No. 24-5326

In the Supreme Court of the United States

THOMAS E. KNUFF, JR.,

Petitioner,

v.

STATE OF OHIO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

*****CAPITAL CASE*****

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does Ohio's joinder rule violate the federal Constitution when no jury could possibly have confused which evidence supported guilt as to each crime?
2. When the Supreme Court of Ohio ruled that a defendant received a fundamentally fair trial free of any prejudicial prosecutorial error, can the defendant's misreading of the trial transcript support a reversal for due-process reasons?

PARTIES TO THE PROCEEDING

The parties to the proceeding are Petitioner Thomas E. Knuff, Jr., and Respondent State of Ohio.

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STATEMENT

The Supreme Court of Ohio criticized Thomas Knuff's merits brief for its "misleading" paraphrasing. *State v. Knuff*, 2024-Ohio-902, ¶164. His petition for certiorari offers much of the same. Knuff tells stories. After killing Regina Capobianco and John Mann, he told his friend Alicia Stoner that drug dealers roughed up Mann, leading to a fight between Capobianco and Mann. *Id.* at ¶9. To Stoner, Knuff claimed Capobianco injured his finger by trying to stab him with a knife, after which Knuff stabbed Capobianco. *Id.* But Knuff told his son that his finger injury occurred when defending Mann from some men who attacked him. *Id.* at ¶¶9–10. At other points, Knuff claimed the injury came from (1) a car chase, (2) an attempted mugging, (3) a dog bite, and (4) a hedge-trimming accident. *Id.* at ¶9. Once arrested, Knuff blamed his "claimed memory lapses and his irrational behavior after the murders" not on his desire to avoid detection, but on his drug use. *Id.* at ¶132.

At trial, the State presented "overwhelming evidence" that Knuff killed Mann and Capobianco. *Id.* at ¶240. Contrary to Knuff's argument here, the State referenced his convictions only to explain his motive: Having just finished an almost-sixteen-year sentence, Knuff killed Mann and Capobianco because Capobianco's lawbreaking threatened Knuff's probation. *Id.* at ¶¶2, 118–121. In fact, counsel for Knuff referenced the convictions in his opening statement—before the State did. *Id.* at ¶122.

Knuff wants this Court to second-guess every evidentiary decision in a month-long death-penalty trial. This Court has better things to do. Minor disputes about the significance of a fleeting TV show reference does not rise to the level of a certiorari-

worthy issue. Especially not when the Supreme Court of Ohio noted that any alleged prosecutorial missteps were harmless error at best. *Id.* at ¶235. This Court should deny the petition. There is no compelling reason to grant certiorari. *See* S. Ct. R. 10.

A. The Crime

Thomas Knuff left prison on April 11, 2017, after serving an almost-sixteen-year-sentence. *Knuff*, 2024-Ohio-902, ¶2. Alicia Stoner, a former prison employee who became romantically involved with Knuff, offered to pick him up upon release. *Id.* But Knuff declined, saying that he already made arrangements with John Mann. *Id.*

Knuff first told his parole officer that he was staying at a motel. *Id.* at ¶3. But when the parole officer visited the motel, Knuff was nowhere to be found. *Id.* The motel manager said he had not seen Knuff in five days. *Id.* When the parole officer confronted Knuff, the latter confessed that he had been staying at John Mann's house in Parma Heights. *Id.*

The parole officer contacted Mann to learn more about Knuff's arrangements. *Id.* at ¶4. Mann told the parole officer that he "lived alone" and "was not under court-ordered supervision." *Id.* Mann said he had no weapons or dangerous animals in his home, and he "agreed to unannounced home visits and warrantless searches." *Id.* But this was not entirely true: Mann didn't live alone. *See id.* at ¶5. Regina Capobianco lived with him. Capobianco previously had a romantic relationship with Knuff that arose from being prison pen pals. *Id.* The romantic relationship ended when Capobianco used Knuff's money to purchase drugs for herself. *Id.*

Capobianco's drug habit posed a threat to Knuff's parole. *Id.* If caught living with someone else who was breaking the law, Knuff could face "progressive sanctions" under the terms of his parole. *Id.* Nor was drug use Capobianco's only vice. She also engaged in prostitution, sometimes at Mann's house. *Id.* Both the drug use and the prostitution threatened Knuff's newfound freedom. *Id.*

The conflict between Knuff and Capobianco reached a boiling point on May 11, 2017. *Id.* Around 8:00p.m., Knuff contacted Stoner and requested she send him money. *Id.* at ¶6. Knuff said he needed to get Capobianco out of the house "now"; he wanted her to relocate to a motel for the night. *Id.* Stoner sent Knuff money, but she never heard back from him. Despite repeated calls and texts, Stoner never heard from Knuff the rest of that evening or the next morning. *Id.* Instead, he contacted her the next afternoon to tell a fantastical story. *Id.* at ¶¶6–7.

