

****THIS IS A CAPITAL CASE****
****EXECUTION SET FOR DECEMBER 3, 2024, AT 6:00 PM CENTRAL****

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Christopher Collings, Petitioner,

v.

David Vandergriff,
Warden, Potosi Correctional Center, Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

The State built its death penalty case against Christopher Collings on the credibility of its primary law enforcement witness, Wheaton Police Chief Clinton Clark, regarding incriminating statements Clark obtained from Collings. Clark's testimony was the only evidence suggesting—contrary to all other available evidence—that Collings received a *Miranda* warning prior to his interrogation by Clark, and the statements Clark obtained directly contradicted the victim's stepfather's confession admitting to being the only person who committed the fatal act. However, although Clark had four prior criminal convictions for AWOL, the State did not disclose Clark's convictions during Collings's trial, direct appeal, or initial state post-conviction proceedings. Instead, the State did not disclose them until *after* the conclusion of these proceedings.

The State's failure to disclose Chief Clark's prior criminal convictions prevented Collings's trial counsel from using the convictions to impeach Clark at the suppression hearing and trial proceedings, including that the convictions may have disqualified Clark from serving as a police officer at all. Similarly, the State's failure to disclose prevented post-conviction counsel from investigating the relationship of Clark's convictions to his service as a police officer as well as any due process claims under *Brady v. Maryland*, 373 U.S. 83 (1963), stemming from the State's failure to disclose the convictions.

Although prior counsel did not have grounds to present *Brady* violations to the Missouri Supreme Court until the State finally disclosed the convictions, the State nonetheless contended in the court below that Collings could not show cause for failing to present the *Brady* violations earlier. The State further contended Collings could not show prejudice because of the age of the prior convictions. The Missouri Supreme Court accepted these arguments and ignored both the State's duty to disclose and the import of the prior convictions as impeachment evidence.

This case raises the following questions:

Whether the State's failure to disclose impeachment evidence constitutes cause sufficient to excuse the petitioner's prior non-presentation of the due process violations stemming from the State's failure to disclose?

Whether a court conducting the *Brady* prejudice inquiry must consider the entirety of the suppressed evidence?

PARTIES TO THE PROCEEDING

Christopher Collings, an indigent prisoner in Potosi Correctional Center, is the petitioner.

David Vandergriff, Warden of the Potosi Correctional Center, is the respondent.

RELATED PROCEEDINGS

- *State v. Collings*, No. SC92720, 450 S.W.3d 741 (Mo. banc 2014). Judgment entered August 19, 2014.
- *Collings v. Missouri*, No. 14-7051, 574 U.S. 1160 (2015) (Mem.).
- *State v. Collings*, No. SC 96118, 543 S.W.3d 1 (Mo. banc 2018). Judgment entered March 6, 2018.
- *Collings v. Missouri*, No. 18-5278, 139 S. Ct. 247 (2018) (Mem.).
- *Collings v. Griffith*, No. 4:18-cv-08000-MDH, 2022 WL 4677562 (W.D. Mo. Sept. 30, 2022). Judgment entered September 20, 2022.
- *Collings v. Griffith*, No. 23-1064, 2023 WL 9231488, at *1 (8th Cir. June 28, 2023). Judgment entered June 28, 2023.
- *Collings v. Vandergriff*, No. 23-6703, 144 S. Ct. 1123 (2024) (Mem.).
- *State v. Collings*, No. SC92720, Supreme Court of Missouri. Order setting December 3, 2024 execution date entered August 13, 2024.
- *State of Missouri ex rel. Collings v. Vandergriff*, No. SC100640, Supreme Court of Missouri. Judgment entered August 15, 2024.

TABLE OF CONTENTS

OPINIONS BELOW	0
JURISDICTION.....	0
CONSTITUTIONAL PROVISIONS INVOLVED.....	0
STATEMENT OF THE CASE.....	0
A. Factual Background	4
1. David Spears confessed to killing R.F.	4
2. Clinton Clark sought a confession from Collings.	7
3. The State failed to disclose Chief Clark’s prior convictions.....	9
B. Procedural Background.....	14
REASONS FOR GRANTING THE WRIT	17
A. This Court’s precedent establishes that a petitioner shows “cause” when the State’s suppression of the relevant evidence was the reason for the petitioner’s failure to develop facts in state-court proceedings.	17
B. A prosecutor’s dishonest or unwarranted concealment of impeachment information of its witnesses should not warrant judicial approbation. .	19
C. This Court’s precedent establishes that all impeachment evidence is relevant to the prejudice analysis and courts must consider all suppressed evidence in its entirety.....	21
D. One can hardly be confident that Collings received a fair trial due to the State’s suppression of the impeachment evidence of its principal witness.	24
E. This Court is presently addressing the same questions this case presents.....	27
CONCLUSION.....	29

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Amadeo v. Zant</i> , 486 U.S. 214 (1988)	19
<i>Banks v. Dretke</i> , 540 U.S. 668 (2004)	2, 3, 19, 20, 22, 28
<i>Berger v. United States.</i> , 295 U.S. 78 (1935)	19
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	1, 2, 3, 15, 16, 17, 18, 20, 29
<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973)	27
<i>Charron v. Gammon</i> , 69 F.3d 851 (8th Cir. 1995)	16
<i>Collings v. Griffith</i> , No. 4:18-cv-08000-MDH, 2022 WL 4677562 (W.D. Mo. Sept. 30, 2022)	15, 16
<i>Collings v. Griffith</i> , No. 23-1064, 2023 WL 9231488 (8th Cir. June 28, 2023)	16
<i>Collings v. Vandergriff</i> , 144 S. Ct. 1123 (2024)	16
<i>Farmer v. Ratelle</i> , 131 F.3d 146 (9th Cir. 1997)	27
<i>Giglio v. United States</i> , 405 U.S. 150 (1972)	1-2, 18
<i>Glossip v. Oklahoma</i> , 144 S. Ct. 691 (2024)	4, 28
<i>Glossip v. State</i> , 2023 OK CR 5, 529 P.3d 218, <i>cert. granted</i> , 144 S. Ct. 691 (2024)	28, 29
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)	2, 4, 16, 19, 22, 24
<i>Miranda v. Arizona</i> , 384 U.S. 536 (1966)	2, 10, 12, 25, 26
<i>Mitchell v. Kardesch</i> , 313 S.W.3d 667 (Mo banc 2010)	24-25
<i>Murray v. Carrier</i> , 477 U.S. 478 (1986)	19
<i>Perry v. Rushen</i> , 713 F.2d 1447 (9th Cir. 1983)	27
<i>Rhines v. Weber</i> , 544 U.S. 269 (2005)	15
<i>Shinn v. Ramirez</i> , 596 U.S. 366 (2022)	15
<i>State ex rel. Engel v. Dormire</i> , 304 S.W.3d 120 (Mo. banc 2010)	3
<i>State ex rel. Jackson County Grand Jury v. Shinn</i> , 835 S.W.2d 347 (Mo. App. W.D. 1992)	22

