

No. 25-6885

IN THE
Supreme Court of the United States

JEFFREY DALE BUSBY,
Petitioner,

v.

STATE OF MISSISSIPPI,
Respondent.

**On Petition for Writ of Certiorari
to the Supreme Court of Mississippi**

PETITIONER'S REPLY BRIEF

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June 2, 2026

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REPLY BRIEF

Mississippi forthrightly concedes that the decision below conflicts with *Smith v. Arizona*, 602 U.S. 779 (2024). Resp. 5–6. The State thus asks the Court to summarily vacate the decision and remand for further proceedings, including to address “whether any out-of-court statements admitted at petitioner’s trial are testimonial and whether any error in admitting them was harmless.” *Id.* at 6.

For the reasons the State explains, the Court should *at a minimum* summarily vacate the decision below. The better course, however, is summary reversal. While the State notes that vacatur would suffice to “eliminate any conflict between the decision below and decisions of other lower courts,” *id.* at 6, 8–9, a conflict would remain among other appellate courts.

In particular, the Georgia Supreme Court has done exactly what the Mississippi court did here—reaffirm its pre-*Smith* precedent and thus allow the prosecution to “ask[] a second expert” about his supposedly “independent, expert opinion regarding the facts contained” in a lab report written by a different, non-testifying expert. See *Johns v. State*, 919 S.E. 2d 588, 594 (Ga. 2025) (citation omitted), *cert. denied*, No. 25-689 (Apr. 20, 2026). The Minnesota Court of Appeals and the Texas Court of Appeals, too, have allowed surrogate analysts to testify about results they had no role in producing and about which they lacked personal knowledge. See *Gourley v. State*, 710 S.W.3d 368, 378 (Tex. App. 2025); *State v. Shea*, No. A23-1523, 2024 WL 4115377, at *5 (Minn. Ct. App. Sep. 9, 2024).

Reversal would not, of course, foreclose the Mississippi high court on remand from reaching the outstanding issues the State identifies, including harmlessness. See Pet. 13–14.

CONCLUSION

The Court should grant the petition, summarily reverse the decision below, and remand for further proceedings.

Respectfully submitted,

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