Knuff's stories, however, are less important than his crimes. Over a month later, law enforcement discovered Capobianco's and Mann's bodies in Mann's house. *Id.* at ¶22. The bodies had long been decomposing, but autopsies revealed that Capobianco's and Mann's deaths were "homicide[s] caused by sharp-force injuries to the neck and trunk"—that is, they were killed by knife-stabbing. *Id.* And the injuries established that Knuff, not Capobianco, killed Mann.[1]

[1] At trial, Knuff claimed that he killed Capobianco in self-defense after she killed Mann. *See, e.g.*, *Knuff*, 2024-Ohio-902, ¶¶25, 209. The Supreme Court of Ohio noted that the evidence "strongly supports the jury's rejection of Knuff's self-defense claim." *Id.* at ¶209. Regardless, whether Knuff killed Capobianco is not in dispute.

Mann had "downward-oriented stab wounds in his neck." *Id.* at 210. He also had "score marks" atop his skull, along with "other head wounds." *Id.* These injuries establish that Mann and his killer "were similar in stature." *Id.* Mann was five feet, eleven inches tall. *Id.* But Capobianco was roughly a foot shorter. *Id.* So who present had a similar statute to Mann? Knuff, who is also five feet, eleven inches tall. *Id.*

Capobianco's injuries similarly disproved Knuff's claim. *Id.* Knuff claimed that Capobianco killed Mann, then pursued Knuff, and Knuff killed her in self-defense. *See id.* at ¶25. But Capobianco had "two stab wounds in her back." *Id.* at ¶210. As the Supreme Court of Ohio noted, Capobianco's stab wounds in her back "tend[] to disprove that Knuff acted in self-defense when he was stabbing her." *Id.*

A jury would later find Knuff guilty of murdering Capobianco and Mann. *Id.* at ¶198. But Knuff's efforts to evade detection for the murders played a large part at his trial.

B. The Cover-Up

After murdering Capobianco and Mann, Knuff's efforts to cover up his crime began immediately. An unusual "late evening water-usage spike" occurred when Knuff tried to wipe bloodstains off the walls and ceiling. *Id.* at ¶211 (discussing blood-stained mops). The next day, Knuff called Stoner to tell her that she needed to come pick him up. *Id.* at ¶7. Stoner met him at a bar and noticed that Knuff's finger was injured. *Id.* at ¶8. Knuff wove his first tale: drug dealers came to the house and beat up Mann, causing an argument during which Capobianco killed him. *Id.* Capobianco

then turned on Knuff, so he stabbed her. *Id.* When Stoner suggested calling an ambulance for them, Knuff said not to bother because they were dead. *Id.*

Knuff next enlisted the help of his son, Tommy. *Id.* at ¶10. He confessed to his son that he was responsible for two deaths that occurred at the house. Id. But Knuff claimed that the two people he killed were the two people who had attacked Mann. *Id.* at ¶11. Knuff told his son that he wanted to "chop off the men's fingers and throw them into a sewer and then chop the bodies up to get rid of them." *Id.* Tommy later testified that the TV show *Dexter*, about a serial killer who dismembers his victims, is what gave his father this idea—his father talked about *Dexter* "all the time." *Id.* at ¶¶142–43.

Knuff procured what he would need to dismember the bodies and dispose of the evidence to hide his crimes. Knuff had his son Tommy drive him to a store to purchase super-strength glue (for Knuff's finger injury) and a box of large, plastic trash bags (for the bodies). *Id.* at ¶12. He then had Stoner take him to another store where he bought "two hacksaws and two blades and shoplifted an X-Acto knife." *Id.* at ¶13. Knuff told her that he would use the hacksaws to "dismember the bodies." *Id.* Though he never got around to dismembering the bodies, he did "cut the bloodstained living-room carpet into numerous pieces" to hide it in the trash bags. *Id.* at ¶211.

Knuff then stole his son's car. *Id.* at ¶14. He broke into two nail salons and stole a cash register from one and cash from the other. *Id.* A surveillance camera caught Knuff entering the stolen car, which is what ultimately led the investigation to connect him to the murders.

While driving the stolen car, Knuff crashed it when he thought undercover officers were following him. *Id.* at ¶15. He fled on foot after the crash. The Ohio State Highway Patrol finally found him in response to an alert about "a man on a highway holding a gun to his head." *Id.* When arrested, Knuff did not have a gun, but expressed suicidal thoughts. *Id.* So the Ohio State Highway Patrol took him to a hospital for treatment of his injured finger and a psychiatric evaluation. *See id.* at ¶¶15–17. During the evaluation, Knuff claimed that a prostitute killed his roommate with a knife, and Knuff killed the prostitute in self-defense. *Id.* at ¶17.

