No. 23-651

IN THE

Supreme Court of the United States

JOHN LOWERY,
Petitioner,
v.

MIKE PARRIS,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY IN SUPPORT OF CERTIORARI

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REPLY BRIEF FOR PETITIONER

John Lowery was sentenced to spend the rest of his life behind bars for crimes he has always maintained he did not commit. The only two witnesses against him, William Boatwright and Malik Hardin, have recanted. A disinterested witness, Lorretta Turner, whom the State suppressed, has come forward and testified Mr. Lowery did not do it. Given these remarkable developments and considering the *full* evidentiary picture, Mr. Lowery has brought forth sufficient evidence to pass through the actual-innocence gateway. A federal court should review his underlying constitutional claims. *See Schlup v. Delo*, 513 U.S. 298, 316 (1995).[1]

Under this Court's precedents, a "habeas court must consider all the evidence, old and new, incriminating and exculpatory," when deciding whether a petitioner should pass through the innocence gateway. *House v. Bell*, 547 U.S. 518, 538 (2006). As Mr. Lowery argued, this Court should summarily reverse because the Sixth Circuit did not conduct this holistic inquiry. *See* Pet. at 27–34. Tennessee does not argue otherwise. Instead, the State repeats the Sixth Circuit's errors, assessing each piece of evidence one-by-one, searching for reasons to discount it. *See* BIO at 20–24.

That's not how the gateway innocence inquiry works. Rather, it "requires a *holistic* judgment about all the evidence." *House*, 547 U.S. at 536 (emphasis

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[1] The State's repeated casting of Mr. Lowery's habeas petition as "untimely" is a red herring. *See, e.g.*, BIO at i, 15. The whole point of an actual innocence claim is to allow a federal court to review an untimely habeas petition. *See McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

added). Here are some ways the State, like the Sixth Circuit, fails to conduct this aggregated inquiry.

The State, like the Sixth Circuit, does not address the fact that the only witnesses against Mr. Lowery testified that they identified him due to police coercion (the State hasn't even attempted to refute the coercion allegations). *See* Pet. at 29. The State, like the Sixth Circuit, ignores the fact that both witnesses were facing legal jeopardy when they testified against Mr. Lowery at trial, which undermines the credibility of their initial testimony. *See id.* The State, like the Sixth Circuit, overlooks the fact that it suppressed Ms. Turner's statement, which is clearly probative of how damaging her evidence was to its case. *See id.* at 32–33 & n.10. The State, like the Sixth Circuit, skips the fact that the new evidence of innocence aligns with the *four* defense witnesses who testified at trial that Mr. Lowery could not have committed the crime. *See id.* at 33. And the State, like the Sixth Circuit, does not consider the fact that all of this evidence is mutually reenforcing and yet none of the witnesses have spoken to one another. *See id.* In sum, the State, like the Sixth Circuit, does not contend with the fact that the new evidence of innocence paints a far more convincing picture than the evidence of guilt presented at trial. Indeed, given this new evidence, "no juror, acting reasonably, would have voted to find [Mr. Lowery] guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 329. The State's response only highlights the ways in which the Sixth Circuit failed to abide by this Court's precedents.

The State tries to get around all this by arguing that the Sixth Circuit rightly deferred to the state court's credibility findings. But as the State admits, under this Court's precedents, "[a] federal court can

disagree with a state court's credibility determination." *See* BIO at 18 (quoting *Miller El v. Cockrell*, 537 U.S. 322, 340 (2003)). It is hard to see how the Sixth Circuit's blanket rule that a federal court *"always* owes significant deference to a trial judge's credibility determinations" squares with this Court's precedents. *Lowery v. Parris*, No. 21-5577, 2023 WL 5236396, at *5 (6th Cir. Aug. 15, 2023) (emphasis added).

This Court's precedents further make clear that deference is *not* required when credibility determinations rest on clearly incorrect factual premises. *See Miller-El*, 537 U.S. at 341. As the petition points out, that is the case here. *See* Pet. at 23–24. Yet the State, like the Sixth Circuit, does not address the fact that the reasons the trial court gave for discounting Boatwright's and Hardin's recantations were contradicted by the record, even though the State admitted below that there were "discrepancies between the state-court's order and the testimony at the error coram nobis hearing." *See* Appellee's Br. at 25.

Instead, the State rehashes the reasons the Sixth Circuit gave for why a "reasonable factfinder *could*" discount the new evidence. BIO at 14 (quoting *Lowery*, 2023 WL 5236396, at *5) (emphasis added; quotation marks omitted). This Court has rejected this very mode of reasoning. *Schlup* explains that the "use of the word 'could' focuses the inquiry on the power of the trier of fact to reach its conclusion," but the "would" standard that this Court *actually* deploys "focuses the inquiry on the likely behavior of the trier of fact." *Schlup*, 513 U.S. at 330. And when asking what a reasonable juror *would* do, *Schlup* explains that a "habeas court may have to make some credibility assessments," especially if the "the newly presented evi-

dence . . . call[s] into question the credibility of the witnesses presented at trial." *Id.* Thus, under this Court's precedents, the Sixth Circuit could not just blanketly defer to the state court's credibility findings, especially given that—in the State's own words—there were "discrepancies" between the reasons the state court gave in support of those findings and the record. Appellee's Br. at 25.

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While this Court's exercise of its summary reversal procedures may be "rare," *see* BIO at 15, this Court will summarily reverse when lower courts fail to follow its precedents. *See, e.g.*, *Calcutt v. Fed. Deposit Ins. Corp.,* 598 U.S. 623, 624–25 (2023); *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019); *Lynch v.* Arizona, 578 U.S. 613, 618 (2016); *see also Salazar-Limon v. City of Houston*, 581 U.S. 946 (2017) (Alito, J., concurring in denial of certiorari) ("We may grant review if the lower court conspicuously failed to apply a governing legal rule."). And it is rarer still for this Court to be presented with a case in which all the evidence against a criminal defendant has evaporated and new evidence exonerating him has emerged (despite the State's efforts to keep it hidden). If there were ever a time for this Court to expend its "scarce judicial resources," *see* BIO at 15, it is now, to ensure that an innocent man does not die in prison for crimes he did not commit.

CONCLUSION

This Court should grant Mr. Lowery's petition and reverse the judgment below.

Respectfully submitted,

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January 24, 2024