<i>State v. Callahan</i> , 573 S.W.2d 453 (Mo. App. 1978)	23
<i>State v. Collings</i> , 450 S.W.3d 741 (Mo. banc 2014)	5, 8, 9, 14, 16, 17, 24
<i>State v. Collings</i> , 543 S.W.3d 1 (Mo. banc 2018)	5
<i>State v. Himmelman</i> , 399 S.W.2d 58 (Mo. 1966)	23
<i>State v. Mitchell</i> , 659 S.W.2d 4 (Mo. App. 1983)	23
<i>State v. Zinn</i> , 562 S.W.2d 784 (Mo. App. 1978)	23
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	15-16
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999)	1, 2, 3, 4, 18, 19, 22, 24
<i>United States v. Bagley</i> , 473 U.S. 667 (1985)	1, 15, 18
<i>United States v. Brenizer</i> , 20 M.J. 78 (C.M.A. 1985)	23
<i>Wearry v. Cain</i> , 577 U.S. 385 (2016)	4, 25, 27

Statutes and Rules

28 U.S.C. § 1257(a)	1
R.S.Mo. § 590.080.1	24
R.S.Mo. § 590.080.2(2)	24
R.S.Mo. § 590.100.1	24
Rule 13.1	1

Other

Licensing Information, Missouri Department of Public Safety, https://dps.mo.gov/dir/programs/post/licensing.php	24
Ursula Bentele & William J. Bowers, <i>How Jurors Decide on Death: Guilt Is Overwhelming; Aggravation Requires Death; and Mitigation Is No Excuse</i> , 66 Brook. L. Rev. 1011 (2001)	27-28
U.S. Department of Justice, National Crime Information Systems, https://www.justice.gov/tribal/national-crime-information-systems	21

PETITION FOR WRIT OF CERTIORARI

Christopher Collings respectfully petitions for a writ of certiorari to review the final order of the Supreme Court of Missouri.

OPINIONS BELOW

The judgment and mandate of the Supreme Court of Missouri is unreported and reproduced in the appendix at 1a-3a.

JURISDICTION

The Supreme Court of Missouri entered judgment on August 15, 2024. App. 1a. This petition is timely under Rule 13.1, and this Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution states in relevant part, “nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

Under *Brady v Maryland*, prosecutors must disclose evidence that a defendant may use to impeach a government witness. *See, e.g., Strickler v. Greene*, 527 U.S. 263, 280 (1999) (finding that the prosecution’s duty to disclose encompasses impeachment evidence); *United States v. Bagley*, 473 U.S. 667, 676 (1985) (“Impeachment evidence . . . falls within the *Brady* rule.”); *Giglio v. United States*, 405 U.S. 150, 153-54 (1972) (clarifying that *Brady* applies to evidence

undermining witness credibility). *Brady* provides that “the individual prosecutor,” not the defendant, has the “duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). A rule “declaring ‘prosecutor may hide, defendant must seek,’ is not tenable in a system constitutionally bound to accord defendants due process.” *Banks v. Dretke*, 540 U.S. 668, 696 (2004); *see also Strickler*, 527 U.S. at 280.

In this capital case, the State built its case on the credibility of its primary law enforcement witness, Wheaton Police Chief Clinton Clark. Clark’s testimony was the only evidence suggesting that Collings received a *Miranda* warning prior to Clark’s interrogation of Collings, and the statements Clark obtained directly contradicted the victim’s stepfather’s confession to being the only person who committed the fatal act. However, although Clark had at least four criminal convictions for AWOL, the State *never provided* Clark’s four convictions (nor any of Clark’s other relevant impeachment material requested in Collings’s motion for discovery in the court below) to Collings’s trial, direct appeal, or post-conviction counsel. In addition to their inherent impeachment value, Clark’s convictions—had he disclosed them on his law enforcement application—may have disqualified Clark from serving as a police officer at all.

The only reason Collings now knows that Clark’s convictions exist is that *after* the conclusion of Collings’s trial, direct appeal, and post-conviction proceedings, the State finally disclosed the convictions in Collings’s federal habeas

proceedings. Only the State possessed or had access to Clark's convictions, and Collings did not have any other way of obtaining this impeachment information but for the State's disclosure of it.

After the State disclosed Clark's impeachment evidence, Collings pursued state-court habeas relief. This action required Collings to establish "cause and prejudice." *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 125 (Mo. banc 2010). "Cause is established where there is a factor at issue external to the defense or beyond its responsibilities." *Engel*, 304 S.W.3d at 125-26 (citing *Strickler*, 527 U.S. at 283 n.24). "[P]rejudice is identical to" that necessary to warrant relief under *Brady*. *Id.* at 126. Accordingly, "[c]ause and prejudice parallel two of the three components of the alleged *Brady* violation itself." *Strickler*, 527 U.S. at 282.¹ "Corresponding to the second *Brady* component (evidence suppressed by the State), a petitioner shows 'cause' when the reason for his failure to develop facts in state-court proceedings was the State's suppression of the relevant evidence; coincident with the third *Brady* component (prejudice), prejudice within the compass of the 'cause and prejudice' requirement exists when the suppressed evidence is 'material' for *Brady* purposes." *Banks*, 540 U.S. at 691.

As to cause, there is no dispute that the State did not provide the impeachment evidence to Collings's prior counsel. And although the State contends

¹ A defendant seeking relief due to the prosecution's abdication of its duty to disclose must satisfy three components: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler*, 527 U.S. at 281-82.

that Collings should and could have obtained the impeachment information on his own, neither the law nor the evidence supports this conclusion. Nonetheless, despite *Kyles*, *Strickler*, and *Banks*, the lower court did not find that Collings established cause.