While Knuff was trying to cover up his murders, Parma Heights Police were investigating the disappearance of Capobianco, who had been reported missing by her sister. *Id.* at ¶18. Capobianco's sister reported that Capobianco had been in contact with Knuff. *Id.* Parma Heights Police were able to locate Knuff because he missed a court date and had an outstanding warrant. *Id.* at ¶¶18–19. When interviewed, Knuff spoke as if Mann and Capobianco were still alive. *Id.* at ¶19. He told a detective that Capobianco was likely with Mann, and that the detective should go an hour south to Canton to meet with Capobianco's friends named "Earl" and "Allen." *Id.*

Upon his arrest, Knuff knew he needed to move quickly to finish disposing of the evidence. *Id.* at ¶23. He wrote a letter to a friend that he wanted Stoner to deliver. The letter requested Knuff's friend "start a fire at the house I was staying at" because "the only thing I can do is torch it all." *Id.* The letter promised to split the insurance money with the friend if the house were burned. Knuff's letter also identified the location of the "most incriminating" evidence as the back bedroom. *Id.* at ¶24.

The back bedroom is exactly where police found Capobianco's and Mann's bodies. *Id.* at ¶21. The back bedroom had "several garbage bags piled around the bed" that hid the bodies. *Id.* at ¶22. Knuff later confessed to detectives that upon realizing "that he might go back to prison because of the killings," Knuff decided to "clean up the crime scene." *Id.* at ¶28. Knuff admitted that he dragged the bodies into a bedroom, covered them, and tried to wipe away blood spatter. *Id.* at ¶29. Even still, Knuff maintained he killed Capobianco in self-defense after she killed Mann. *Id.* at ¶25. He told detectives that his drug use was "the reason for his claimed memory lapses and his irrational behavior after the murders." *Id.* at ¶132.

C. The Sentence

The jury rejected Knuff's self-serving self-defense story. *Id.* at ¶209. It found Knuff guilty on all counts except an aggravated-robbery charge. *Id.* at ¶31. Specifically, it determined that Knuff committed two aggravated murders, each with two death-penalty specifications upheld on appeal. *Id.* at ¶¶31, 311 (merging kidnapping specification). Knuff purposefully killed two people, *id.* at ¶312–13, and he did so while committing or attempting to commit aggravated burglary, *id.* at ¶¶315–18. The jury also found Knuff guilty of vandalism, theft, and breaking and entering the nail salons. *Id.* at ¶32.

In mitigation phase, Knuff offered three witnesses and his own unsworn statement. *Id.* at ¶323. The mitigation evidence focused on his troubled upbringing. *Id.* at ¶327–337. Knuff started using marijuana by age ten and crack cocaine by age eighteen. *Id.* at 338. And he was confined at a juvenile facility that later faced "litigation

over conditions of confinement"—even though Knuff's expert "lacked extensive knowledge of conditions . . . during Knuff's confinement." *Id.* at ¶343. A mental-health expert diagnosed Knuff with "mild to moderate depression," posttraumatic stress disorder, and antisocial personality disorder, which the expert said meant Knuff has "a criminal personality" and was "someone who has problems with following the law." *Id.* at ¶347.

In his unsworn statement, Knuff merely "reiterat[ed] his claim of innocence." *Id.* at ¶350. He did express contrition for leaving the bodies in the house, thus denying the families an opportunity to have proper funerals, and Knuff said he "felt guilty about having created the situation between Mann and Capobianco." *Id.* In response, the State offered a rebuttal witness who testified that Knuff was so remorseful that he made "three detailed, full-color replicas of the sheriff's stars worn by correctional staff" while incarcerated for the crime. *Id.* at ¶227.[2]

After weighing the aggravating circumstances and mitigating evidence, the jury recommended a death sentence for Knuff. *Id.* at ¶33. The trial court agreed. *Id.* On appeal to the Supreme Court of Ohio, Knuff raised twenty-four alleged errors with his trial. *Id.* at ¶34. The court agreed that the trial court's journal entry should have included its earlier court-costs waiver—but it rejected the rest of Knuff's arguments. *Id.* at ¶¶34, 307–09. It then engaged in an independent reweighting of Knuff's death sentence. It found Knuff's mitigating factors "unimpressive" given that he killed two

[2] The trial court instructed the jury to consider this evidence only as it related to Knuff's mitigating evidence on his remorsefulness. *Id.* at ¶229.

individuals at the mature age of forty-two. *Id.* at ¶¶356, 353. Two justices opined that felony-murder specifications should not render a defendant eligible for a death sentence, but because Knuff's crimes carried other death specifications, the concurring justices agreed with the death sentences here. *Id.* at ¶366 (Donnelly, J., concurring).

