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

No. 24-5807

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REASONS FOR GRANTING THE WRIT

A. The state-court decision relies primarily on federal law or is interwoven with federal law, and this Court has jurisdiction to review the decision.

The State's contention that the Missouri Supreme Court denied relief on an adequate and independent state-law ground lacks merit. The State acknowledges that when a state-court decision appears to rest primarily on federal law or is interwoven with federal law, this Court presumes that the state court's denial of a federal claim rested on federal law, and this Court accordingly has jurisdiction to review the state-court decision. BIO at 16. However, the State posits that this presumption does not apply in this case. *Id.* Neither law nor fact supports the State's position.

In *Coleman v. Thompson*, this Court reiterated that:

> this Court on direct review of state court judgments[] will presume that there is no independent and adequate state ground for a state court decision when the decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion."

501 U.S. 722, 734-35 (1991) (quoting *Michigan v. Long,* 463 U.S. 1032, 1040-41 (1983)).

Here, it is unconverted that Collings's *Brady* claims are federal claims. Furthermore, both this Court and the lower court have recognized that, in the context of a *Brady* claim, the merits of the claim necessarily are interwoven with the application of the "cause and prejudice" procedural default rule. This Court has plainly stated "[c]ause and prejudice parallel two of the three components of the

alleged *Brady* violation itself." *Strickler v. Greene*, 527 U.S. 263, 282 (1999). "Cause" is interwoven with the suppression component of a *Brady* claim: "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[.]" *Banks v. Dretke*, 540 U.S. 668, 691 (2004). "Prejudice" is "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." *Id.*

Likewise, the Missouri Supreme Court has determined that "[c]ause is established where there is a factor at issue external to the defense or beyond its responsibilities." *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 125-26 (Mo. banc 2010) (citing *Strickler*, 527 U.S. at 283 n.24 (noting that "cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule") (internal quotation omitted)). Under this rule, a petitioner satisfies both "cause" and the suppression component of a *Brady* claim when, as in this case, there is no dispute that during trial, the State did not provide the "impeachment evidence that is the subject of [the] habeas claims." *Id.* at 126-27; *see also Woodworth v. Denney*, 396 S.W.3d 330, 338 (Mo. banc 2013), *as modified* (Jan. 29, 2013) (finding that "a failure to disclose exculpatory evidence, if shown, constitutes adequate cause for failure to earlier raise the error."). The Missouri

Supreme Court has further determined that the "prejudice" component "is identical to" that necessary to warrant relief under *Brady*. *Id.* at 126; *Woodworth*, 396 S.W.3d at 338 ("The determination whether a constitutional violation is prejudicial under the cause and prejudice standard is identical to this Court's assessment of prejudice undertaken in assessing . . . *Brady* claims."). Thus, a petitioner satisfies both the "prejudice" and the materiality component of a *Brady* claim when, as in this case, "the new evidence is sufficient to 'undermine confidence' in the verdict." *Wearry v. Cain*, 577 U.S. 385, 392 (2016).

These authorities show that a merits analysis of a *Brady* claim is interwoven with both prongs of the "cause and prejudice" analysis. Because the merits and procedural questions are so interwoven, the adequacy and independence of any possible state law ground is not clear from the face of the lower court opinion. "[T]he absence of a plain statement that the decision below rested on an adequate and independent state ground" further shows the face of the opinion does not clearly show that the state court denied relief on an adequate and independent state ground. *Long*, 463 U.S. at 1044. Thus, under *Coleman* and *Long*, this Court presumes that there is no independent and adequate state ground for the lower court's decision, and this Court has jurisdiction to review the state-court decision denying Collings's *Brady* claims.

The State has not offered any evidence or argument sufficient to overcome this presumption. The State's reliance on *Byrd v. Delo*, 942 F.2d 1226 (8th Cir. 1991), is misplaced.

First, nothing in *Byrd* suggests that this Court's decision in *Coleman* was erroneous. On the contrary, the *Byrd* court agreed that this Court on direct review of state-court judgments presumes that there is no independent and adequate state ground for a state court decision when (1) the decision fairly appears to rest primarily on or be interwoven with federal law and (2) the adequacy and independence of any possible state law ground is not clear from the face of the opinion. *Byrd*, 942 F.2d at 1231.

Second, although the *Byrd* court found that it could not apply the *Coleman* presumption given the specific facts of *Byrd*, these facts are materially different from the facts of this case. *Byrd* did not involve a *Brady* claim, which, as explained above, necessarily interweaves the merits of the claim with the "cause and prejudice" procedural default rule. Also, in *Byrd*, the state court issued an order explaining that its ruling was based on state procedural law. *Id.* at 1232. Because of this order, the *Byrd* court found that the adequacy and independence of a state law ground was clear. But no such order exists in this case. *Long*, 463 U.S. at 1044 (finding that "the absence of a plain statement that the decision below rested on an adequate and independent state ground" showed that the adequacy and independence of any possible state law ground was not clear from the face of the opinion).