Nor did the lower court find prejudice. A petitioner “must show only that the new evidence is sufficient to ‘undermine confidence’ in the verdict.” *Wearry v. Cain*, 577 U.S. 385, 392 (2016). The State urged that Clark’s four convictions were irrelevant to the prejudice analysis because they occurred decades before Clark had anything to do with Collings’s case. Sugg in Opp. at 5. But a reviewing court must consider all suppressed impeachment evidence; older convictions are not meaningless for impeachment purposes. *See Kyles*, 514 at 441; *Strickler*, 527 U.S. at 281-82. And without question, the State’s case—particularly at the suppression hearing and the sentencing phase of the trial—hinged on the factfinders’ crediting Clark’s account over the defense account, which is the precise situation in which impeachment evidence discrediting a prosecution witness is most meaningful. *See Wearry*, 577 U.S. at 392-93.

The opinion below is directly contrary to relevant decisions of this Court. Like *Glossip v. Oklahoma*, 144 S. Ct. 691, 692 (2024) (Mem.), this case thus presents a clear opportunity for this Court to address important due process concerns arising out of the prosecution’s suppression of impeachment evidence until after the conclusion of the defendant’s trial, direct appeal, and initial-review post-conviction proceedings.

A. Factual Background

1. David Spears confessed to killing R.F.

Nine-year-old R.F. lived with her mother, Colleen Munson, and stepfather, David Spears, in Stella, Missouri. *State v. Collings*, 450 S.W.3d 741, 747 (Mo. banc 2014). On November 2, 2007, Spears, Christopher Collings, and Nathan Mahurin were drinking alcohol and smoking marijuana together at Spears's house. *Collings v. State*, 543 S.W.3d 1, 5 (Mo. banc 2018). Later in the evening, the three men went to Collings's trailer and left R.F. home alone. *Id.* On the way, they stopped at a convenience store and purchased more alcohol. *Id.* They continued drinking and smoking at Collings's trailer for about an hour, and then Mahurin and Spears left. *Id.* Mahurin took back roads to take Spears home and then Mahurin returned to his home. *Id.*

The next morning, Munson returned from her overnight work shift and could not find R.F. *Id.* Munson woke Spears and asked him where R.F. was. *Id.* Spears said R.F. was staying with a friend, but he could not identify the friend; his insistence that R.F. was with a friend caused Munson to delay calling the police. *Collings*, 450 S.W.3d at 747. Later that afternoon, Munson contacted the local sheriff's department to report R.F. missing. *Id.* Law enforcement began to investigate R.F.'s disappearance. *Id.*

Spears met with investigators on several occasions in the following days. He told an officer he recalled R.F. waking him and asking permission to go to a friend's house. App. 53a-54a. This information was not true.

On November 3, 2007, the day after R.F.'s disappearance, Spears called Mahurin and left a voicemail. App. 57a. Spears told Mahurin to confirm to law enforcement that Spears left his home with Mahurin to assist Collings with gassing up his vehicle. App. 57a. This information was not true.

Spears then tried to convince investigators that he only left his residence on the night his stepdaughter disappeared for a few minutes. App. 58a-59a. He said he and Mahurin departed the residence to take gas to Collings as Collings had run out on his drive home. App. 58a-59a. However, Munson informed law enforcement that Collings did not have a vehicle at the house that night, and Mahurin provided Spears's voicemail to law enforcement. App. 58a-59a. When law enforcement confronted Spears about the lies, he then admitted Collings did not have a vehicle at his home that night. App. 58a-59a. Spears acknowledged he left R.F. at home alone when the three men traveled to Collings's home. App. 58a-59a.

After hearing about R.F.'s disappearance, Amber Walters, who was a childhood friend of Spears, went to see Spears and check on how he was doing. App. 60a. Spears was focused on his relationship with Munson and lamented that the disappearance negatively impacted his marriage. App. 60a. Spears did not express any concern for R.F. App. 60a. Spears offered that he didn't know where R.F. was located, but if he were going to dispose of a body, he would do it in the Fox Sinkhole. App. 60a.

On November 7, 2007, Spears agreed to ride with Mark Bridges, Newton County Coroner, to search for R.F. Bridges was friendly with Spears and had

employed Spears at his car dealership in Neosho, Missouri. App. 130a. Investigators believed Spears would be willing to speak openly with Bridges during the ride along, so they had Bridges wear a recording device. App. 136a.

Spears directed Bridges to the Fox Sinkhole despite its remote location. App. 68a, 69a, 70a. Spears was familiar with the sinkhole and believed it would be an ideal location to hide a body. App. 70a. Once there, Spears located the opening, and both Bridges and Spears peered into the cave. App. 75a. Bridges mentioned that he thought he could see something at the bottom of the hole. App. 75a-77a.

On November 9, 2007, law enforcement returned to the Fox Sinkhole and discovered R.F.'s body. Later that day, Spears confessed to having raped and murdered R.F. App. 109a. He said he drove to the Collings property and found R.F. and Collings together. App. 109a. Spears admitted he had intercourse with R.F. and then used a string or cord to strangle her to death. App. 109a. He did so after Collings purportedly stated, "It's gotta be done." App. 109a-110a. Spears loaded R.F. into the back of his mother's Chevrolet Suburban and drove her to the Fox Sinkhole to dispose of her body. App. 110a. Spears claimed that Collings was with him at the sinkhole. App. 110a.

Spears's confession matched the investigative timeline. Mahurin dropped Spears off at his residence near midnight on November 2, 2007. Trial Tr. Vol. 10, pp. 3734-35. Spears then called his mother to borrow her Suburban and left his residence shortly after she arrived. Trial Tr. Vol. 19, pp. 5887-88. After Spears left

his home in his mother's Suburban, his whereabouts were unknown, and he did not return home until just before 7:00 AM on November 3, 2007. *Id.* at 5888-89.