ARGUMENT

Knuff's petition describes a trial that never happened—not surprising, as "the record contains abundant evidence of Knuff's lying." *Knuff*, 2024-Ohio-902, ¶255. To hear him tell it, the prosecutors hoodwinked the jury into treating him like the title serial killer in *Dexter* simply because he had a poor relationship with his son and sister. Pet. 6–7. And the jury recommended the death sentence merely for being a racist who burglarized some nail salons. *Id.* at 6, 22. And somehow the State must have bamboozled the Supreme Court of Ohio too, as all seven justices agreed that the evidence was "overwhelming" and the death penalty appropriate. *See id.* at 4, 22 (citing *Knuff*, 2024-Ohio-902, ¶¶240, 247); *Knuff*, 2024-Ohio-902, ¶366 (Donnelly, J., concurring) (agreeing that death sentence was appropriate and proportional).

Nothing could be further from the truth. As the Supreme Court of Ohio said, Knuff provided a "misleading" description of the testimony at his trial. *Knuff*, 2024-Ohio-902, ¶164. His charges were joined because they fit within the heartland of Ohio's joinder rule—easily refuting Knuff's joinder challenge. *Id.* at ¶45–48. The witness described Knuff not as racist but as someone who said he was offended by racism. *Id.* at ¶130. And his self-defense claim made no sense: Capobianco was stabbed in the back, and at nearly a foot shorter than Mann, she could not have inflicted

downward stabbing injuries upon Mann's head and neck. *Id.* at ¶¶195, 209–14 (describing reasons why jury sensibly rejected self-defense claim).

The truth is that Knuff spent roughly a month buying hacksaws and garbage bags to dispose of evidence he said would cause him to go to prison for life. *Id.* at ¶13, 23. In fact, Knuff was so concerned about police finding the evidence that he tried to pay an acquaintance to torch the house where he left Capobianco's and Mann's bodies. *Id.* at ¶¶23–24. The Supreme Court of Ohio said it best when it said that Knuff received a trial free of prejudicial error. *Id.* at ¶34. The sentences reflected the "overwhelming" evidence, not a conspiracy of prosecutorial misconduct. *Id.* at ¶¶240, 247.

This Court should decline Knuff's invitation to break new ground based on his description of a trial that never happened. Knuff does not even try to fit his case into this Court's typical reasons for granting a writ of certiorari. S. Ct. R. 10. There is no circuit split among federal courts of appeals. S. Ct. R. 10(b)(a). Knuff spends no time explaining how the Supreme Court of Ohio "decided an important federal questions in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals" (it didn't). S. Ct. R. 10(b). Nor does he say that the Supreme Court of Ohio decided a question in a way that conflicts with this Court's decisions. S. Ct. R. 10(c).

At bottom, Knuff is simply upset at the strength of the evidence against him. The only person to blame for that is Knuff himself.

I. The charges against Knuff were properly joined.

Ohio's rule for joining different counts in one indictment is similar but not identical to the federal rule. *Contra* Pet. 9 (comparing evidence-admissibility rules instead of joinder rules). The federal rule allows joinder when the joined offenses are "of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan." Fed. R. Crim. P. 8(a). Ohio's rule is slightly broader. It supports joinder when the offenses "are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan"—so far, mimicking the federal rule—but then it also supports joinder when the crimes "are part of a course of criminal conduct." Ohio Crim. R. 8(A). On its face, then, Ohio's joinder rule goes further than its federal counterpart.

Ohio case law provides a clear test for whether the joinder of multiple offenses against one defendant produces reversible error. The burden is first on the defendant, who "must affirmatively show that his rights were prejudiced and that the trial court abused its discretion in refusing to grant separate trials." *Knuff*, 2024-Ohio-902, ¶46 (citing *State v. Hand*, 2006-Ohio-18, ¶166). Then the burden flips to the prosecution, which can defeat the claim one of two ways. First, the prosecution can defeat the claim by showing that the "evidence of the other crimes would be admissible even if the counts were severed"—the other-acts test. *State v. Schaim*, 65 Ohio St. 3d 51, 59 (1992). Or second, the prosecution can defeat the claim by showing that the "evidence of each crime joined at trial is simple and direct"—the joinder test. *State v. Diar*,

2008-Ohio-6266, ¶96. Here, the Supreme Court of Ohio ruled that the State satisfied the joinder test. *Knuff*, 2024-Ohio-902, ¶47. It did not bother to reject Knuff's claim under the other-acts test. *Id.* at ¶¶45–48.

This Court has long left States free to manage their own rules of evidence. More than fifty years ago, this Court noted that "the law of evidence . . . has been chiefly developed by the States." *Spencer v. Texas*, 385 U.S. 554, 562 (1967). It recognized that the States "ha[ve] evolved a set of rules designed to reconcile the possibility that" evidence of other crimes "will have some prejudicial effect with the admitted usefulness it has as a factor to be considered by the jury for any one of a large number of valid purposes." *Id.* This Court then warned, "To say the United States Constitution is infringed simply because this type of evidence may be prejudicial and limiting instructions inadequate to vitiate prejudicial effects, would make inroads into this entire complex code of state criminal evidentiary law, and would threaten other large areas of trial jurisprudence." *Id.* Instead, jury limiting instructions are sufficient to balance potential prejudice with the "valid governmental interest" of "the convenience of trying different crimes against the same person . . . in the same trial." *Id.*

Knuff requests that this Court federalize Ohio's joinder rule. Pet. 10 ("The State's maneuver in this case would likely not have been permitted in federal court."). This Court should decline. The Supreme Court of Ohio properly applied its own joinder precedent and determined that Knuff's offenses were properly joined.

