No. 23-5147

# In the Supreme Court of the United States

JOHNNY JOHNSON, PETITIONER,

v.

PAUL BLAIR, RESPONDENT.

*On Petition for a Writ of Certiorari to the Supreme Court of Missouri*

## BRIEF FOR MISSOURI IN OPPOSITION

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Capital Case

## Questions Presented

1. May this Court review a state court decision when that decision is founded on state law?

2. Should this Court overrule its prior precedents, including *Wood v. Bartholomew*, 516 U.S. 1, 8 (1995), and create a new rule by holding that *Brady v. Maryland*, 373 U.S. 83 (1963) requires the State to disclose inadmissible "evidence?"

3. Should this Court expand *Brady v. Maryland* and overrule *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), to require a state to disclose impeachment material relating to acts that occurred entirely *after* trial?

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**BRIEF FOR MISSOURI IN OPPOSITION**

## Opinion Below

The summary order of the Supreme Court of Missouri is unpublished and is contained in the petitioner's appendix. App. 1a.

## Jurisdiction

The Missouri Supreme Court issued its summary denial on April 19. App. 1a The petition for writ of certiorari was filed on July 18, 2023. Johnson argues this Court has jurisdiction under 28 U.S.C. § 1257(a). But the Court is without jurisdiction because the Supreme Court of Missouri's decision rests on an adequate and independent state-law ground, as explained in point II.A, *infra*.

## Statement[1]

Johnny Johnson lured a six-year-old girl to a concreate pit, tried to rape her, and then caved in her head with a boulder when she would not accede to his advances. Johnson was convicted and sentenced to death. His direct appeal, state post-conviction relief, and federal habeas efforts did not overturn his conviction. Johnson then returned to state court and filed an original state habeas corpus petition, where he raised a *Brady* claim. The Supreme Court of Missouri denied relief. Johnson's complaints are not worthy of this Court's extraordinary review. The family members of Johnson's victim have waited more than twenty years for justice; they should have to wait no longer.

1. On a Thursday evening in July 2002, six-year-old Cassandra "Casey" Williamson, her mother and father, and some family friends in the neighborhood were having a cookout when they saw Johnny Johnson walking down the street. Tr. 821, 871–72.[2] While at the picnic, Casey's mother and others spoke with Johnson, and none of Johnson's conduct suggested that he was mentally ill. Tr. 869–70. Casey's mother had a "nice conversation" with Johnson where there were no indications that Johnson was mentally ill, unstable, or seeing things. Tr. 860–63. Casey's mother had known Johnson since Johnson was three years old and Johnson had never done

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[1] Respondent objects to Johnson's statement of facts. For instance, Johnson attempts to use alleged juror statements to impeach the verdict. Pet. at 4. This is improper in this Court. F.R.E. 606(b).

[2] Because the transcript was completed in reduced format, Respondent cites to the page of the transcript, not the page of Respondent's appendix. The transcript is found on pages X-Y of the Respondent's Appendix.

anything that caused Casey's mother to suspect that Johnson was suffering from mental illness. Tr. 869–70. The night before the murder, Johnson did not seem mentally ill at the picnic. Tr. 872–73. Johnson ended up spending the night on a couch in Casey's father's house. Tr. 827.

On Friday morning, Casey's father's alarm clock woke up Casey and her father. Tr. 826. Casey's father went downstairs to get ready before finding Casey something to eat and Casey's father saw Johnson on the couch. Tr. 827. After spending fifteen minutes in the bathroom getting ready, Casey's father came out and started looking for Casey. Tr. 827–28. Casey and Johnson were gone. Tr. 828.

That Friday morning, a neighbor saw Johnson carrying a little girl on his back while walking across a parking lot. Tr. 936–37. At about the same time, a motorist also saw a man—later identified as Johnson—carrying a little girl—later identified as Casey—on his back. Tr. 951, 953, 956–57. Johnson was smiling. Tr. 951.

