No. 24A1192
CAPITAL CASE

In the
Supreme Court of the United States

GREGORY HUNT,
Petitioner,
v.
STATE OF ALABAMA,
Respondent.

OPPOSITION TO HUNT'S APPLICATION FOR STAY OF EXECUTION

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June 5, 2025

EXECUTION SCHEDULED JUNE 10, 2025

CAPITAL CASE

QUESTION PRESENTED

Whether the Court should stay Hunt's execution in order that he might pursue a meritless *Napue* claim procedurally barred from review on multiple state-law grounds and for which the Court previously denied certiorari in 2019.

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INTRODUCTION

Gregory Hunt is scheduled to be executed on June 10, 2025. The State is confident in his conviction and death sentence.[1] With one week to go, Hunt filed a "pro se"[2] stay application on June 3, citing Supreme Court Rule 23, 28 U.S.C. § 2101(f), and 28 U.S.C. § 1651, and asking the Court to stay his execution "to preserve its jurisdiction to consider a certiorari petition following the resolution of his pending petitions for post-conviction relief." App. 1. Put another way, Hunt believes he will lose in state court, and rightly so: his second and third ***successive*** postconviction petitions, App. 16-74, are procedurally barred on multiple state-law grounds and meritless.

Hunt's thesis is that *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025):

> created a new rule by imposing a new responsibility on States that use [a] procedural default rule of requiring "diligence" while misapplying *Napue* [*v. Illinois*]—which violates due process and infringes upon a petitioner's right in violation of the Fourteenth Amendment that no State may create a law that infringes on citizens right to life, liberty, or property without due process of law.

App. 11. His claim hinges on an argument the prosecutor made at his trial—an argument based on a reasonable inference from the testimony and evidence presented but possibly incorrect. The problem for Hunt is that *Napue v. Illinois*, 360 U.S. 264 (1959), holds that "prosecutors have a constitutional obligation to correct false testimony."

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1. Indeed, Hunt admitted in a 2016 letter to the victim's father that he was "solely responsible" for her death. Letter from Greg Hunt to W.O. Sanders via Beth Hughes, Assistant Attorney General (Mar. 17, 2016) (on file with Office of the Attorney General).

2. While Hunt's filing is nominally pro se, it bears clear indicia of assistance from counsel, not least of which is the fact that it was printed in Century Schoolbook using word processing software, an option that is not available to inmates at Holman Correctional Facility. Hunt's two successive Rule 32 petitions, App. 16-74, are likewise "pro se" filings but were apparently written with counsel's assistance.

Glossip, 145 S. Ct. at 618. *Napue* does not create a right to relief where the testimony presented was not false and the prosecutor drew a potentially inaccurate conclusion—and as set forth below, that's precisely what happened here.

Hunt raised these same arguments as a *Napue* claim in a successive state post-conviction petition in 2016, and the Court ultimately denied certiorari. *Hunt v. Alabama*, 140 S. Ct. 151 (2019) (mem.). He offers nothing new but his misplaced reliance on *Glossip*. The Court should not stay Hunt's execution in order that he be permitted to pursue claims doomed to failure.

JURISDICTION

At this time, the Court lacks jurisdiction to grant the application. While the Court can review "[f]inal judgments or decrees rendered by the highest court of a State," 28 U.S.C. § 1257(a), Hunt's petitions for postconviction relief remain pending in Walker County Circuit Court, and there has been no final judgment. The final-judgment rule is "firm," not a "technicalit[y]," *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997), and Hunt has identified no exception.

Hunt cites 28 U.S.C. § 2101(f), which permits a stay for "the party aggrieved to obtain a writ of certiorari," but only "[i]n [a] case in which the final judgment or decree of [a] court is subject to review." Here, there is no final judgment, let alone one subject to review, and thus no party aggrieved. Hunt cites the All Writs Act, but to issue a writ, the Court must already have jurisdiction, for "the Act does not enlarge [it]." *Clinton v. Goldsmith*, 526 U.S. 529, 535 (1999) (collecting authorities).

Yesterday, on Hunt's direct appeal docket, *Ex parte Hunt*, No. 1931176 (Ala.), the Alabama Supreme Court denied a motion to vacate the execution warrant. But

Hunt does not seek a stay to preserve jurisdiction over an appeal in *that* case. *See* SUP. CT. R. 23.2 ("A party to a judgment *sought to be reviewed* may…appl[y] to stay the enforcement of *that* judgment." (emphasis added)). Rather, he seeks to preserve the possibility of review "following the resolution of his pending petitions for post-conviction relief." App. 1. But Hunt has no judgment in those cases from which to appeal, and he generally cannot seek certiorari to the Walker County Circuit Court.

Absent extraordinary circumstances not present here, the Court's power to issue writs or injunctions in connection with state-court proceedings must await a final judgment from the State's highest court. *See Liles v. Nebraska*, 465 U.S. 1304, 1304 (1984) (Blackmun, J., in chambers) ("no jurisdiction to act pursuant to 28 U.S.C. § 2101(f)" where there was no pending appeal in the Nebraska Supreme Court); *Valenti v. Spector*, 79 S. Ct. 7, 8 (1958) (Harlan, J., in chambers) (no jurisdiction where no federal question "ha[d] yet been passed upon by the highest court of the State"). Even "a doubt" about jurisdiction "weighs against [the] applicant." *Bateman v. Arizona*, 429 U.S. 1302, 1306 (1976) (Rehnquist, J., in chambers).