A. The Supreme Court of Ohio correctly determined that Knuff was not prejudiced by the joinder of his offenses because the proof of each was simple and direct.

Take Ohio's joinder rule first. Knuff says that the joinder of the theft counts violated due process in his death-penalty trial. Pet. 13. But the Supreme Court of Ohio held that the proof of Knuff's thefts was "sufficiently simple and direct to refute Knuff's claim of prejudice." *Knuff*, 2024-Ohio-902, ¶47.

How simple was that proof? As easy as watching security-camera footage. *Id.* The evidence of Knuff's thefts consisted of "the testimony of the victimized shop owners, security-camera footage, crime-scene photos, and Knuff's admissions to police." *Id.* That's it. Even Knuff's petition admits that he confessed to the thefts. Pet. 4. The Supreme Court of Ohio rightly held it was "highly unlikely that the jury was confused about which evidence applied to the break-ins and which applied to the murders." *Knuff*, 2024-Ohio-902.

Knuff paints a picture better suited for dystopian, postapocalyptic fiction. He says that the State "invit[ed] the jury to assume" that because Knuff was "guilty of one crime, he must be guilty of the other." Pet. 14. But that gives the jury far too little credit. Both this Court and courts throughout Ohio assume that properly instructed juries follow the instructions they have been given. *See, e.g.*, *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (courts presume "that the judge or jury acted according to law"); *Diar*, 2008-Ohio-6266, ¶145 (same). In fact, this Court has described it as an "almost invariable assumption of the law that jurors follow their instructions." *United*

States v. Olano, 507 U.S. 725, 740 (1993) (quoting *Richardson v. Marsh*, 481 U.S. 200, 206 (1987)). The same assumption applies here.

Knuff has no evidence for his baseless speculation that the jury recommended a death sentence simply because Knuff broke into nail salons for cash. Pet. 14. Instead, all the evidence supports a different conclusion: that the properly instructed jury carefully considered the evidence in its well-reasoned verdict. Knuff pressed three challenges to his jury's instructions in the Supreme Court of Ohio. *Knuff*, 2024-Ohio-902, ¶178. The Supreme Court of Ohio admittedly found that the trial court erroneously gave a duty-to-retreat instruction. *Id.* at ¶193 (Knuff had no duty to retreat from residence). But that error was harmless because the jury rejected Knuff's self-serving self-defense claim when it found him guilty or murdering Mann. *Id.* at 195 (noting that upon jury's verdict of guilty for murdering Mann, "Knuff's self-defense claim collapsed and whether he had a duty to retreat was irrelevant"). In fact, the Supreme Court of Ohio found it harmless twice over because Knuff's self-defense claim would fail if the jury determined he were at fault—so the sole erroneous jury instruction "duplicated a necessary element of any self-defense claim." *Id.* at ¶196.

The Supreme Court of Ohio correctly determined that the jury could not possibly have confused "which evidence applied to the break-ins and which applied to the murders." *Id.* at ¶47. Because of the evidentiary simplicity, Knuff cannot show that the joinder in his trial was improper under Ohio law.

B. Knuff cannot show prejudicial error under federal joinder law either.

Now, the charges against Knuff were properly joined under state law. What about under federal law? The answer would be the same. As discussed above, just like Ohio courts, federal courts assume juries follow the instructions given to them. *Olano*, 507 U.S. at 740. And this Court has long said that lesser measures, "such as limiting instructions, often will suffice to cure any risk of prejudice" from improper joinder. *Zafiro v. United States*, 506 U.S. 534, 539 (1993). This would take any sting out of Knuff's arguments of prejudice. Consider what the U.S. Court of Appeals for the Sixth Circuit has said: "Prejudicial joinder is especially unlikely when the jury can adequately 'compartmentalize and distinguish the evidence concerning the different offenses charged.'" *Thomas v. United States*, 849 F.3d 669, 676 (6th Cir. 2017) (citing *United States v. Cody*, 498 F.3d 582, 587 (6th Cir. 2007)). The Sixth Circuit said this when rejecting unsupported "speculation[]" on how one count affected the others because "there was no reason to think it would have affected the outcome of the proceeding." *Id.*