Later that morning, officers found Johnson near Casey's home and asked Johnson if he would speak with them. Tr. 1014–15. Johnson agreed. Tr. 1015. Johnson spontaneously stated that he "wouldn't hurt little kids" because he "had one of his own." Tr. 1015. Johnson told officers that he had been swimming in the river that morning, but denied going to the glass factory.[3] Tr. 1016. The officer found this odd because traveling through the glass factory was the most direct route for Johnson

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[3] The glass factory was an abandoned, torn down factory surrounded by a wooded area with trails that was a popular place for teenagers and children to play. Tr. 834, 969–70, 972–73. The factory itself consisted of "the foundation, a few tunnels, [and] a few like ground structures . . . ." Tr. 970.

to get to the river. Tr. 1017. Johnson eventually confessed to the officers over the course of multiple interviews on the same day.

In the glass factory, after dropping down into the pit, Johnson asked Casey if she wanted to see his penis. Tr. 1290. Even though Casey said no, Johnson pulled down his shorts and exposed his penis. Tr. 1291, 1377–78. Johnson then asked Casey to pull down her panties so he could see her vagina. Tr. 1378. When she said no, Johnson grabbed Casey's underwear, tearing it off her and forcing her to the ground. Tr. 1379.

Johnson then got on top of Casey, pinned Casey to the ground with his chest, and rubbed his penis on her leg to try to get an erection. Tr. 1379. Casey fought back, scratching Johnson's chest. Tr. 1379. Johnson got up and, even though he had not yet raped Casey, decided to murder her. Tr. 1379. Johnson grabbed a brick and hit Casey in the head at least six times. Tr. 1379, 1432–35. Casey ran around the pit, leaving a trail of blood. Tr. 1136–37, 1156–59, 1195–98, 1228–30. After more blows from Johnson, Casey was unable to run so she tried to crawl away. Tr. 1291. Johnson continued to strike Casey with the brick, eventually fracturing her skull. Tr. 1291. Because Casey would not stop moving, Johnson lifted a "rather large boulder" over his head and brought it down on Casey's head and neck, breaking her skull. Tr. 1291, 1424–25, 1430. Johnson then wiped blood off Casey's face with her underpants, threw them in another opening in the wall, and started burying Casey with rocks, leaves, and other debris in the pit. Tr. 1054–55, 1116–17, 1136, 1140, 1291–92, 1380. Johnson then climbed out of the pit, went back through the tunnel, and headed down to the

nearby Meramec River to wash Casey's blood and other trace evidence from his body. Tr. 1291–92, 1380.

A construction worker saw Johnson, shirtless, walking up from the bottom of a boat ramp on the Meramec River that same Friday morning with a hateful look on his face. Tr. 962, 966, 970–71.

Meanwhile, a searcher found Casey's foot underneath a pile of rocks inside a five-foot-deep concrete chamber that was only accessible by crawling through a tunnel. Tr. 1054–57. There was "a piece of concrete that probably weighed a hundred pounds right up where [Casey's] head would be." Tr. 1057.

2. The State brought Johnson to trial over the course of one week. For his part, Johnson called eight witnesses at trial, who provided testimony and other evidence designed to present a defense that Johnson cold not deliberate because of his alleged mental illness. Tr. 1446–1793. These witnesses included Dr. Raybun, who testified that when he evaluated Johnson months before the murder, Johnson had the ability to "deliberate" and to "coolly reflect [] on something he was about to do." Tr. 1513–14. The jury convicted Johnson. During the sentencing phase, the State presented victim-impact evidence and evidence of Johnson's convictions for seven criminal offenses and two ordinance violations, including convictions for second-degree burglary, felony and misdemeanor stealing, property damage, and "indecent act." Tr. 1986–2032. Johnson called seventeen witnesses, who provided testimony and other evidence designed to present evidence of Johnson's personal and family history and his alleged mental health issues. Tr. 2033–2265. The jury found all three of the submitted statutory

aggravating circumstances: that the murder was outrageously wanton and vile, that the murder was committed while committing the offense of kidnapping, and that the murder was committed while committing the offense of attempted forcible rape. The jury, through its verdict, also found that the aggravating circumstances outweighed the mitigating circumstances presented by Johnson and that Johnson was not deserving of mercy.

After his conviction, Johnson brought a direct appeal, which the Missouri Supreme Court denied. *State v. Johnson*, 207 S.W.3d 24 (Mo. 2006). This Court denied certiorari review. *Johnson v. Missouri*, 550 U.S. 971 (2007). Johnson then returned to state court and sought post-conviction review, which was denied by the trial court. The Missouri Supreme Court affirmed the denial of post-conviction relief. *Johnson v. State*, 388 S.W.3d 159 (Mo. 2012). Thereafter, Johnson petitioned for federal habeas relief, which the district court denied without issuing a certificate of appealability. Johnson requested a certificate of appealability from the Eighth Circuit, which was denied by the panel. This Court denied certiorari review.