STATEMENT OF THE CASE

A. The murder of Karen Sanders Lane and Hunt's trial and conventional appeals

In the early morning hours of August 2, 1988, Gregory Hunt beat to death Karen Sanders Lane, his girlfriend of one month. After making a number of alarming statements and phone calls over the course of the evening, chasing Lane through the streets of Cordova, Alabama, around midnight, and burning down Lane's house, Hunt broke into the apartment she shared with his cousin, Tina Gilliland, to find Lane.

Hunt v. Comm'r, Ala. Dep't of Corr., 666 F.3d 708, 711-13 (11th Cir. 2012). A neighbor saw him enter and leave. R. 568, 575-79, 591.[3] His fingerprints and a bloody palm-print tied him to the crime. *Hunt*, 666 F.3d at 714; R. 556-59. Before fleeing the scene, Hunt even made a phone call from the apartment to Gilliland's boyfriend, telling him Lane was "lying [t]here in the kitchen floor," and asking him to "get somebody up [t]here to get her to the hospital." The pathologist identified some sixty injuries on Lane's body, including bruises and lacerations to her head, broken bones in her face and neck, bruises to her brain and other organs, tears in her liver, and twelve broken ribs on each side. Karen Lane died from blunt force trauma at the age of thirty-two. R. 250-56, 258.

But that wasn't all that Hunt did to Lane. The evidence and testimony showed that he sexually abused her in the course of ending her life. Oral swabs of her corpse contained an unusual quantity of semen in good condition, which suggested it was deposited no more than an hour before her death or at some point postmortem. R. 384-86 403, 406. Moreover, Hunt left a broomstick lying "in a suggestive position" between Lane's legs, R. 235, and epithelial cells on one end indicated the presence of mucus—potentially cervical, anal, oral, or nasal, R. 262, 264, 267, 388, 400, 1089.

Dr. Joseph Embry: Dr. Embry was the pathologist from the Alabama Department of Forensic Sciences who autopsied Lane's body. His report, given to both sides, indicated that Lane had a six-inch horizontal suprapubic scar, R. 1094, and that "[t]he

3. "R." citations are to the state trial record from 1988–1990. If the Court so desires, the State will transmit a scanned copy.

uterus, fallopian tubes and right ovary have been removed," R. 1098. In other words, Lane had a hysterectomy. However, no one questioned Dr. Embry about Lane's missing organs.

At trial, Dr. Embry testified that the cervix produces mucus. R. 262. A different kind of mucus is produced in the nose and mouth. R. 264, 267. Regarding cervical mucus, he testified on redirect as follows:

> Q. You said mucus is secreted by the outer part of the cervix; is that right?
>
> A. By the cervix which is the lower part of the uterus.
>
> Q. Okay. For lay persons how far, if any, would that be inside the vagina?
>
> A. At the top of the vagina.
>
> Q. On the outside or inside?
>
> A. Inside.
>
> Q. On the inside. How far on the inside, if you have a judgment?
>
> A. About four inches.
>
> Q. So, inside the vagina you have to go four inches to get where that mucus is; is that what you're telling me, doctor?
>
> A. To get to where it is produced, yes, sir.

R. 264-65. On recross, Dr. Embry explained that cervical mucus remains in the cervix. R. 266-67. On further redirect, he confirmed that the broomstick was found lying "in close proximity to" the victim's vagina. R. 267. The prosecutor asked:

> Q. Is it still your opinion that you would have to go approximately four inches inside the vagina before you could get the mucus?
>
> A. My opinion was that the mucus produced by the cervix which is about four inches into the vagina. That was the line of questioning.

Id. Defense counsel followed up:

Q. So, you couldn't tell about penetration?

A. To get to the heart of the question, I believe it probably did have to go to the cervix to get mucus on it.

Q. If it's that kind of mucus.

A. Correct.

R. 268. To this, the prosecutor asked:

Q. So, we have to have that broom stick four inches inside of the deceased to get the vagina mucus on it?

A. To get the cervical mucus, yes, sir.

Id. Dr. Embry further testified that the victim's vagina had been unremarkable, that it was possible that a broomstick could be inserted four inches into a vagina without causing damage, and that violent insertion could cause vaginal damage. R. 268-69.

Larry Huys: Larry Huys, a serologist from ADFS, also testified about the broomstick:

A. I found that on the rounded end of the broom stick, there were cells present which indicated mucus secretions were present.

Q. Was this consistent with vaginal secretions?

A. Vaginal secretions or could, also, have originated oral secretions and I could not rule out the possibility of anal secretions, also. Although I didn't note any fecal material present on the broom stick.

Most consistent would indicate vaginal or possibly oral secretions of some kind.