Similarly, Knuff has no evidence suggesting that his jury recommended a death sentence because he broke into two nail salons. *Contra* Pet. 14. Even the suggestion is ludicrous. Knuff may have no faith in his jury—which is his right—but the State, its courts, and this Court do. Consider what the Supreme Court of Ohio said about Knuff's jury: it did not confuse "which evidence applied to the break-ins and which applied to the murders," *Knuff*, 2024-Ohio902, ¶47; the evidence "strongly sup-

ports" its rejection of Knuff's self-defense claim, *id.* at ¶209; the jury reasonably inferred that the much-shorter Capobianco could not have inflicted "downward-oriented stab wounds" in the much taller Mann's neck, *id.* at ¶210; its verdict "was consistent with the evidence admitted at trial," *id.* at ¶214; and it properly found that the two murders "were part of a single counsel of conduct," *id.* at ¶314. Again, the Supreme Court of Ohio—all seven justices—agreed that the State presented "overwhelming evidence of Knuff's guilt." *Id.* at ¶¶240–47; *id.* at ¶366 (Donnelly, J., concurring) (agreeing with majority's analysis).

Moreover, this Court long ago incorporated harmless-error analysis to improper-joinder arguments. So even if the theft counts against Knuff were joined improperly (they weren't), federal courts would uphold Knuff convictions unless he makes a specific showing of prejudice. *See United States v. Lane*, 474 U.S. 438, 451 (1986) (rejecting claim of improper joinder on based on harmless error). And Knuff makes no such showing. He simply ignores the Supreme Court of Ohio's conclusion that the *evidence* against him was overwhelming by pretending that court was describing the amount of *prejudice* against him. Pet. 4 (citing *Knuff*, 2024-Ohio-902, ¶¶200, 207). But that is a misleading description of the court's opinion. *See Knuff*, 2024-Ohio-902, ¶164 (criticizing defendant's "misleading" description of testimony).

* * *

In conclusion, Knuff's challenge to the joinder of his theft counts fails. His argument that the jury improperly convicted him of murder because he broke into two nail salons makes no sense. The Supreme Court of Ohio determined that the evidence

against him was overwhelming and that his trial was free of any prejudicial joinder error. This Court should say the same by denying Knuff's petition.

II. The Supreme Court of Ohio properly determined that Knuff's trial was free of any prejudicial prosecutorial error.

Knuff recites this Court's longstanding maxim that prosecutors "may strike hard blows," but they "are not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88 (1935); Pet. 19. He then assumes that each alleged misstatement was a foul blow. That is not the case. The Supreme Court of Ohio examined each allegedly unfair statement within Knuff's trial. It said, "The conduct Knuff complains of either did not amount to misconduct, was harmless beyond a reasonable doubt, or—for the alleged misconduct that Knuff failed to object to at trial—did not constitute plain error." *Knuff*, 2024-Ohio-902, ¶235. This Court's precedent requires the same.

Knuff must clear a high bar to show that prosecutorial misstatements require reversing his conviction. To warrant reversal, the improper comments must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)). Courts examine the remarks "within the context of the trial to determine whether the prosecutor's behavior amounted to prejudicial error." *United States v. Young*, 470 U.S. 1, 12 (1985). Even comments that are "undesirable or even universally condemned" are not enough to warrant reversal. *Darden*, 477 U.S. at 181 (citation omitted). The key inquiry is "the probable effect the prosecutor's [comments] would have on the jury's ability to judge the evidence fairly." *Young*, 470 U.S. at 12. And this Court will not reverse for mere harmless error, nor

error without objection when that error is not plain. *See Berger*, 295 U.S. at 89 (discussing cases with "overwhelming" evidence of guilt); *Young*, 470 U.S. at 15–16 (discussing plain error); *Darden*, 477 U.S. at 181 (prosecutorial misstatements "did not deprive petitioner of a fair trial").

As the Supreme Court of Ohio said, Knuff received a fair trial free of prejudicial prosecutorial misconduct. *Knuff*, 2024-Ohio-902, ¶235. Knuff offers no reason for this Court to disagree with the Supreme Court of Ohio. As it found, the "otherwise overwhelming evidence of Knuff's guilt" makes the statements he complains about harmless error at best. *Id.* at ¶240. Many are not even error at all.

A. The trial court properly admitted evidence of Knuff's past crimes to show his motive: Knuff killed Capobianco and Mann because Capobianco's illegal behavior threatened his parole.

Consider first Knuff's complaints that the jury heard about his previous convictions.[3] Pet. 5, 17. He says that by painting him as a "career criminal," the State sought to convince the jury that "someone so bad, someone of such low character, must have committed murder." *Id.* at 19. But that was not the State's argument.