Spears's confession also matched with the cadaver dog evidence. Spears stated R.F.'s body was in the Suburban Spears drove that night. App. 109a-110a.. Investigators used a cadaver dog to search various locations thought to be associated with the murder. Trial Tr. Vol. 19, pp. 5906-23. Only the Suburban had positive identifications. *Id.* The trained cadaver dog positively identified locations at the driver's side door as well as in the cargo area of the vehicle. *Id.* at 5915, 5918.²

2. Clinton Clark sought a confession from Collings.

While law enforcement naturally focused the bulk of their attention on Spears, law enforcement also repeatedly questioned Collings about his potential involvement because Collings was one of the last people to see R.F. alive. Wheaton Police Chief Clinton Clark viewed Collings as a suspect and affirmatively contacted law enforcement handling the investigation seeking to be investigate and pursue a confession from Collings. Supp. Trial Tr. Vol 6, p. 1219. After speaking with Collings, "Chief Clark contacted the FBI and told them about his talk with Collings. The FBI believed if Collings were going to confess or reveal any information, it would be to Chief Clark. Hence, the FBI encouraged Chief Clark to help in the

² Given Spears's confession and its consistency with the physical evidence, law enforcement charged Spears with R.F.'s murder. After Collings's trial, the State struck a deal with Spears in which he pleaded guilty to endangering the welfare of a child and hindering a felony prosecution and received consecutive four- and seven-year sentences. *State of Missouri v. David Wesley Spears*, Pulaski County Circuit Court No. 08PU-CR00681-01.

investigation, to which Chief Clark agreed.” *Collings*, 450 S.W.3d at 749. Afterward, Clark actively pursued questioning of Collings expressly to extract a confession. Supp. Tr. Vol. 3, pp. 586, 604; Supp. Tr. Vol. 4, pp. 662-63.

Clark obtained authorization to make additional approaches to Collings, and Clark did so on several occasions in the week following R.F.’s disappearance. *Collings*, 450 S.W.3d at 749-50. Clark then reported back his findings to the FBI. *Id.* On November 9, 2007, Collings made several statements to Clark. The first was an unrecorded statement made at the Muncie Bridge outside of Wheaton, Missouri. *Id.* at 50-51. According to Clark, while at the Muncie Bridge, Collings confessed to raping and killing R.F. *Id.* After returning to the Wheaton Police Department, Collings gave another statement that was unrecorded. *Id.* at 751. Collings later gave two more statements that were videorecorded. *Id.* at 751-52.

The State charged Collings with R.F.’s murder. Afterward, even though Clark knew—from attending Collings’s arraignment and from Collings himself—that Collings was represented by counsel who had advised Collings not to talk about his case, Clark continued “to pose questions and interject personal comments about their relationship in an effort to get Collings to speak.” *Collings*, 450 S.W.3d at 757. This questioning, which Clark knew was being recorded, went on for approximately 40 minutes, even though “Collings stated unequivocally, at least nine times, that he could not answer any questions regarding the case on the advice of counsel.” *Id.* The Missouri Supreme Court determined Clark’s conduct was an “egregious and blatant violation of Collings’ constitutional rights[.]” *Id.* at 758.

3. The State failed to disclose Chief Clark's prior convictions.

The State's case against Collings heavily depended on the statements Clark obtained from Collings on November 9, 2007. Unlike Spears, the cadaver dog evidence did not implicate Collings. The physical evidence collected from Collings's property and offered against him—a random piece of string and ashes from a burn barrel—was not collected until after the statements, and without the statements, this evidence would have lacked relevance for admission. The only other physical evidence included a tenuous hair comparison and a partial DNA profile.

On January 22, 2008, Collings requested impeachment information under *Brady* regarding the State's witnesses, including Clark. Trial L.F. Vol. 1, p. 12; App. 167a. Defense counsel subsequently made additional discovery requests for impeachment information. Trial L.F. Vol. 2, pp. 261-62.

The State knew that a principal issue at the suppression hearing was whether Clark provided *Miranda* warnings prior to the Muncie Bridge interrogation. The only evidence suggesting that Clark did so was Clark's testimony itself; all the other available evidence regarding the timing of the *Miranda* warnings contradicted Clark's testimony. The State also knew that Spears had confessed to being the sole person who killed R.F., which contradicted the statements Clark obtained from Collings, and that the State intended to use Clark's testimony to convict Collings and secure a death sentence. Nonetheless, throughout the 1,002 days (or two years, eight months, and 28 days) that elapsed between Collings's request for impeachment material and the start of the suppression hearing on

October 20, 2010, the State failed to disclose any information about Clark's criminal history.

Approximately five months later, on or about April 1, 2011, after the suppression hearing but before the trial, the State made the following disclosure regarding Clark's criminal history:

Chief Clint Clark, Wheaton Police Department, had one reported incident being arrested in Barry County on January 6, 1968 for Desertion from the U.S. Army with the charge amended to AWOL and an investigative arrest in Rogers, Arkansas on November 5, 1968 for investigation of forgery with no disposition shown on either charge.

App. 114a. The State asserted that it was providing all impeachment information concerning Clark. App. 112a-114a. The State later confirmed that it had disclosed all relevant *Brady* information. Trial Supp. L.F. Vol. 2, p. 235.

However, the State's disclosure regarding Clark's criminal history was both incorrect and incomplete. Clark's desertion arrest did have a disposition: a conviction for AWOL. Supp. App. 1sa. Clark also had three additional convictions and sentences for AWOL.³ Supp. App. 3sa-6sa, 9sa-10sa. Although *voir dire* did not begin until February 27, 2012, the State never disclosed Clark's AWOL convictions during the trial proceedings nor the direct appeal or initial-review post-conviction proceedings.

³ Collings does not know whether Clark also was convicted of forgery. The State has never disclosed this information to Collings, and the lower court—despite the newly disclosed evidence of Clark's AWOL convictions—overruled Collings's motion for discovery requesting such records.

After all these proceedings concluded, the State finally disclosed Clark's prior convictions in response to Collings's petition for federal habeas relief. The State's records acknowledged that Clark's arrest on January 6, 1968, in fact led to an AWOL conviction and sentence. Supp. App. 1sa. The records also revealed three additional convictions for the same offense. Supp. App. 3sa-6sa, 9sa-10sa. Clark was ordered to serve a sentence of six months of hard labor in the Post Stockade at Fort Leonard Wood, Missouri. Clark was then released in January 1969, and within three weeks of his release, he deserted his post again until he was apprehended on or about May 9, 1969. Supp. App. 13sa-14sa, 16sa. Clark was again sentenced to six months imprisonment in the Post Stockade at Fort Leonard Wood, Missouri until his discharge "under conditions other than honorable" on October 23, 1969. Supp. App. 16sa. Clark was absent or in-custody for 726 of the 890 days of his service in the military. Supp. App. 16sa.