Third, although the *Byrd* court stated that "[a]fter *Coleman*, there is simply no reason to construe an unexplained Rule 91 denial as opening up the merits of a previously defaulted federal issue[,]" the reason for this statement was that the

court was not aware of any case "where the Missouri Supreme Court, acting on a Rule 91 petition, either granted relief or denied relief on its merits, as to claims that could have been raised earlier on direct appeal or [in initial-review post-conviction proceedings]." *Id.* However, since *Byrd*, the Missouri Supreme Court has issued merits rulings in Rule 91 petitions raising *Brady* claims that could have been raised earlier had the State provided the *Brady* material earlier. *See*, *e.g.*, *State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 72 (Mo. banc 2015) (addressing *Brady* claim in Rule 91 habeas petition filed after the conclusion of the defendant's direct appeal, post-conviction, and federal habeas proceedings); *Woodworth*, 396 S.W.3d at 336 (addressing *Brady* claim in Rule 91 habeas petition filed after the conclusion of the defendant's direct appeal and post-conviction proceedings); *Engel*, 304 S.W.3d at 123-24 (addressing *Brady* claim in Rule 91 habeas petition filed after the conclusion of the defendant's direct appeal, post-conviction, and federal habeas proceedings). Similarly, after *Byrd*, the court has recognized that its unexplained summary denials constitute merits rulings. *See Prosecuting Att'y, 21st Jud. Cir., ex rel. Williams v. State*, 696 S.W.3d 853, 859 (Mo. banc 2024) (finding that the result of its Rule 91 state habeas summary denials was that the court heard and rejected all the petitioner's actual innocence claims based on DNA evidence).[1]

Byrd is neither controlling nor persuasive, and the State's reliance on it is insufficient to overcome the presumption this Court recognized in *Coleman*. This

[1] The cases including the unexplained summary denials include *State ex rel. Williams v. Steele*, No. SC94720 (Mo. banc Jan. 31, 2017) and *State ex rel. Williams v. Larkin*, No. SC96625 (Mo. banc Aug. 15, 2017).

Court has jurisdiction to review the state court's decision denying Collings's *Brady* claims.

B. The State's assertion that Collings should have brought his *Brady* claims earlier directly contradicts this Court's controlling authority.

The State wrongly suggests that Collings should have brought his *Brady* claim in the ordinary course of state-court review. The State admits that it never provided the *Brady* material until *after* the ordinary course of state-court review ended. BIO at 8, 10. Nonetheless, the State posits, although the State had not yet released the *Brady* material, Collings nonetheless should have raised his *Brady* claims. BIO at 11. But this position directly contradicts this Court's controlling authority holding that "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). Thus, the State's position is flatly incorrect.

Furthermore, the State's attempt to shift blame to Collings for the State's deception displays extraordinary indifference to this Court's determination that a rule "declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process." *Id.* The State had the obligation to produce Clark's impeachment evidence; it was not Collings's burden to obtain it himself. *Strickler*, 527 U.S. at 280 (finding that the prosecution's duty to disclose encompasses impeachment evidence); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (finding 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."). The State does not cite to any authority holding otherwise. The State's position also blindly ignores the evidence disproving the State's allegation that Collings would have been able to obtain the impeachment information himself. *Contrast* App. 171a-174a (response to Collings's open records request containing no information about Clark's prior convictions) *with* Supp. App. 1sa-20sa (State's records including all of Clark's convictions, sentencing details, and additional military records relevant to his credibility).[2]

This Court should not blame Collings for the State's withholding of the *Brady* evidence until after the ordinary course of state-court proceedings ended. Had the State disclosed the impeachment material to Collings at trial, as it undeniably had a constitutional duty to do, there would not have been any *Brady* claim to raise at all. Any failure to present the impeachment evidence at trial or at another point during the ordinary course of state-court review unquestionably is the fault of the State, not Collings.

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[2] Collings agrees with the State that Clark's impeachment information was available for disclosure prior to trial. BIO at 18. The parties disagree about whether the State had the obligation to disclose it, as this Court repeatedly has held, or whether Collings instead had the burden of obtaining it on his own. However, even if this Court were to reverse its prior rulings to find that a defendant has the duty to learn of and obtain favorable evidence known to those acting on the government's behalf, the evidence in this case establishes that the impeachment evidence contained in the State's records was not available to Collings absent the State's disclosure of it. To the extent that there is any question about whether the parties had equal access to the impeachment evidence, this Court should remand for an evidentiary hearing.

Similarly, this Court should not fault Collings for timely filing his state habeas petition after appellate review of the federal habeas proceedings concluded. This was not a manipulation of the judicial process, as the State alleges. BIO at 19. Rather, it is the State who appears to be attempting to manipulate this Court by grossly misstating what occurred below. In its Questions Presented, the State claims that Collings filed his state habeas petition "after the Missouri Supreme Court had scheduled his execution date[.]" BIO at 2.[3] This is patently false.