The State discussed Knuff's prior convictions for two reasons. First, it provided Knuff's motive for murdering Capobianco and Mann. Any drug use or other illegal activity at his residence "could have resulted in revocation of Knuff's parole and his return to prison." *Knuff*, 2024-Ohio-902, ¶119. The fear of going back to prison was why Knuff "had tried to get Capobianco out of the house for her date" on the night of

[3] As the Supreme Court of Ohio noted, Knuff's defense counsel was the first to mention this fact in his guilt-phase opening statement. *Knuff*, 2024-Ohio-902, ¶122.

the murders. *Id.* And Knuff's lengthy prior prison sentence "explained the intensity of his desire not to return to prison." *Id.* Knuff himself told law enforcement as much when he tried to justify why he left Capobianco's and Mann's bodies to rot instead of calling the police. *Id.* at ¶120. And proving motive is a valid reason to tell a jury about a defendant's past convictions. Ohio R. Evid 404(b); Fed. R. Evid. 404(B)(2).

Second, beyond proving motive, Knuff's convictions were "essential to telling the story of these crimes." *Knuff*, 2024-Ohio-902, ¶118. Knuff's prison term explained how he knew Capobianco and Mann: Capobianco became Knuff's pen pal while he was in prison. *Id.* at ¶119. Mann, through Capobianco, provided Knuff with a place to stay after Knuff left prison. *Id.* Knuff's previous prison sentence also explained how he knew Stoner, whose testimony illuminated Knuff's efforts to cover-up the murders. *Id.* at ¶121. Stoner met Knuff when she was employed by the prison, and their romantic relationship is why Stoner resigned from that job. *Id.*

Knuff's suggestion—that it was prosecutorial misconduct to discuss his past incarceration—is a flop. His prior prison stay was essential to understand the crime. Staying out of prison explained why he killed Capobianco and Mann, why he tried to dispose of the evidence, and even how he knew the victims and many of the witnesses. Introducing his record was not prosecutorial misconduct; it was essential evidence.

B. The testimony Knuff protests was that he abhorred racism, not that he endorsed it.

Knuff next claims that the State tried to paint him as a racist. Pet. 17. The State did no such thing. In fact, the testimony elicited by the State showed that Knuff was not a racist. *Knuff*, 2024-Ohio-902, ¶130. At trial, a psychiatric nurse testified

about treatment provided to Knuff. *Id.* at ¶128. As part of the intake process, that nurse asked Knuff to disclose "any triggers that may cause him agitation." *Id.* Knuff said that he was triggered by racist actions and ignorant people. *Id.*

Defense counsel objected at trial for the same reason Knuff now contends the testimony was improper: that it "prejudiced Knuff by making him appear to be a racist." *Id.* at 129. The trial court correctly noted that Knuff's statement meant, "I don't like racist people or ignorant people." *Id.* As the Supreme Court of Ohio held, no reasonable juror would misinterpret Knuff's comment as "an avowal of racism." *Id.* at ¶130. So it determined that there was "no likelihood" that the testimony was prejudicial, making it "harmless beyond a reasonable doubt." *Id.* Knuff offers no reason to second-guess how every court so far interpreted this remark.

C. The references to the TV show *Dexter* were fleeting at best and explained Knuff's plan to dismember the bodies.

Knuff also complains that the State made his similarities to the title character of *Dexter* "a theme of the prosecution's case." Pet. 7, 17–18. This is untrue too. Knuff's petition recounts all three *Dexter* references. *Id.* at 18. First, a detective noted without objection that the title character is "a serial killer who dismembers his victims." *Knuff*, 2024-Ohio-902, ¶142. This gave context to the second instance, when Knuff's son testified that Knuff discussed *Dexter* frequently and that it may have inspired Knuff's plan to dispose of Capobianco's and Mann's bodies. *Id.* at ¶¶143–44. Finally, the State's closing argument referenced this testimony without objection. *Id.* at 249–50.

The Supreme Court of Ohio found that the State's "single passing mention" of *Dexter* "did not deny Knuff a fair trial." *Id.* at ¶250. Instead, the State "focus[ed] on relevant evidence"—Knuff's plan and preparation to dismember Capobianco's and Mann's bodies. *Id.* The analysis of Ohio's highest court is spot-on: "Any prejudice would stem not from Knuff liking *Dexter* but from his considering dismembering Mann's and Capobianco's bodies, which was relevant to show his consciousness of guilt." *Id.* at ¶144 (cleaned up). Once again, Knuff simply protests the strength of the evidence against him. *See id.* at ¶¶186–87 (discussing consciousness-of-guilt jury instruction).

D. Any prosecutorial misstatements were at most harmless error.

Nor do Knuff's remaining allegations of prosecutorial misconduct amount to reversible error—much less "compelling reasons" to grant certiorari. S. Ct. R. 10. Consider two. Knuff first says that the State introduced "testimony that Knuff's polygraph examination showed that he lied." Pet. 17. Not quite. The State redacted "several references to a polygraph examination" from Knuff's video-recorded interrogation. *Knuff*, 2024-Ohio-902, ¶¶146–47. Unfortunately, one reference slipped through. The interrogating detective said, "This machine says that you had—had stabbed [Mann]." *Id.* at ¶147. The State, defense counsel, and the trial court then discussed the video outside the jury's presence. *Id.* at ¶148. The State agreed to redact this reference and submit only the resulting video to the jury. *Id.*