The State's withholding of Clark's convictions prevented trial counsel from inquiring about the circumstances of Clark's convictions during his deposition and from using the convictions to impeach Clark at the suppression hearing and at trial. App. 39a-42a, 45a-47a. The only evidence suggesting that Clark provided *Miranda* warnings to Collings prior to the Muncie Bridge interrogation was Clark's testimony itself. Contrary to Clark's testimony, the case records showed that the *Miranda* form was signed at 3:00 PM, *after* the initial interrogation at the Muncie Bridge. App. 166a. Similarly, corroborating testimony from two law enforcement officers observed Collings sign the form *after* he returned from the initial

interrogation at the Muncie Bridge. Supp. Tr. Vol. 2, pp. 258, 321, 326-27.

Furthermore, this timing was consistent with Chief Clark's own call log indicating that he and Collings arrived back at the station following the Muncie Bridge interrogation at approximately 3:00 PM. Supp. Tr. Vol. 4, pp. 667-70. But due to the State's suppression of Clark's convictions and other impeaching information, Collings was unable to use this evidence to discredit Clark's testimony.

The State continued to withhold the impeaching information throughout Collings's pre-trial and trial proceedings, which likewise prevented Collings from using it at trial. For example, when Clark added details furthering the State's narrative that he had not shared in the various times he previously testified under oath, Trial Tr. Vol. 13, pp. 4578-4601, the State's failure to disclose prevented counsel from using Clark's convictions to impeach him. The State's suppression also prevented Collings from investigating whether Clark's convictions disqualified him from servicing as a police officer or whether he disclosed the convictions as part of his application to be a police officer. App. 41a-42a, 46a.

The suppression of Clark's convictions also prevented Collings from relying on them to establish residual doubt, which was one of the principal arguments for a sentence other than death. PCR Tr. Vol. 2, p. 390. Defense counsel presented evidence establishing that Spears was one of the last people to see R.F. alive, that he acted suspiciously the day she disappeared, and that dogs alerted to the scent of human remains in the Suburban that he was driving on the night of the offense. Trial Tr. Vol. 10, pp. 3647, 3650, 3652-53, 3695; Vol. 19, pp. 5905, 5913. Although

counsel did not present Spears's confession to raping and killing R.F., counsel did present the statements of law enforcement officers providing evidence of Spears's involvement to Collings. Trial Tr. Vol. 14, pp. 4847-64; PCR Ex. 29.

If Spears's confession that he was the sole person who committed the fatal act was true, then Collings's confession—obtained by Clark—could not also have been true. App. 42a; Trial Tr. Vol. 20, p. 6489. The jury thus would have had reason to question whether the police tactics and investigation implicating Collings were reliable. *Id.* But due to the State's suppression of Clark's prior convictions, the jury could not consider Clark's convictions when assessing residual doubt. *Id.*

The State continued to withhold Clark's convictions throughout Collings's initial-review post-conviction proceedings. App. 50a. As with trial counsel, this failure to disclose prevented post-conviction counsel from investigating whether Clark's convictions should have disqualified him from servicing as a police officer and whether he disclosed his convictions as part of his law enforcement application. App. 50a-51a. The State's failure also prevented post-conviction counsel from including Clark's convictions in their claims regarding the reliability of Collings's confession. App. 51a. Furthermore, the State's withholding prevented post-conviction counsel from raising any due process claims under *Brady* stemming from the State's failure to disclose the convictions to trial counsel as well as any other potential claims related to the relationship of Clark's convictions and his service as a police officer. App. 51a.

B. Procedural Background

After the conclusion of Collings's state post-conviction proceedings, Collings petitioned for federal habeas corpus relief. That petition included a *Brady* claim regarding the culpability phase of the trial. In response to that claim, the State finally disclosed Clark's convictions. Supp. App. 1sa-20sa.

During the pendency of the habeas petition, this Court issued its decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022). Collings sought a stay of the habeas proceedings in the federal district court under *Rhines v. Weber*, 544 U.S. 269 (2005), so he could return to state court to comply with the new obligations of *Ramirez*. The State opposed the motion and further contended that, although the State had never previously disclosed Clark's convictions, because the withheld evidence was not a part of the prior state court record, the district court could not consider it. App. 123a.

The district court denied the *Rhines* motion and entered a separate order denying habeas relief. *Collings v. Griffith*, No. 18-CV-08000-MDH, 2022 WL 4677562, at *1 (W.D. Mo. Sept. 30, 2022). The district court found that Collings (who was limited to the prior state court record that did not include Clark's convictions) had not shown that a failure to disclose occurred. *Id.* at *11. The court ruled that even if it could consider Clark's convictions, Collings could not show prejudice. *Id.* In this ruling, the court applied a higher prejudice standard than this Court applies to *Brady* claims. *Contrast Bagley*, 473 U.S. at 682 (equating the *Brady* materiality standard with the reasonable probability standard of *Strickland*

v. Washington, 466 U.S. 668 (1984)) *with Collings*, 2022 WL 4677562 at *8 (finding that “the standard of prejudice is higher than that required to establish ineffective assistance of counsel under *Strickland*.”) (citing *Charron v. Gammon*, 69 F.3d 851, 858 (8th Cir. 1995)). The Eighth Circuit denied Collings’s application for appellate review. *Collings v. Griffith*, No. 23-1064, 2023 WL 9231488, at *1 (8th Cir. June 28, 2023).

Collings subsequently requested review in this Court. On April 2, 2024, this Court declined to grant review. *Collings v. Vandergriff*, 144 S. Ct. 1123 (2024).

The next day, the State moved the Missouri Supreme Court to set Collings’s execution date. *State v. Collings*, No. SC92720. On June 27, 2024, Collings timely initiated a state habeas action asserting *Brady* violations that invalidated Collings’s conviction and sentence. App. 4a. The petition asserted that under *Strickler* and *Banks*, Collings established “cause” for not presenting the claim earlier due to events or circumstances external to the defense: the State’s suppression of the impeachment information. App. 6a, 29a-30a, 35a-36a. The petition further asserted that, under *Brady*’s materiality test, the State’s suppression of the impeachment information prejudiced Collings. App. 6a, 25a-29a, 31a, 33a-35a, 36a. Collings requested that the court deny or stay the State’s motion to set an execution date so that the *Brady* claims could be fully and properly adjudicated. App. 36a-37a.