R. 388. Huys did not determine how far down the broomstick the cells were present but simply noted that they were on the rounded end. *Id.* He testified that the cells on the broomstick could have come from any orifice, including the mouth and nose, and it was not possible for him to tell which orifice was involved. R. 400.

Beyond the broomstick, Huys testified about the semen found in Lane's mouth. He examined vaginal, oral, and anal swabs taken from the victim, and he "found components of semen to be present" on the oral swabs. R. 384-86. Asked to describe them, he stated, "They were not deteriorated. It is very common in looking at forensic samples to see the actual tails of the spermatozoa broken or for instance the head might be ruptured. These spermatozoa were in good condition." R. 386. Under microscopic examination, the sperm were "too numerous to count" on the slide. *Id.* Huys could not determine whether Lane was alive or dead when the sperm were deposited in her mouth, R. 403, but he stated that the sperm would have been deposited "very close, I would think, to the time of death, if not postmortem," less than an hour before she died or at some point thereafter. R. 406.

After conducting ABO blood type testing, Huys testified that Hunt was blood type O and a secretor. R. 387. A secretor's blood antigens, such as antigens A and B, are present in their other bodily fluids, including semen.[4] As a person of blood type O has neither antigen, Huys determined that the man who deposited the semen in the victim's mouth was either a secretor of type O (like Hunt) or a non-secretor, a fairly wide pool. R. 387. There was no DNA testing done on the swabs—unsurprising, as Huys conducted his analysis in August 1988. *See* R. 1088. However, other forensic evidence, including Hunt's bloody palmprint, placed him at the scene of the crime. *See, e.g.*, R. 556-59.

James Carl Sanders: James Sanders was one of Hunt's cellmates at the Walker County jail. He testified that while the two men had been reading their Bibles

4. *E.g.*, *Secretor System*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/science/secretor-system (last visited May 22, 2025).

together, Hunt confessed that he went to the apartment, fought with Lane, and "knocked her down and choked her and kicked her." Hunt also shoved a broomstick into her vagina, telling Lane, "If you need one stuck in you all the time, here is you one." He then called the police and left. R. 600-03. Sanders explained that Hunt's confession bothered him so badly that he called his former lawyer to talk about it. R. 604.

The evidence led the prosecutor to conclude that Hunt had ejaculated into Lane's mouth, that he had inserted the broomstick into her vagina, and that the mucus on the broomstick was cervical in origin. The prosecution's opening statement included:

> Evidence will show there is a broom stick that will be introduced into evidence and on that broom stick—We're going to have a serologist testify that there is mucus cells on the end of the tip of that broom stick and that broomstick is laying between the legs of Karen Lane. Those mucus cells, the serologist is going to testify, can come from three body cavities; the mouth, the rectum or the vagina. It is our contention, based on the evidence, that he put that stick up inside her to humiliate her further in death.
>
> But, it gets worse than that. We expect to show from the evidence that a swab was done on the mouth of Karen Lane and there was sperm and semen in it. It is our contention that, not only after he humiliated her by putting that broom up inside her vagina, that he masturbated and ejaculated in her mouth after he did that.

R. 228-29. The theme continued in the prosecution's closing arguments:

> I suggest to you that from the evidence that you can logically infer that he took this stool in hand and that he beat and he beat and he beat the body of Karen Lane until he broke twenty-four of her ribs.
>
> He put a three and a half inch gash in her liver. He bruised her brain and Dr. Embry said she was still living when that happened. And, I'm sure when she fell to the floor he took this and he beat her with it, after he had been trying to sexually abuse her. There she is with her bra tore off and with her panties there and I'm sure she is saying, "No, Greg, no." Her cheek bone is

> broken and she is lying on the floor. And, there was a bottle of vaseline found by the body. There is a broom stick and she is lying there and she is bleeding and she can't move. She can't move and he gets this broom stick and they had the audacity to suggest it has been moved. Use the tile as a guide and you will see that it is in exactly the same place but a different angle.
>
> And, he said, "Bitch, if you want one I'll give you one, Bitch." And, he takes this broom stick and I don't know if he put that vaseline on this broom stick or not but I suggest to you that it was found right there laying close to her and he might have greased this broom stick up and was using it as a phallic symbol. She is laying there, God, she is beat to a pulp and he takes this broom stick and I suggest to you that evidence is none other than that he put it four inches deep in her vagina, to her cervix and the mucus secreted by the cervix is on it.
>
> The sexual abuse started upstairs. It continued in the living room. She is laying there a bloody pulp. Her eyes are bruised and are closed and she is laying there and she has had this broom stick put up her and then what does he do? While she is laying there—And, Sanders said he said he noticed her and she was bleeding and the defendant said he thought she was alive because he called Walker Regional Medical Center the toll records all show that. He left her alive there. This woman suffered.
>
> She suffered laying there, but do you know what he did while she was suffering laying there? Do you know probably the last thing that Karen Lane saw in her life? The last thing she probably saw?
>
> She saw this pair of pants, unzipped or being taken off. This bloody pair of pants that is the same size as he wears, that has the blood in the left pocket. I suggest to you that the evidence is clear, that he kneeled down in those pants and unzipped them or pulled them down and he took his penis in his hand and he beat his penis and he ejaculated or come in her mouth and that is the last thing she saw in life.