Next, Johnson brought his current *Brady* claim in a state-court habeas action, which was summarily denied without a written opinion. App. 1a.

3. Congress has enacted a victim's crime statute, and extended some of those rights to victims of a defendant who has a pending federal habeas action. 18 U.S.C. § 3771. Respondent has communicated with Casey's family, and they have informed Respondent of their hope that Casey will be remembered for more than just her tragic murder. Casey's family has created various public events, memorials, and

scholarships in her honor. *See*, *e.g.* Mary Shapiro, *Friends remember Casey Williamson through safety fair*, St. Louis Post Dispatch May 9, 2011, http://www.perma.cc/2JML-YS5E (last accessed July 18, 2023); *see also* Remembering Casey, http://www.rememberingcasey.org (last accessed July 18, 2023).

## Reasons for Denying the Writ

### I. This case is an exceptionally poor vehicle for this Court's consideration.

Johnson's petition is a poor vehicle for resolving the questions presented for at least three reasons. *First*, Johnson's petition arrives at this Court on the last day of the statutory deadline, with only two weeks before his scheduled execution, and without any request for a stay. *Second*, Johnson has not raised his claim in federal habeas, which this Court has held is a more appropriate venue for such claims because it respects our system of dual sovereignty. *Third*, any relief would be barred under *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021). As a result, this petition presents an exceptionally poor vehicle for the Court to consider the questions presented.

#### A. Johnson has unreasonably delayed in bringing this claim.

Johnson comes to this Court with a history of delay. Missouri pointed out this history to the Court in Johnson's 2022 certiorari petition, when Johnson filed that certiorari petition one day out of time and raised unpreserved claims after delaying for weeks at the district court and at the court of appeals. Br. in Opp. at 13–16, *Johnson v. Blair*, 22-5542.

Now, Johnson returns to this Court with two weeks remaining before his scheduled execution. But this time, Johnson waited until the ninetieth day to file his certiorari petition. And Johnson does not provide the Court with any of the state-court record. App. at 1a. Further, Johnson has inexplicably failed to include any request for stay.

At bottom, Johnson has constructed and executed a strategy of extreme delay. Missouri—and more importantly the victims of Johnson's crime—have "an important interest in the timely enforcement of a sentence." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)); 18 U.S.C. § 3771(a)(7). Johnson's strategy convincingly illustrates the wisdom of this Court's concerns about unnecessary delay in capital cases.

**B. This Court should decline to issue a writ of certiorari to respect our system of dual sovereignty.**

This Court should not grant certiorari review of state post-conviction claims because this Court has found federal habeas proceedings provide a more appropriate avenue to consider federal constitutional claims. *Lawrence v. Florida,* 549 U.S. 327, 335 (2007); *Kyles v. Whitley,* 498 U.S. 931, 932 (1990) (Stevens, J., concurring in the denial of certiorari).

"To respect our system of dual sovereignty," this Court and Congress have "narrowly circumscribed" federal habeas review of state convictions. *Shinn v. Ramirez,* 142 S. Ct. 1718, 1730 (2022). The States are primarily responsible for enforcing criminal law and for "adjudicating constitutional challenges to state convictions[.]" *Id.* at 1730–31 (citation and quotations omitted). Federal intervention intrudes on state sovereignty, imposes significant costs on state criminal justice systems, and "inflict[s] a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Id.* at 1731 (citation and quotations omitted).

To avoid the harms of unnecessary federal intrusion, "Congress and federal habeas courts have set out strict rules" requiring prisoners to present their claims in state court and requiring deference to state-court decisions on constitutional claims. *Id.* at 1731–32; *see* 28 U.S.C. § 2254(d), (e). Johnson knows this and has deliberately filed this certiorari petition instead of pursuing a federal habeas petition. Pet. at 22 ("Because this petition arises directly from the denial of habeas corpus in state court, and not from the denial of habeas relief in federal court pursuant to 28 U.S.C. § 2254, AEDPA does not apply. . . ."). A grant of certiorari now would allow Johnson an end-run around the rules that Congress and federal courts have crafted to maintain our federalist system of government. To respect "Our Federalism," *Younger v. Harris,* 401 U.S. 37, 44 (1971), and "finality, comity, and the orderly administration of justice," this Court should enforce the limits on federal review of state convictions and deny Johnson's petition. *Shinn,* 142 S. Ct. at 1733 (quoting *Dretke v. Haley,* 541 U.S. 386, 388 (2004)).