On July 1, 2024, Collings moved for discovery. App. 175a. In support of this motion, Collings relied on Amendments 5, 6, 8 and 14 to the United States Constitution; *Brady*, *Kyles*, and their progeny; and his rights to due process and a

full and fair hearing in state post-conviction and habeas corpus proceedings. App. 175a. Collings requested the entirety of the information in Clark's criminal history records, including any additional impeachment information regarding Clark's AWOL convictions and as well as the disposition of Clark's arrest for forgery, and Clark's law enforcement application and other relevant law enforcement employment or licensing records. App. 176a-177a, 184a-186a.

The Missouri Supreme Court issued an order requesting that the State respond, and on July 3, 3034, the State responded to the petition. App. 188a. The State acknowledged that it never provided Clark's convictions to Collings prior counsel but posited that it did not have any duty to provide this impeachment information to Collings's counsel. App. 188a-189a, 191a. The State argued trial counsel should have known about Clark's multiple AWOL convictions, and because trial counsel did not obtain Clark's convictions on their own, Collings could not establish cause for failing to present his *Brady* claims earlier. App. 192a. In response to Collings's prejudice showing, the State only offered one conclusory statement: that Clark's four convictions occurred "in the 1960s decades before he had anything to do with Petitioner's case." App. 192a. Collings timely replied on July 17, 2024. App. 194a.

On August 13, 2024, the Missouri Supreme Court ordered Collings to be executed on December 3, 2024. *State v. Collings*, No. SC92720. Two days later, on August 15, 2024, the court overruled the motion for discovery and denied the habeas petition. App. 1a-3a.

REASONS FOR GRANTING THE WRIT

- A. This Court's precedent establishes that a petitioner shows "cause" when the State's suppression of the relevant evidence was the reason for the petitioner's failure to develop facts in state-court proceedings.

The decision below is contrary to controlling precedent of this Court. It is beyond question that the State had a duty to disclose Clark's convictions and any other impeachment evidence. *See, e.g., Strickler*, 527 U.S. at 280; *Bagley*, 473 U.S. at 676; *Giglio*, 405 U.S. at 153-54.

The State does not dispute that although Clark has at least four convictions for AWOL, the State *never provided* Clark's convictions (nor any of Clark's other relevant impeachment material requested in Collings's motion for discovery in the court below) to Collings's trial, direct appeal, or post-conviction counsel. App. 188a-189a. However, in response Collings's contention that this failure to disclose was a circumstance external to the defense that prevented Collings's prior counsel from developing and presenting the grounds for the due process violations, the State contends that it did not have any duty to provide the impeachment information. App. 188a-189a, 191a. Rather, the State posits, trial counsel should have known about Clark's multiple AWOL convictions, and because trial counsel did not obtain Clark's convictions on their own, Collings could not establish cause for failing to present his *Brady* claims earlier. App. 192a.

This Court has resoundingly rejected this argument. It is "the individual prosecutor," not the defendant, who has the "duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the

police.” *Kyles*, 514 U.S. at 437. When the State has not disclosed impeachment information, “defense counsel has no ‘procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.’” *Banks*, 540 U.S. at 696 (quoting *Strickler*, 527 U.S. at 286-87). Instead, the “cause” inquiry “turns on events or circumstances ‘external to the defense.’” *Id.* (citing *Amadeo v. Zant*, 486 U.S. 214, 222 (1988) (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986))). These circumstances include the State’s suppression of relevant evidence. *Id.* at 691.

In *Banks*, the prosecutor argued that the “the prosecution can lie and conceal and the prisoner still has the burden to ... discover the evidence[.]” *Id.* at 696 (quoting Tr. of Oral Arg. 35). This Court found that its prior “decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed.” *Id.* at 695. This Court further explained that given the “special role played by the American prosecutor in the search for truth in criminal trials[.]” *id.* at 696 (quoting *Strickler*, 527 U.S. at 281), “[c]ourts, litigants, and juries properly anticipate that ‘obligations [to refrain from improper methods to secure a conviction] ... plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.’” *Id.* (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). Accordingly, this Court rejected a rule “declaring ‘prosecutor may hide, defendant must seek,’ [because it] is not tenable in a system constitutionally bound to accord defendants due process.” *Id.*

Here, as in *Banks*, the prosecution withheld impeachment information from the defense, (Supp. App. 1sa-20sa), asserted that it had provided all impeachment information concerning Clark (App. 112a-114a), and later confirmed that it had disclosed all relevant *Brady* information, (Trial Supp. L.F. Vol. 2, p. 235). Under *Banks*, a defendant is entitled to rely on the prosecutor's duty to be truthful, not to "stoop to improper litigation conduct to advance prospects for gaining a conviction," and properly discharge prosecutorial duties regarding discovery. 540 U.S. at 694. When it later comes to light that the prosecutor did not fulfill this duty, the defendant has established cause for not presenting the *Brady* material earlier. *Id.* The decision below conflicts with this Court's long-established precedent.

B. A prosecutor's dishonest or unwarranted concealment of impeachment information of its witnesses should not warrant judicial approbation.

Despite this Court's rulings in *Banks* and *Strickler*, prosecutors continue to argue—as in this case—that their failure to disclose impeachment information does not constitute cause for a defendant's failure to bring a *Brady* claim. A state court's explicit or implicit acceptance of this argument effectively greenlights the State's withholding of all impeachment evidence in future cases. So long as the State withholds the information throughout the defendant's direct appeal and post-conviction proceedings, if the State's suppression cannot constitute cause, the defendant will never have any opportunity for a reviewing court to redress the constitutional violation arising from the State's abdication of its duty. This approach is antithetical to the prosecution's constitutional duties and the defendant's Fourteenth Amendment rights.

Permitting prosecutors to conceal impeachment information discrediting their own witnesses is not consistent with the Fourteenth Amendment's due process guarantees. Often, the State is the only party who has access to the impeachment information. This case provides a perfect illustration of that reality. Collings's current counsel attempted to follow up on the State's limited trial disclosure regarding Clark by requesting a complete copy of his military records, but counsel did not have the access to obtain the relevant impeachment information. Accordingly, the response Collings received did not provide any evidence of Clark's prior convictions. App. 171a-174a. However, the State did not face any barriers to Clark's information, including all his convictions, sentencing details, and additional military records relevant to his credibility. *Contrast* Supp. App. 1sa-20sa *with* App. 171a-174a. Only the State possessed or had had access to Clark's prior convictions, and Collings did not have any way of obtaining this information on his own.