R. 860-62.

The jury convicted Hunt of three counts of capital murder and recommended 11-1 that he be sentenced to death. The trial court accepted that recommendation in July 1990. *Hunt v. State*, 659 So. 2d 933, 937 (Ala. Crim. App. 1994). Two of the capital murder counts were for murder during first-degree sexual abuse, *see* ALA. CODE

§ 13A-5-40(a)(8), while the third was for burglary-murder, the offense underlying the burglary being sexual abuse as well, *see id.* § 13A-5-40(a)(4).

On direct appeal, the Alabama Court of Criminal Appeals (ACCA) and Alabama Supreme Court affirmed Hunt's conviction and death sentence. *Hunt*, 659 So. 2d 933; *aff'd*, 659 So. 2d 960 (Ala. 1995). This Court denied certiorari in October 1995. *Hunt v. Alabama*, 516 U.S. 880 (1995) (mem.).

Hunt filed a state postconviction (Rule 32) petition in 1997. The circuit court denied relief after an evidentiary hearing. ACCA affirmed in August 2005, and the Alabama Supreme Court denied certiorari. *Hunt v. State*, 940 So. 2d 1041 (Ala. Crim App. 2005); *cert. denied*, No. 1050302 (Ala. Apr. 21, 2006).

Hunt then initiated federal habeas proceedings in the Northern District of Alabama. The district court denied Hunt's petition, and the Eleventh Circuit affirmed in 2012. *Hunt*, 666 F.3d 708. The Court again denied certiorari in November 2012, *Hunt v. Thomas*, 568 U.S. 1012 (2012) (mem.), concluding Hunt's conventional appeals.

B. First successive Rule 32 petition

In 2016, Hunt filed a successive Rule 32 petition in circuit court. Successive Petition, *Hunt v. State*, CC-1989-76.61 (Walker Cnty. Cir. Ct. Oct. 26, 2016), Doc. 1. He alleged, in relevant part, a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), *Napue v. Illinois*, 360 U.S. 264 (1959), and *Giglio v. United States*, 405 U.S. 150 (1972), attaching an affidavit from Dr. Embry, who stated:

> 3. On June 13, 1990, I testified at Gregory Hunt's capital murder trial. My testimony primarily concerned the physical examination performed on the victim's body. However, I was asked a number of questions about the position of

> the cervix and cervical mucus. In answering these questions, I provided general anatomical information, but did not intend to refer to Karen Lane specifically.
>
> 4. As noted in my autopsy report, Karen Lane's uterus had been removed. The cervix is part of the uterus. Accordingly, the implication that her cervical mucus was present on a broomstick, as a result of it having been inserted in her vagina, is dubious.
>
> 5. I do not remember receiving Larry Huys's serological examination report prior to my trial testimony, but I have reviewed the document today. This report indicates that mucus was present on the broomstick, but does not specify cervical mucus.

Id. at 44-45. The trial transcript, as quoted above, supports Dr. Embry's affidavit: neither he nor Huys testified that the mucus on the broomstick was cervical, and Dr. Embry never gave specific testimony about *Lane's* cervix. The fact that she had received a hysterectomy was indeed noted in the autopsy report, R. 1098, but neither side questioned Dr. Embry about her missing organs and what, if anything, that would mean concerning the production of cervical mucus.[5] The only "testimony" that the mucus on the end of the broomstick was cervical *and* Lane's was not testimony at all, but rather the prosecutor's argument.

The circuit court summarily dismissed Hunt's successive petition in December 2017. Order, *Hunt v. State*, CC-1989-76.61 (Walker Cnty. Cir. Ct. Dec. 12, 2017), Doc. 28. As for the *Brady*/*Napue*/*Giglio* claim, the court held that it was procedurally barred for three reasons and meritless. *Id.* at 8.

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5. Hunt complains that his trial counsel was an attorney, not a doctor, and so "[t]here were no facts that could cause his attorney to have constructive knowledge" that Lane's cervix had been removed. App. 7. That neither side bothered to ask Dr. Embry what a hysterectomy entailed or what was significant about Lane's missing organs does not show that counsel could not have obtained this information through cross-examination, by asking another medical professional, or by consulting medical references. Hunt was tried in 1990, not 1890; if counsel had wanted to speak to a gynecologist, surely he could have located one.

First, the claim was filed outside the statute of limitations in Rule 32.2(c) of the Alabama Rules of Criminal Procedure. *Id.* at 8-9. While Hunt argued that Dr. Embry's affidavit constituted newly discovered evidence that could not have reasonably been discovered at a prior time, the court disagreed:

> Hunt does not allege in his successive Rule 32 petition that Dr. Embry was not available to be interviewed or refused to speak with any attorney representing Hunt at any time. In fact, there is no reason that this claim could not have been raised at trial, on direct appeal, or in the previous Rule 32 proceeding. This is especially true where Hunt's attorney had Dr. Embry's autopsy report before his trial and used the report to cross-examine Dr. Embry.