On April 2, 2024,[4] the same day appellate review of the federal habeas proceedings concluded, the State requested the state court to set an execution date. Mot. to Set an Execution Date, *State v. Collings*, No. SC92720. Collings requested an extension of 60 days (up to and including July 1, 2024) to file a response and alerted the state court he would be filing a state habeas petition containing *Brady* claims prior to filing his response. Mot. for Ext. of Time to File Response to Mot. to Set Execution Date, *State v. Collings*, No. SC92720. The court granted Collings's request, and Collings timely filed his petition on June 27, 2024. Order, *State v. Collings*, No. SC92720 (Apr. 29, 2024); App. 4a. Collings responded to the State's motion to set an execution date on July 1, 2024. App. Christopher Collings's Resp. in Opp. to State's Mot. to Set an Execution Date, *State v. Collings*, No. SC92720

[3] The State makes this false statement in both its introduction to the Questions Presented and in its second question presented, which requests this Court to deny review "given that Collings only sought review after Missouri scheduled his execution date[.]" BIO at 2.

[4] Collings's petition erroneously identified this date as April 3, 2024, instead of April 2, 2024.

(Apr. 29, 2024). On August 13, 2024, the court issued its order setting the execution date. Order, *State v. Collings*, No. SC92720 (Aug. 13, 2024). Thus, the State's assertion that Collings filed his petition after the court set the execution date is untrue.[5]

Timely seeking state habeas relief is not a manipulation of the judicial process. On the other hand, withholding crucial impeachment information threatening the case against Collings certainly is. So is misstating the procedural history to manufacture a purported delay. Any delay in the resolution of the claims arising from the State's non-disclosure of the impeachment evidence lies squarely with the State.

C. The State's suppression of the impeachment evidence of its principal witness prejudiced Collings.

The State's argument suggesting that the withheld impeachment evidence was not material is wholly unpersuasive. The State does not address at all Collings's prejudice showing made in the court below.

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[5] In another part of its pleading, the State appears to acknowledge that Collings filed his petition on June 27, 2024, which of course was before the Missouri Supreme Court set Collings's execution date. BIO at 12. Thus, the assertions to the contrary in the Questions Presented could have been a mistake. However, in its Questions Presented and arguments, the State relies on *Bucklew v. Precythe*, 587 U.S. 119, 125-26 (2019), in which the challenge being reviewed in this Court was filed after the Missouri Supreme Court set an execution date and 12 days before the scheduled execution. Given the State's reliance on *Bucklew*, there is reason to question whether the State's assertion that Collings filed his state habeas petition "after the Missouri Supreme Court had scheduled his execution date[.]" BIO at 2, was an inadvertent mistake. In any event, unlike the *Bucklew* petition filed 12 days before the scheduled execution, Collings's petition was filed before the Missouri Supreme Court even set an execution date and 160 days before the later-selected execution date of December 3, 2024.

Instead, the State relies only on the federal district court's alternative finding that Collings could not prove prejudice because the arrests occurred decades before Clark's involvement in the underlying criminal case. But the decision on review in this Court is the state-court decision, not the federal district court's ruling. The federal district court's ruling has no bearing on the merits of the state-court decision denying the *Brady* claims.

Moreover, the district court did not even consider Collings's *Brady* claim regarding sentencing—only the state court considered that claim. *Contrast* Doc. 8, *Collings v. Griffith*, No. 18-CV-08000-MDH (W.D. Mo.) *with* App. 4. As for the *Brady* claim the district court did address, the court applied an incorrect prejudice standard; it applied a higher prejudice standard than this Court applies to *Brady* claims. *Contrast United States v. Bagley*, 473 U.S. 667, 682 (1985) (equating the *Brady* materiality standard with the reasonable probability standard of *Strickland v. Washington*, 466 U.S. 668 (1984)) *with Collings v. Griffith*, No. 18-CV-08000-MDH, 2022 WL 4677562, at *8 (W.D.Mo. Sep. 30, 2022) (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) (emphasis added)). Thus, even if this Court were to somehow substitute the district court decision for the state-court decision, the district court opinion is not a reliable indicator of the merits of Collings's state-court claims.

There is no question that, especially due to the lack of physical evidence implicating Collings, Clark's testimony was central to its case against Collings.

Given the juxtaposition of the importance of Clark's testimony against 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. The State's suppression of the Clark's impeachment information prejudiced Collings.

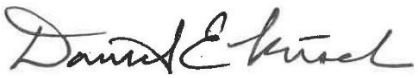
D. The State's response recognizes an important similarity between this case and this Court's pending case in *Glossip*.

The State makes no attempt to distinguish *Glossip v. Oklahoma*, 144 S. Ct. 691 (2024), from this case. In fact, the State's framing of a question presented highlights even another similarity between this case and *Glossip*. According to the State, one of the questions before this Court is whether the Missouri Supreme Court's decision applied Missouri's procedural default rule as an adequate and independent state law ground for the denial of Collings's *Brady* claims. BIO at 2. *Glossip* presents a similar question: whether the Oklahoma Court of Criminal Appeals' decision holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment denying Glossip's *Brady* claims (and other claims). *Glossip*, 144 S. Ct. at 692. This similarity provides additional reason for this Court to grant review or 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*.

Respectfully submitted,



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