Brady v. Maryland*, 373 U.S. 83 (1963) violation), have a sufficient impact that could also satisfy the standard to pass through the *Schlup* gateway?

Petitioner believes that it is well-settled law that impeachment evidence could undermine the credibility of the testimony of a state's sole witness to an alleged crime to substantiate an actionable *Brady v. Maryland*, 373 U.S. 83 (1963) violation.

The lower courts in this case have made no reference to *Brady's* determination, in contrast to its determination in this case that, "[I]mpeachment evidence provides no basis for finding a miscarriage of justice" for passing through the *Schlup* gateway.

In fact, as note above, the appellate court relied on this Court's decision in *Calderon v. Thompson* to dismiss impeachment evidence. In doing so, the appellate court did not state the fact that Petitioner's new evidence of Woodgeard's testimony and written statements were that of the state's sole witness to an alleged crime. There was also no mention of the fact that Woodgeard's testimony against Petitioner was entirely uncorroborated by any other witness and unsupported by any other evidence.

Can this Court conceive of a case where impeachment evidence that could have the effect of undermining the credibility of the testimony of a state's sole witness to an alleged crime, that is entirely uncorroborated by any other witness and unsupported by any other evidence, and/or evidence that undermines the theory of the state's case to substantiate a *Brady* violation, could also be impeachment evidence that could have a sufficient impact to satisfy the evidence standard to pass through the *Schlup* gateway?

Petitioner submits that such evidence would be sufficient and requests a writ be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Melanie A Dyle

Date: 4 March 2019