Id. at 9. Hunt's argument that he was entitled to file late because the new affidavit established he was actually innocent of capital murder, *see* ALA. R. CRIM. P. 32.1(e), was deemed meritless:

> While the prosecution used Dr. Embry's testimony to infer that the murder of Karen Lane occurred during a sexual abuse, this was not the only evidence supporting the prosecution's argument. There was semen found in the victim's mouth. The quantity and condition of this sperm indicated that the semen was deposited "very close…to the time of death" and no more than an hour before, "if not postmortem." The broomstick containing the mucus secretions was found lying between Lane's legs. Finally, James Carl Sanders, an inmate with Hunt in the Walker County jail, testified that while awaiting trial, Hunt told him that he had beaten the victim and that he saw that she was bleeding after he put the stick up her.

Order at 10, *Hunt*, Doc. 28.

Second, the court deemed the claim barred by Rule 32.2(b) of the Alabama Rules of Criminal Procedure, limiting relief on successive petitions, because it was raised in a successive Rule 32 petition and satisfied neither exception to the Rule 32.2(b) bar. *Id.* at 12-13.

Third, the claim was procedurally barred by Rules 32.2(a)(3) and (a)(5) of the Alabama Rules of Criminal Procedure because it could have been, but was not, raised at trial or on direct appeal. Counsel had Dr. Embry's autopsy report before them, and "[t]here was no reason that counsel could not cross-examine him concerning the fact that the victim's uterus had been removed." *Id.* at 13.

Finally, the Court found the claim to be meritless, as Dr. Embry's affidavit *did not show that the prosecution presented false testimony*. "Dr. Embry never states in his affidavit that his testimony was inaccurate. Rather, he states that any inference (from the prosecutor's argument) that the victim's cervical mucus was present on the broomstick was dubious." *Id.* at 15. As for the prosecution's argument:

> It is true that the prosecutor argued that Karen Lane's murder occurred during a sexual abuse and that the victim's cervical mucus cells were present on the broomstick. However, this argument was based on all the evidence presented during the trial—not just the testimony of Dr. Embry—including the following: semen found in the victim's mouth indicating that the semen was deposited "very close…to the time of death" and no more than an hour before, "if not postmortem;" the broomstick containing the mucus secretions was found lying between Lane's legs; and, the testimony of James Carl Sanders, an inmate with Hunt in the Walker County jail, that while awaiting trial Hunt stated that he had beaten the victim and that he saw that she was bleeding after he put the stick up her.
>
> It is well settled law in Alabama that "'[d]uring closing argument, the prosecutor, as well as defense counsel, has a right to present his impressions from the evidence, if reasonable, and may argue every legitimate inference.'" *Maples v. State*, 758 So. 2d 1, 21 (Ala. Crim. App. 1999), *quoting*, *Lloyd v. State*, 629 So. 2d 662, 663-664 (Ala. Crim. App. 1993). In this case, the prosecutor's arguments were legitimate inferences from the evidence and were not based on false testimony. Therefore, the prosecution did not rely on false testimony to obtain Hunt's capital murder conviction.

Id. at 17-18 (citation omitted). There was thus no violation of *Brady*, *Napue*, or *Giglio* because the prosecution did not present false testimony, the prosecutor's argument was based on legitimate inferences, and there was no suppression of material evidence. *Id.* at 18.

ACCA affirmed, holding that the claim was procedurally barred because Hunt failed to sufficiently plead his claim of newly discovered evidence:

> Although Hunt alleged that neither he nor his counsel were aware of the information contained in Dr. Embry's affidavit in time to include this claim in any prior proceeding, he failed to allege that the information "could not have been discovered by any of those times through the exercise of reasonable diligence." Rule 32.1(e)(1), Ala. R. Crim. P. Nothing in Hunt's petition indicates that he was somehow unable to obtain an affidavit from Dr. Embry's prior to 2016. In fact, Hunt admits in his petition that the defense was provided a copy of Dr. Embry's autopsy report prior to trial, that the report was admitted into evidence, and that the report indicated that the victim did not have a cervix. Thus, Hunt would have been aware of the implications of Dr. Embry's testimony in plenty of time to include this claim at trial, on direct appeal, or in his first Rule 32 petition. Nevertheless, Hunt failed to plead any facts indicating that he was unable to obtain the information contained in Dr. Embry's affidavit until 2016. Accordingly, he failed to sufficiently plead all of the requirements of Rule 32.1(e), Ala. R. Crim. P. The circuit court noted this deficiency in its order dismissing Hunt's petition.

Hunt v. State, CR-17-0406, mem. op at 9 (Ala. Crim. App. Aug. 3, 2018). The Alabama Supreme Court denied certiorari, *Ex parte Hunt*, No. 1180005 (Ala. Dec. 14, 2018), as did this Court, *Hunt v. Alabama*, 140 S. Ct. 151 (2019) (mem.).