**C. Johnson cannot receive relief because he is asking this court to fashion a new rule of criminal procedure in a collateral review proceeding.**

As fully explained in point II.B, *infra*, Johnson is asking this Court to expand *Brady* in three ways: by extending it to inadmissible "evidence," by extending it to state attorneys general, and by extending the disclosure obligation to events that occur entirely after trial. Pet. at 16, 13, 15–16. Doing so would require this Court to overrule its precedent holding that *Brady* does not apply to "evidence that is inadmissible. It would also force the Court to consider the novel and fact-intensive

situation where a state attorney general's office represents a state agency board, and in its role as the board's counsel, obtains information that is arguably relevant to a post-conviction action. And, expanding *Brady* as Johnson requests would require the Court to overrule its precedents holding that *Brady* is a trial right, and holding that *Brady* is not the right framework in post-conviction matters. Expanding *Brady* in any of these ways would create a new rule of criminal procedure. But, as this Court recently reaffirmed, new rules of criminal procedure are not retroactive to cases on collateral review. *Edwards*, 141 S. Ct. at 1551 (citing *Teague v. Lane*, 489 U.S. 288, 310 (1989)). As a result, Johnson could not benefit from any new rule that he has purposed. That, in turn, makes this a poor vehicle for the Court's consideration of the questions presented.

## II. Johnson's efforts to manufacture a conflict between state courts of last resort does not merit this Court's extraordinary intervention.

In his petition, Johnson attempts to construct a conflict between the Supreme Court of Missouri's decision and a prior decision of the California Supreme Court.[4] *See, e.g.,* Pet. at 26–27. Johnson's efforts are unavailing for at least two reasons. *First*, the Supreme Court of Missouri's decision is presumed to be founded on state law, not federal law. *Second*, even if the Supreme Court of Missouri's opinion is founded on federal principles, the facts of Johnson's case do not implicate *Brady* because the only *pre-trial* evidence Johnson claims was suppressed was not admissible under state law. The decisions are, therefore, distinguishable.

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[4] Johnson never invokes the other portions of Rule 10.

### A. The Supreme Court of Missouri's decision was founded on state law grounds.

Johnson wrongly assumes that the Missouri Supreme Court's summary denial must be viewed as a decision on the merits of his claims. While this Court may generally presume that summary denials are denials on the merits, *Harrington v. Richter,* 562 U.S. 86, 99 (2002), that presumption only applies *"in the absence of any indication or state-law procedural principles to the contrary." Id.* at 86 (emphasis added). Missouri's procedural rules prohibit belated post-conviction challenges that could have been raised earlier as well as "duplicative and unending challenges to the finality of a judgment[.]" *State ex rel. Strong v. Griffith,* 462 S.W.3d 732, 733–34 (Mo. 2015) (quotations omitted).

As the United States Court of Appeals for the Eighth Circuit has recognized, Missouri's procedural rules normally require summary denial of defaulted post-conviction claims, so a summary denial does not "fairly appear to rest primarily on federal law, or to be interwoven with federal law[.]" *Byrd v. Delo,* 942 F.2d 1226, 1231 (8th Cir. 1991) (alteration omitted); *accord Preston v. Delo,* 100 F.3d 596, 600 (8th Cir. 1996). The Eighth Circuit has consistently followed the rule of *Byrd* and assumed unexplained Missouri state habeas denials were denied on procedural grounds. *Preston,* 100 F.3d at 600 (citing *Reese v. Delo,* 94 F.3d 1177, 1181 (8th Cir. 1996); *Charron v. Gammon,* 69 F.3d 851, 857 (8th Cir. 1995), *cert. denied,* 518 U.S. 1009, 116 S. Ct. 2533, (1996); *Anderson v. White,* 32 F.3d 320, 321 n. 2 (8th Cir. 1994); *Battle v. Delo,* 19 F.3d 1547, 1561 (8th Cir. 1994) (subsequent history omitted); *Blair v. Armontrout,* 976 F.2d 1130, 1136 (8th Cir. 1992), *cert. denied,* 508

U.S. 916, 113 S. Ct. 2357 (1993)). As the Eighth Circuit has decisively stated, "After [*Coleman v. Thompson*, 501 U.S.722, 729 (1991)], there is simply *no reason* to construe an unexplained Rule 91 denial as opening up the merits of a previously defaulted federal issue."[5] *Byrd*, 942 F.2d at 1232 (emphasis added).