Similarly, Collings would not have been able to obtain on his own the other impeachment information requested in his motion for discovery. Only the State has access to the NCIC databases containing the disposition of Clark's forgery charge. U.S. Department of Justice, National Crime Information Systems, <https://www.justice.gov/tribal/national-crime-information-systems> (explaining that NCIC is "[a] criminal records database allowing *criminal justice agencies* . . . to get criminal histories) (emphasis added). Likewise, only the State has access to Clark's law enforcement application (on which he should have disclosed his convictions) or any other law enforcement employment or licensing records containing (or not

containing) information about his convictions. *State ex rel. Jackson County Grand Jury v. Shinn*, 835 S.W.2d 347 (Mo. App. W.D. 1992) (concluding that the public policy of Missouri is that personnel records of police officers are closed to the public).⁴ The State also had unique access to Chief Clark as he was an integral part of the State's case-in-chief against Collings.

Unlike a prosecutor, a criminal defendant does not have access to impeachment information pertaining to the State's law enforcement witnesses. "Prosecutors' dishonest conduct or unwarranted concealment [of this information] should attract no judicial approbation." *Banks*, 540 U.S. at 696.

C. This Court's precedent establishes that all impeachment evidence is relevant to the prejudice analysis and courts must consider all suppressed evidence in its entirety.

The decision below also conflicts with this Court's controlling precedent regarding the prejudice inquiry. In the proceedings below, the State responded to Collings's prejudice showing with only one conclusory statement: that Clark's four convictions occurred "in the 1960s decades before he had anything to do with Petitioner's case." App. 192a. However, this Court has repeatedly held that the *Brady* prejudice inquiry must include the entirety of the suppressed evidence, which necessarily includes all suppressed impeachment evidence. *Kyles*, 514 at 441; *Strickler*, 527 U.S. at 281-82. Thus, the fact that a witness' multiple convictions

⁴ Due to the State's failure to disclose Clark's convictions, Collings's prior counsel did not know that there was a particular need to examine Clark's law enforcement application or other employment records. App. 41a, 46a, 50a-51a.

occurred prior to the witness' conduct in the case does not render the convictions irrelevant to the witness' credibility.

For example, courts have specifically recognized the impeaching value of a prior conviction like AWOL. As one court explained, "a servicemember who thinks so little of his service commitment as to depart without authority may also take lightly his obligation to testify truthfully, especially when his own neck is on the block." *United States v. Brenizer*, 20 M.J. 78, 81 (C.M.A. 1985); *see also State v. Mitchell*, 659 S.W.2d 4, 5-6 (Mo. App. 1983) ("We do not question the validity of courts martial for the purposes of military order and discipline. Further, we find nothing objectionable in the use of courts-martial for the purpose of impeaching a witnesses' credibility."). In fact, the State of Missouri itself has used AWOL convictions for the precise purpose of impeaching a testifying witness. *See, e.g., State v. Callahan*, 573 S.W.2d 453, 455 (Mo. App. 1978) (noting that the State interrogated the appellant about being AWOL while a member of the Armed Forces of the United States under the guise of impeaching the appellant's credibility); *see also State v. Himmelman*, 399 S.W.2d 58 (Mo. 1966) (evidence of defendant's court-martial conviction was properly received for purposes of impeachment); *State v. Zinn*, 562 S.W.2d 784, 788 (Mo. App. 1978) (same).

Here, Clark's convictions were particularly relevant because, like Clark's demonstrated disregard for his service commitment, Clark's conduct in this case unquestionably showed he took lightly his obligation to respect Collings's rights. It is uncontroverted that not long after obtaining Collings's initial statements and "in

an effort to get Collings to speak[.]” Clark engaged in conduct that was an “egregious and blatant violation of Collings’ constitutional rights[.]” *Collings*, 450 S.W.3d at 757-58. Given Clark’s egregious and blatant disregard for Collings’ rights, Clark’s similar blatant disregard for his service commitment—as reflected in his *four* prior convictions—would have been relevant to his conduct in this case.

The lower court’s refusal to consider Clark’s law enforcement application records also is inconsistent with *Kyles* and *Strickler*. The lower court knew that these records were relevant to Clark’s credibility and may even show that Clark was ineligible to be a police officer. The Missouri Department of Public Safety licenses peace officers, and under its provisions, “[a] person may be eligible for licensing as a peace officer if the individual . . . has no criminal history as outlined in Section 590.080.1 and Section 590.100.1, R.S.Mo.” Licensing Information, Missouri Department of Public Safety, <https://dps.mo.gov/dir/programs/post/licensing.php>. Such history includes convictions resulting from a criminal prosecution under the laws of the United States, including the Uniform Code of Military Justice. *See* R.S.Mo. § 590.080.2(2).

Because Clark’s convictions should have rendered him ineligible to be a police officer in the first place, Clark may have failed to disclose his convictions on his law enforcement application.⁵ That act would have been a specific act of dishonesty relevant to his credibility. *See, e.g., Mitchell v. Kardesch*, 313 S.W.3d 667, 670 (Mo

⁵ Collings does not know whether Clark disclosed these convictions or any others on his application because the State has never disclosed this information to Collings.

banc 2010). But even if Clark did disclose them on his law enforcement application, because they should have rendered him ineligible to serve, then special accommodations likely were made due to his prior criminal history.

Either way, Clark's law enforcement application records—which the State has continued to suppress—were relevant to the court's prejudice determination. The court's failure to consider them and the prior convictions conflicts with this Court's precedent.

D. One can hardly be confident that Collings received a fair trial due to the State's suppression of the impeachment evidence of its principal witness.

This Court has recognized the reasonable probability of prejudice due to the State's suppression of impeaching evidence when the State's case was “built on the jury crediting [the State's witness's] account rather than [the defense account.]” *Wearry*, 577 U.S. at 392-93. Here, the statements Clark obtained and Clark's testimony about them were critical to the State's case at both phases of Collings's trial. The State's suppression of Clark's impeachment information renders the outcome of this case unworthy of confidence.