C. Execution litigation and Hunt's present successive Rule 32 petitions

The State moved the Alabama Supreme Court to authorize Hunt's execution on March 3, 2025. After an extension, Hunt's counsel objected on April 9, arguing that Hunt was "in the process of analyzing the applicability of" *Glossip v. Oklahoma* to his case. Response at 1, *Ex parte Hunt*, No. 1931176 (Ala. Apr. 9, 2025). The State

replied the following day, and on May 1, the Alabama Supreme Court authorized Hunt's execution. Order, *Ex parte Hunt*, No. 1931176 (Ala. May 1, 2025). On May 7, Governor Kay Ivey scheduled Hunt's execution to begin on June 10.

Not until May 23 did Hunt make up his mind about *Glossip* and file *two* successive Rule 32 petitions in state circuit court. *See* App. 16-74. The petitions are similar, perhaps an earlier and later draft. Hunt's argument in both is that the State violated *Napue* and now *Glossip* by offering false testimony at his trial and not correcting it. On May 27, the State filed a motion to dismiss both petitions. As of this filing, the circuit court has not ruled.

Hunt filed a motion for the Alabama Supreme Court to vacate his execution warrant on May 27, which was docketed on June 3. That same day, he filed the stay application at bar. On June 4, the Alabama Supreme Court denied Hunt's motion. Order, *Ex parte Hunt*, No. 1931176 (Ala. June 4, 2025).

REASONS THE APPLICATION SHOULD BE DENIED

A stay of execution is an equitable remedy, and "[a] court considering a stay must also apply 'a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.'" *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (quoting *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004)); *see also Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) ("Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay. Last-minute stays should be the extreme exception, not the norm…."). As Hunt's successive state postconviction

petitions have no chance of success, and as the equities favor the State, his stay application is due to be denied.

I. Hunt's State Postconviction Petitions Have No Chance of Success.

Hunt asks this Court "to stay his execution to preserve its jurisdiction to consider a certiorari petition following the resolution of his pending petitions for postconviction relief." App. 1. Apparently, Hunt has no confidence in his claim in state court, nor should he. His present claim relies on *Glossip*, which is merely an application of *Napue*—and as Hunt has not identified an actual *Napue* violation, either here or in his earlier postconviction litigation, his claim cannot succeed.

A. *Glossip* and *Napue*

To begin, a word about *Glossip* and *Napue*.

In *Glossip*, the Oklahoma Attorney General conceded *Napue* error and asked for Glossip's capital conviction to be vacated because evidence came to the State's attention showing that the prosecutor had knowingly elicited false testimony from a key witness, whose testimony was the only direct evidence of Glossip's guilt. 145 S. Ct. at 618-24. Glossip filed a successive petition for postconviction relief in the Oklahoma Court of Criminal Appeals (OCCA), and Oklahoma filed a response in support. *Id.* at 623. OCCA, however, summarily denied the unopposed petition, explaining that the Attorney General's concession, without more, "cannot overcome the limitations on successive post-conviction review." *Id.* at 624. Applying Oklahoma's Post-Conviction Procedures Act (PCPA), OCCA held that Glossip's claims were procedurally barred and that the evidence "did not 'create a *Napue* error." *Id.* (citation omitted).

This Court reversed and remanded. *Id.* at 633. First, the Court held that it had jurisdiction to review OCCA's judgment. While the PCPA was a state statute, and the Court would ordinarily not consider decisions of state courts resting on adequate and independent state-law grounds, before OCCA ever reached the PCPA, it "rejected the attorney general's confession of *Napue* error, deeming it meritless and therefore incapable of 'overcom[ing]' application of the PCPA." *Id.* at 625 (citation omitted). "Because the OCCA's decision to reject the attorney general's confession of error rested exclusively on federal law, so too did its subsequent decision to apply the PCPA." *Id.* OCCA's merits determination concerning *Napue* "was a federal holding, and it was the only reason the OCCA provided for its conclusion that the attorney general's confession could not 'overcome' the PCPA." *Id.* (citation omitted). Therefore, the decision below did not rest on an adequate and independent state-law ground, and the Court had jurisdiction. *Id.* at 626.

Second, the Court held that the facts supported a *Napue* violation: the witness testified falsely, and the prosecutor knew he had done so but did not correct the false testimony. *Id.* at 626-27. Here, because the witness's testimony was the only direct evidence of Glossip's guilt, and the witness's credibility would have been hurt had the prosecutor corrected him on the stand, the false testimony was clearly material. That, along with additional errors noted by the Attorney General, entitled Glossip to a new trial. *Id.* at 628-30.

Glossip did not announce a new rule, as Hunt contends, but rather applied *Napue* to the particular facts of that case. Hunt had a *Napue* claim, which was raised,

rejected, and cannot be resurrected. And even if it could, the facts of Hunt's case, as set forth above in relevant part, are considerably different from *Glossip*.

B. Hunt's successive state postconviction claim is procedurally barred

Hunt's present *Napue* claim must (and will) fail in state court as a matter of state law, as it is procedurally barred in three ways. Each of these bars is a reason that Hunt is unlikely to satisfy the likelihood-of-success factor. And if the courts below rest their decision on any of these procedural bars, there will be an independent and adequate state-law ground, apart from *Napue*, for rejecting Hunt's claims for postconviction relief. *See, e.g.*, *Lee v. Kemna*, 534 U.S. 362, 375 (2002).