The same is true here. Johnson's petition below failed on both procedural and substantive grounds. Resp. App. A53–A69. Because adequate and independent state-law grounds support the Missouri Supreme Court's order below, this Court has "no power to review" the order and "resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Coleman*, 501 U.S. at 729.

### B. Johnson's arguments are factually incorrect and legally irrelevant given that the only pre-trial evidence at issue was inadmissible under Missouri state law.

Johnson's brief attempts to transmute his claim from one about alleged *Brady* violations into a claim about the proper role and relationship of state attorneys general within our criminal justice system. Johnson's argument is factually incorrect and legally irrelevant because the only *pre-trial* information that Johnson claims was suppressed was a non-testifying expert's suspended imposition of sentence for driving while intoxicated. Pet. at 23. Johnson refers to the non-testifying expert's suspended imposition of sentence as a "conviction" in his petition. Pet. at i, 16, 20, 23. But Johnson was informed during briefing below that, under Missouri law, a suspended

[5] "Rule 91" refers to Missouri's procedural rule for state habeas actions.

imposition *is not a conviction under Missouri law*. Resp. App. at A63[6]; Mo. Rev. Stat. § 556.021 (1979). On top of that, Missouri law only allows admission of findings of guilt when they belong to the testifying witness and when they are used for impeachment. Mo. Rev. Stat. § 491.050 ("findings of guilty may be proved to affect [a witness'] credibility in a criminal case.").

There are three components to a *Brady* violation: "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Under this Court's precedents, *Brady* extends only to *admissible* evidence. *Wood v. Bartholomew*, 516 U.S. 1, 8 (1995); *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) ("The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."); *United States v. Agurs*, 427 U.S. 97, 104 (1976); *United States v. Bagley*, 473 U.S. 667, 675 (1985).

In *Wood*, this Court held that polygraph examination results were "not 'evidence' at all" because the results were "inadmissible under state law, even for impeachment purposes." 516 U.S. at 6. In Missouri courts, one witness cannot be impeached with the criminal history of another witness. Mo. Rev. Stat. § 491.050.

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[6] Johnson acknowledged as much to the Supreme Court of Missouri when he stopped calling the suspended imposition of sentence a "conviction." Resp. App. A71–A91.

This Court has no power to revise a state's code of evidence. *Romano v. Oklahoma*, 512 U.S. 1, 11 (1994); *Estelle v. McGuire*, 502 U.S. 62, 70 (1991) (citing *Spencer v. Texas*, 385 U.S. 554, 563–64 (1967)).

Finally, Johnson complains of alleged non-disclosure of convictions and bad acts that occurred *after* Johnson's trial and sentencing. Pet. 22–24. Johnson identifies no case that has held that the state's obligation to disclose extends to events that occurred *after* trial and sentencing. Nor can he. The due process rights announced by *Brady* are rights designed to ensure the defendant receives a fair trial. *Brady*, 373 U.S. at 87. *Brady*, therefore, protects trial rights. *Id.*; *District Attorney's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). That is why, for instance, disclosure during trial does not violate *Brady*. *See, e.g.*, 18 U.S.C. § 3500(a); *see also United States v. Ruiz*, 536 U.S. 622, 631–32 (2002) (no *Brady* disclosure required before guilty plea). And after a defendant has been found guilty, *Brady* does not extend to a post-conviction context. *Osborne*, 557 U.S. at 68 ("nothing in our precedents suggested that [*Brady*'s] disclosure obligation continued after the defendant was convicted and the case was closed . . . ."). In fact, in the post-conviction context, "*Brady* is the wrong framework . . . ." *Id.* at 69. As a result, Johnson's remaining arguments are little more than makeweight.

## Conclusion

This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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