This is neither prosecutorial misconduct nor reversible error. For starters, not redacting this reference was a mere oversight. In addition, the trial court noted the

omission had no effect on the jury. *Id.* at ¶149. The court noted it had such difficulty hearing the word "machine" that it did not realize what was said until defense counsel objected outside the presence of the jury. *Id.* The trial court denied a mistrial motion because the court "had 'been watching the jury very carefully'" and "'did not note any change in anyone's demeanor' when the contested portion was played.'" *Id.* (quoting trial court). Any polygraph reference was "brief and isolated," *id.* at ¶153, and nothing suggests the jury interpreted the referenced machine to be a polygraph as opposed to "scientific testing done by the medical examiner" or "autopsy results," which the detective was discussing with Knuff before he made the machine comment, *id.* at ¶151.The Supreme Court of Ohio even relied on federal case law to bolster its conclusion that "unclear references" to polygraph examinations "are seldom deemed to create reversible error." *Id.* at 152 (citing *Henley v. Cason*, 154 Fed. App'x 445, 446 (6th Cir. 2005)); *see also Neal v. Commonwealth*, 95 S.W.3d 843, 849 (Ky. 2003) (same).

The same is true for Knuff's escape attempt.[4] Pet. 5. Knuff claims the jury considered it as "an impermissible aggravating factor," and he quotes the trial court saying it was not certain about the evidentiary value of the escape attempt. *Id.* But the Supreme Court of Ohio explained why it was relevant: "Preparing to break out of pretrial confinement may reasonably be construed as trying to evade responsibility for one's actions." *Knuff*, 2024-Ohio-902, ¶233. So the escape-attempt plans undercut Knuff's "repeated declarations of 'remorse' in his unsworn statement." *Id.* at ¶229.

[4] For clarity, the State introduced this evidence during the penalty phase. *Knuff*, 2024-Ohio-902, ¶226.

And as Ohio's highest court noted, "Evading responsibility tends to call into question the sincerity and depth of claimed remorse." *Id.* at ¶233 (collecting cases).

At any rate, this evidence too is harmless at best. Knuff admitted on appeal that the trial court did not factor his escape attempt into its independent analysis of whether Knuff's crimes warranted a death sentence. *Id.* at ¶299. Nor did the escape attempt matter for the independent sentence evaluation. *Id.* at ¶¶351–56.

* * *

In sum, the prosecutor made entirely fair statements about the strength of the evidence against Knuff. None of the statements produced plain error, much less prejudicial error. While these statements contradict Knuff's view of the evidence, the Supreme Court of Ohio observed that "the record contains abundant evidence of Knuff's lying." *Id.* at ¶255. This Court should not give Knuff's misreading of the record any additional attention. It should deny his petition.

III. Knuff's factual misrepresentations make this case a poor vehicle to resolve any question presented.

As a final reason to deny Knuff's petition, the State points this Court to Knuff's "misleading" treatment of the record. *Id.* at ¶164. To not belabor the point, consider two areas Knuff's petition diverges from the factual record. First, the testimony about racism that Knuff argues prejudiced the jury was that Knuff was *not* racist, not that he *was*. *Id.* at ¶130. He interprets it exactly backward. *See id.* at ¶¶129–30 (trial court and Supreme Court of Ohio agree that Knuff's interpretation is backward). Second, Knuff argues that "the TV show *Dexter* became a theme of the prosecution's case." Pet. 7. But the Supreme Court of Ohio noted that the State made a "single passing

mention of that show," not that it was a theme. *Knuff*, 2024-Ohio-902, ¶250. Nor would prejudice result from Knuff liking a popular TV show; any prejudice would have come from "his considering dismembering Mann's and Capobianco's bodies, which was relevant to show his consciousness of guilt." *Id.* at ¶144.

Factual questions make a case a poor vehicle for certiorari. *See NLRB v. Hendricks Cnty. Rural Elec. Mbrshp. Corp.*, 454 U.S. 170, 176 n.8 (1981) ("As such, we are presented primarily with a question of fact, which does not merit Court review."). This Court is a "court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Knuff's petition does not present anything like the usual candidates for certiorari. He does not present a circuit split among federal courts of appeals. S. Ct. R. 10(b)(a). He does not identify any conflict between the Supreme Court of Ohio and any other state supreme court or federal appellate court. S. Ct. R. 10(b). And he does not claim that the Supreme Court of Ohio contradicted precedent from this Court. S. Ct. R. 10(c).

At the end of the day, Knuff simply disagrees with the jury, the trial court, and the Supreme Court of Ohio, which all found him guilty of murdering Capobianco and Mann. That's fine. Knuff can disagree. He can even continue to misrepresent the trial record. *Knuff*, 2024-Ohio-902, ¶164. But his misleading arguments do not entitle him to a writ of certiorari.

CONCLUSION

For these reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted by,

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