First, Hunt's claim is barred by Rule 32.2(c) of the Alabama Rules of Criminal Procedure because it was brought outside the one-year limitations period. Rule 32.2(c) provides that a court "shall not entertain any petition for relief from a conviction or sentence on the grounds specified in Rule 32.1(a) and (f)"—that is, that (a) the petitioner is entitled to relief on constitutional grounds, or (f) that the petitioner's failure to appeal in time was not his fault—unless the petition is filed within one year of the issuance of the certificate of appealability from ACCA on direct appeal. In Hunt's case, ACCA issued the certificate of judgment on April 25, 1995, so his present petitions are nearly thirty years too late.

There is an exception to the Rule 32.2(c) bar if the petitioner can satisfy the Rule 32.1(e) requirements for "[n]ewly discovered material facts…that require that the conviction or sentence be vacated by the court":

> (1) The facts relied upon were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to

> file a posttrial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence;
>
> (2) The facts are not merely cumulative to other facts that were known;
>
> (3) The facts do not merely amount to impeachment evidence;
>
> (4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and
>
> (5) The facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that the petitioner received.

ALA. R. CRIM. P. 32.1(e). If the petitioner can make that showing, then he may file a timely petition within six months after the discovery of the newly discovered evidence. ALA. R. CRIM. P. 32.2(c).

But Hunt cannot satisfy Rule 32.1(e). The basis for his claim is Dr. Embry's 2016 affidavit, and while Hunt protests that trial counsel were not medical professionals, App. 7, he still has not pleaded facts showing that the information in the affidavit could not have been obtained through reasonable diligence long before 2016. Lane's autopsy showed that her uterus was missing—information that was before counsel at the time of trial—and Hunt does not plead that Dr. Embry would not have answered questions about her hysterectomy at trial or spoken to his counsel in time for his first postconviction proceeding in 1997. Hunt's lack of diligence alone is sufficient to bar his claim under Rule 32.1(e)(1).

Moreover, Hunt fails to satisfy Rule 32.1(e)(4) and (5), as Dr. Embry's affidavit would not have changed the outcome, nor does it prove that Hunt is innocent of

capital murder. All that the affidavit stated was that the mucus on the broomstick probably did not come from Lane's (absent) cervix. It did *not* establish that the mucus did not come from another of Lane's orifices, such as her mouth or anus, nor did it establish that Sanders perjured himself when he testified about Hunt's confession. And Dr. Embry's affidavit does nothing to disturb the evidence that Hunt ejaculated in Lane's mouth near the time of her death, leaving a large quantity of fresh sperm. Considering with this the evidence proving that Hunt murdered Lane, including his fingerprints, his bloody palmprint, eyewitness testimony, his call from Gilliland's apartment, and his confessions to his sister and to Sanders that he killed Lane, Hunt cannot show that the affidavit would've made a difference, let alone that he is innocent of capital murder, so his claim is procedurally barred by Rule 32.2(c).

Second, Hunt's claim is barred by the prohibition on successive postconviction petitions in Rule 32.2(b) of the Alabama Rules of Criminal Procedure. His present claim, while ostensibly based on *Glossip*, is really his 2016 *Napue* claim with a different gloss, and Rule 32.2(b) prohibits a court from granting relief "on a successive petition on the same or similar grounds on behalf of the same petitioner."

Even if Hunt's claim were to be construed as raising different grounds, Hunt failed to satisfy either exception in Rule 32.2(b). He failed to plead facts showing that "the [trial] court was without jurisdiction to render a judgment or to impose sentence," and he failed to show good cause for why his new grounds "were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of

justice." ALA. R. CRIM. P. 32.2(b). Again, the basis of Hunt's claim is Dr. Embry's affidavit, which Hunt obtained in 2016, and which could conceivably have been obtained years before. Hunt also cannot show that the failure to entertain this claim would result in a miscarriage of justice, considering the weight of the evidence showing his guilt. Thus, his claim is procedurally barred by Rule 32.2(b).

Third, Hunt's claim is barred by Rules 32.2(a) of the Alabama Rules of Criminal Procedure, which provides in relevant part:

> (a) Preclusion of Grounds. A petitioner will not be given relief under this rule based upon any ground:
>
> […]
>
> (3) Which could have been but was not raised at trial, unless the ground for relief arises under Rule 32.1(b); or
>
> (4) Which was raised or addressed on appeal or in any previous collateral proceeding not dismissed pursuant to the last sentence of Rule 32. 1 as a petition that challenges multiple judgments, whether or not the previous collateral proceeding was adjudicated on the merits of the grounds raised; or
>
> (5) Which could have been but was not raised on appeal, unless the ground for relief arises under Rule 32.1(b).

Hunt could have raised this claim at trial. There is no reason that counsel, who had a copy of Dr. Embry's autopsy report, could not have asked questions about Lane's cervix or lack thereof. The claim could also have been raised on direct appeal; again, counsel had the autopsy before them. Moreover, this claim ***was*** raised in Hunt's 2016 successive Rule 32 proceeding. Therefore, his claim is procedurally barred by Rule 32.2(a)(3)-(5).

