

No. 25-7431

IN THE
Supreme Court of the United States

IN RE TONY VON CARRUTHERS,

Petitioner

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

EXECUTION SCHEDULED FOR MAY 21, 2026, AT 10:00 AM.

REPLY TO RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS

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REPLY BRIEF IN SUPPORT OF ORIGINAL PETITION FOR
WRIT OF HABEAS CORPUS

The State’s brief is long on belittling critiques, but short on accuracy with respect to both the law and the facts.

Respondent impugns Carruthers for filing his petition the day before his scheduled execution, but Carruthers filed it within a couple of hours of the Sixth Circuit’s order dismissing his application for leave to file a second or successive petition pursuant to 28 U.S.C. § 2244(b)(2). Inasmuch as this Court’s rules require a showing “that adequate relief cannot be obtained in any other form or from any other court,” Carruthers could not properly have filed his petition any sooner. In similar vein, Respondent asserts that the petition is “a not-even-veiled attempt” to work-around the prohibition on certiorari review of a circuit court’s § 2244(c) ruling—but Carruthers followed the precise procedure this Court acknowledged was appropriate in *Felker v. Turpin*, 518 U.S. 651 (1996), where this Court found that the AEDPA did not unconstitutionally restrict the Great Writ by precluding petitions for certiorari in these circumstances because the Court retained original jurisdiction to review claims in the appropriate case. *Id.* at 658-662. Contrary to the State’s contention, *Felker* did not hold that Section 2244(b)(2)’s limitations on second or successive habeas petition “apply too all habeas corpus petitions ..., including those filed under the Court’s original habeas jurisdiction. BIO at 12 (citing *Felker*, 518 U.S. at 662-63). To the contrary, this Court did not decide the issue, noting solely that “[w]hether or not we

are bound by these restrictions, they certainly inform our consideration of original habeas petitions.” *Felker*, 518 U.S. at 663.

Without actually engaging in the post-trial evidence that undermines the State’s weak case, Respondent asserts both that “there is absolutely no basis to conclude ... that Carruthers is actually innocent based on the[] new [Shaw] records,” and that “he simply cannot ignore that the trial testimony proved ‘a strong case against [him.]” BIO at 14. But the Petition methodically lays out both the original weakness of the State’s case and how evidence developed since the trial calls that proof into question. The State’s case was *never* strong, but it has, since trial, unraveled. Moreover, the Shaw documents cannot be viewed in isolation. As this Court explained in *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), the materiality of suppressed evidence must be “considered collectively, not item by item.” Likewise, § 2244(b)(2)(B)(ii) requires the court to view “the facts underlying the claim ... in light of the evidence as a whole....”

Respondent criticizes Carruthers for not saying anything about Nakieta Shaw’s testimony—but she did not testify that she “saw Carruthers and James march two of the kidnapped victims out of her home” that night as Respondent claims. BIO at 14-15. Although Nakieta Shaw testified about seeing two of the victims and the defendants in her home that night, she did not testify to anything alarming about what she witnessed and testified that her statement to police that she saw Marcellos Anderson and Tucker leaving her house with their hands tied was not true. Doc. 55-8, PageID#6015. When directly asked by the prosecutor, she said that she never saw

anyone tied up in her house. R.55-8 PageID#6017. On cross by Montgomery’s lawyer, she testified that she was not afraid of her cousin James Montgomery and that she was unhappy that Marcellos Anderson was in her house because he was in the drug business and “always was in and out of trouble,” and she “didn’t want [her] cousin getting into any trouble” because of Marcellos Anderson. R. 55-8, PageID#6024-25.

Respondent also contends that Carruthers “fails to show that he has been deprived of an adequate remedy to pursue relief.” BIO at 15. That is not the standard. In *In re Davis*, 557 U.S. 952 (2009), like here, the habeas petition filed an original petition in this Court after the Eleventh Circuit Court of Appeals had denied his application for leave to file a successive petition. *See In re Davis*, 565 F.3d 810 (11th Cir. 2009). This Court did not criticize the petitioner for trying to bypass the constraints of 28 U.S.C. § 2244(b)(2). To the contrary, based on the cumulative evidence of innocence submitted, the Court transferred the case to the district court “for hearing and determination.” *Davis*, 557 U.S. at 952. Moreover, Respondent’s contention that Carruthers previously had the opportunity to “fully litigate[] his *Brady*, *Napue*, and *Herrera* claim in his initial petition,” BIO at 15, is simply not true. The district court deemed many of the claims Carruthers attempted to raise defaulted and did not consider them. *See, e.g.*, R. 195, PageID#20196-97. And, it rejected the actual innocence claim both as procedurally defaulted and non-cognizable—hardly a merits ruling.

Carruthers has presented a compelling case that he is innocent of the capital charges for which he was sentenced to death and that accordingly his imminent

execution tomorrow morning would be a constitutional abomination. The original petition is properly before the Court and Carruthers humbly submits that the Court should act by staying his execution and transferring his case to the district court “for hearing and determination” before it is too late.

Respectfully submitted,

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