For example, the *only* evidence the State offered at the suppression hearing to support Clark's timing of the *Miranda* warnings was Clark's testimony itself. All the other available evidence regarding the timing of the *Miranda* warnings contradicted Clark's testimony.

The State contended that Clark issued a written *Miranda* warning to Collings prior to Collings's initial interrogation on the Muncie Bridge. However,

case records reflected the *Miranda* form was signed at 3:00 PM, *after* the initial interrogation. Supp. Tr. Vol. 4, pp. 657, 666-70. This timing was consistent with the signed *Miranda* form, Clark's Daily Log listing the timing of the warning coming *after* the Muncie Bridge confession, as well as the testimony from the two law enforcement officers who observed Collings sign the form after returning from the Muncie Bridge. Supp. Tr. Vol. 2, pp. 258, 321, 326-27; Supp. Tr. Vol. 6, pp. 1247-48; App. 128a-129a. Furthermore, the timing was consistent with Clark's call log indicating that he and Collings arrived back at the station following the Muncie Bridge interrogation at approximately 3:00 PM. Supp. Tr. Vol. 4, pp. 667-70.

The State's case unquestionably relied on crediting Clark's account rather than the defense account. Yet due to the State's suppression, defense counsel was unable to impeach Clark's credibility with his prior convictions, not to mention the other undisclosed impeachment information requested in the Motion for Discovery. Had defense counsel successfully suppressed the November 9, 2007, statements, the remaining evidence would have been insufficient to support a conviction for first-degree murder.⁶

Clark's credibility was again at issue at trial. During his trial testimony, Clark added details furthering the State's narrative that he had not shared in the

⁶ Without the statements, the physical evidence collected from Collings's property after the statements and then offered against Collings—a random piece of string and ashes from a burn barrel—would have lacked relevance for admission. The only other physical evidence included a tenuous hair comparison and a partial DNA profile.

various times he previously testified under oath.⁷ Trial Tr. Vol. 13, pp. 4578-4601. But again, due to the State's suppression, the jury was not able to consider Clark's convictions in assessing Clark's credibility.

At sentencing, given that Spears—R.F.'s own stepfather—confessed to raping and killing R.F., the jury had even more reason to question whether the police tactics and investigation implicating Collings were reliable. App. 42a; Trial Tr. Vol. 20, p. 6489. If Spears's confession admitting that he was the sole person who committed the fatal act was true, then Collings's confession to being the sole person committing the fatal act could not also have been true. *Perry v. Rushen*, 713 F.2d 1447, 1452 (9th Cir. 1983) (concluding that "third party confessions, if believed, would *necessarily* exonerate the defendant of the primary offense."); *see also Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (finding that a third-party confession was "critical evidence" on the question of reasonable doubt). Even if Spears's confession was "not completely accepted by the jury, evidence of a third-party confession casts a dark cloud of reasonable doubt over the guilt of the defendant." *Farmer v. Ratelle*, 131 F.3d 146, *2 (9th Cir. 1997).

"[L]ingering doubt about the defendant's guilt . . . is the factor that makes jurors most likely to reject a death sentence." Ursula Bentele & William J. Bowers,

⁷ For example, Clark testified that Collings told him that he burned a foam mattress. Trial Tr. Vol. 13, pp. 4697, 4702. Clark, though, never noted that in his reports nor did he offer that detail in his sworn deposition. *Id.* The physical evidence is inconsistent with Clark's testimony. App. 125a-127a. Clark also denied Collings signed a *Miranda* form while at the police station following his unrecorded confession at the Muncie Bridge. Trial Tr. Vol. 13, pp. 4672-4676.

How Jurors Decide on Death: Guilt Is Overwhelming; Aggravation Requires Death; and Mitigation Is No Excuse, 66 Brook. L. Rev. 1011, 1058 (2001). However, due to the State’s suppression, defense counsel was unable to use Clark’s convictions to question the reliability of Clark’s account, especially considering Spears’s confession.

Given the trial court and the jury’s ignorance of Clark’s prior convictions, “one can hardly be confident that [Collings] received a fair trial[.]” *Banks*, 540 U.S. at 702.

E. This Court is presently addressing the same questions this case presents.

Glossip, 144 S. Ct. at 692, is currently pending before this Court. The questions presented in *Glossip* are the same as those presented in this case.

In *Glossip*, the State did not disclose impeachment evidence of the State’s “star witness”—information regarding the witness’ psychiatric treatment—until after the conclusion of *Glossip*’s initial state-court trial, direct appeal, and post-conviction proceedings. Pet. Brief at 8, *Glossip v. Oklahoma*, No. 22-7466. The state court found that the petitioner could not establish cause because the defendant could have obtained the impeachment evidence through the exercise of reasonable diligence. *Glossip v. State*, 2023 OK CR 5, ¶ 26, 529 P.3d 218, 226, *cert. granted*, 144 S. Ct. 691 (2024). The court reasoned that because a pretrial competency report and the witness’ trial testimony indicated that the witness had taken lithium, the petitioner’s counsel “knew or should have known about [the witness’] mental health

issues[.]” *Id.* at ¶ 27, 529 P.3d at 226. Thus, the court concluded, “this issue could have been and should have been raised” in earlier proceedings. *Id.*

The State makes the same argument here. The State contends that because it disclosed to trial counsel that Collings had been charged with one count of AWOL, trial counsel should have known, despite the State’s assertions to the contrary, about Clark’s multiple AWOL convictions the State did not disclose. App. 189a, 192a. Because Collings’s prior counsel did not obtain these convictions on their own, the State posits, Collings cannot now establish cause for failing to present his *Brady* claims earlier. App. 192a.

The prejudice question in *Glossip* also is like the question presented here. In *Glossip*, the prosecution’s case hinged on the credibility of its star witness, but the state court made its prejudice finding in isolation without holding any kind of evidentiary hearing or considering the entirety of the suppressed evidence. Pet. Brief at 36-38, *Glossip v. Oklahoma*, No. 22-7466. Here, the State’s case likewise was built on the jury crediting the star witness’ account rather than the defense account, and as in *Glossip*, the court below failed to conduct any kind of fact-development procedure and dismissed the claims without considering the entirety of the suppressed evidence.

Glossip shows that the questions presented in this case similarly warrant this Court’s review. At a minimum, this Court should stay the resolution of this petition until this Court decides *Glossip*.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari or, in the alternative, stay this case until this Court's resolution of the questions presented in *Glossip*.

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