Hunt cannot circumvent the multiple state procedural bars, and so his successive petitions cannot succeed.

C. Hunt's successive state postconviction claim is meritless

Hunt's current *Napue* claim must also fail in state court because it is meritless.

The state courts have already considered Dr. Embry's trial testimony, his 2016 affidavit, and the arguments the prosecutor made. *E.g.*, Order at 15-19, *Hunt*, Doc. 28. In its previous opinion, the circuit court noted, "A review of Dr. Embry's testimony at the trial reveals that he never made an inference that the mucus was cervical mucus from the victim." *Id.* at 15. Instead, Dr. Embry offered "general anatomical information" concerning the female body in response to questions about the cervix's location and where mucus was produced. *Id.* at 16. Both Dr. Embry and Larry Huys testified that multiple orifices produce mucus, and neither stated that the mucus on the broomstick was conclusively cervical. The challenged testimony was not false.

Napue prohibits the State from eliciting or failing to correct false testimony, *not* from making prosecutorial arguments—especially arguments supported by the evidence—that might not ultimately be correct. Even if the prosecutor erred in arguing that the mucus on the broomstick was cervical, there was ample other evidence to support his conclusion that Hunt inserted the broomstick into Lane's vagina and otherwise sexually abused her in the course of beating her to death. "During closing argument, the prosecutor, as well as defense counsel, has a right to present his impressions from the evidence, if reasonable, and may argue every legitimate inference," *Brooks v. State*, 973 So. 2d 380, 397 (Ala. Crim. App. 2007) (further citations omitted),

and there was sufficient evidence to support the prosecutor's arguments. That neither the prosecution nor defense counsel apparently understood all the physical implications of a hysterectomy is not evidence of a *Napue* violation.

As Hunt cannot show a *Napue* violation, his claim cannot succeed.

II. The Equities Favor the State.

A party seeking a stay of execution "'must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Ramirez v. Collier*, 595 U.S. 411, 421 (2022) (quoting *Winter v. Nat. Res. Def. Couns., Inc.*, 555 U.S. 7, 20 (2008)). As the Court noted in *Hill*, "We state again, as we did in *Nelson*, that a stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." 547 U.S. at 584 (citing *Nelson*, 541 U.S. at 649-50). Moreover, a last-minute stay application may be denied due to its late filing or if it is an attempt at manipulating the judicial process. *Gomez v. United States Dist. Ct. for the N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). Here, the equities favor the State and Hunt's execution.

First, this Court should reject Hunt's "last-minute attempt[] to manipulate the judicial process." *Nelson*, 541 U.S. at 649. The Court decided *Glossip* on February 25, 2025. Hunt has known since March 3 that the State was seeking his execution. He, through counsel, told the Alabama Supreme Court on April 9 that he was "in the process of analyzing the applicability of" *Glossip* to his case. Response at 1, *Ex parte*

Hunt. Yet Hunt waited until May 23 to file ***two*** successive postconviction petitions. He waited until May 27 to ask the Alabama Supreme Court to vacate his execution warrant.[6] And now, a bare week before June 10, Hunt asks this Court to step in and stop his execution on the basis that the Court might want to grant certiorari someday in the litigation of Hunt's successive petitions. As both delay and "attempt[s] at manipulation" "provide a sound basis for denying equitable relief," *Ramirez*, 595 U.S. at 434, the stay application should be denied.

Second, a stay would undermine the public interest in justice. Karen Lane was bludgeoned to death nearly thirty-seven years ago, and her broken body was left discarded on the floor with a broomstick between her legs and semen in her mouth. Hunt has been on death row longer than she lived. A stay or any other injunctive relief that might delay his execution would undermine the powerful interest—shared by the State, the public, and the victims—in the timely enforcement of his sentence. *Hill,* 547 U.S. at 584. Any unpunished murder is an intrinsic and ongoing harm to those interests and to the rule of law. "Only with real finality" can we "move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). "To unsettle these expectations…is to inflict a profound injury to…the State and the victims of crime alike." *Id.*

6. If Hunt complied with Supreme Court Rule 23.3, his compliance was minimal. As noted above, Hunt moved the Alabama Supreme Court to vacate his execution warrant in a filing mailed May 27 but not docketed by that court until June 3, the same day that Hunt filed his stay application in this Court. The motion was not filed in an appeal from either postconviction proceeding from which Hunt anticipates seeking this Court's review. In his successive Rule 32 cases, there is no decision from any state court for this Court to review, as Hunt waited too long to initiate his execution litigation.

CONCLUSION

Because Hunt has shown no likelihood of success, and because the equities favor the State, this Court should deny the application for stay of execution.

Respectfully submitted,

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No. 24A1192

In the Supreme Court of the United States

GREGORY HUNT,
Petitioner,
v.
STATE OF ALABAMA,
Respondent.

PROOF OF SERVICE

I, Lauren Ashley Simpson, do hereby certify that on this date, June 5, 2025, I served a copy of the enclosed BRIEF IN OPPOSITION on Petitioner Hunt by hand delivery. I also served a copy on Petitioner Hunt by United States mail, first-class postage prepaid and addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

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June 5, 2025