Nos. 22A709, 22-6713
Capital Case

IN THE SUPREME COURT OF THE UNITED STATES

LEONARD TAYLOR,

Petitioner,

v.

RICHARD ADAMS, Warden,

Respondent.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Missouri and Response Opposing Motion to Stay Execution

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Capital Case

Questions Presented

In a case where a capital offender waited until four days before his scheduled execution to bring his claims before the Missouri Supreme Court:

1. In *Herrera v. Collins,* this Court held that "[C]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." 506 U.S. 390, 400 (1993). Should this Court reconsider that holding by reviewing the Missouri Supreme Court's adjudication of Taylor's claim of innocence that was brought and denied under state-law standards?
2. Does the Constitution prohibit the execution of a murderer whose conviction is supported by a "mountain of evidence" where the Missouri Supreme Court considered and rejected his claim that he was actually innocent?
3. Does the Constitution require the Missouri Supreme Court to grant an eleventh-hour evidentiary hearing or some other review where an offender fails to raise a colorable claim of innocence?

Introduction

A St. Louis County jury convicted Leonard Taylor of four counts of first-degree murder and four counts of armed criminal action for shooting his girlfriend, Angela Rowe, and her three children to death. *Taylor v. State,* 382 S.W.3d 78, 79 (Mo. 2012) ("*Taylor II").* "The State presented overwhelming evidence of [Taylor's] guilt at trial," and the Missouri Supreme Court found that Taylor's post-conviction challenges concerned only "pebbles in a mountain of evidence." *Id*. at 81. Taylor's claims of innocence present nothing new and nothing that could raise doubts about the jury's verdict. The Missouri Supreme Court's decision below rests on state-law grounds and presents nothing for this Court's review. The Court should deny the petition and the motion for stay.

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Statement of the Case

Taylor killed Angela Rowe and her children with a .357 or .38 caliber revolver. *State v. Taylor*, 298 S.W.3d 482, 489 (Mo. 2009) ("*Taylor I*"). He shot Rowe twice in her left arm, once in the chest, and once in the head. *Id.* Taylor shot both of Rowe's oldest children—Alexus (ten years old) and Acqreya (six years old)—twice in the head, and he shot her five-year-old child, Tyrese, once in the head. *Id.*

The evidence at trial indicated that the murder occurred on the night of November 23, 2004, or the early morning hours of November 24, 2004, before Taylor left St. Louis on November 26. *Taylor II,* 382 S.W.3d at 81. Rowe was known to be a good employee, and she called in when she missed work on November 21. *Id.* But she missed all her shifts starting November 26 without calling her employer. *Id.* Rowe's children did not return to school on November 29, the Monday following the Thanksgiving break. *Id.*

When the police entered Rowe's home on December 3, all of the doors and windows were locked, there was no sign of forced entry, and the mailbox was full of mail. *Id.* Newspapers, starting with November 26, were piled in Rowe's yard. *Id.* The police found Taylor's fingerprints on a can of Glade air freshener in Rowe's kitchen. *Id.* They recovered ten bullets from the home, Rowe, and her children. *Id.* All of the bullets were fired from the same .357 or .38 caliber revolver. *Id.*

Taylor confessed to his brother that he killed Rowe and her children. *Id.* Taylor called his brother from Rowe's home and told him, "I killed Angela" and that he had "shot her two or three times." *Taylor I*, 298 S.W.3d at 489. Taylor also told his brother, "I'm going to kill the kids too" or "I killed the kids." *Id.* Cell phone records showed that Taylor called his brother at 11:24 p.m. on November 23, and again at 12:05 a.m. on November 24. *Id.* at 489–90. Telephone records also showed that Taylor called his brother twice from Rowe's landline on the afternoon of November 24. *Id.*

On November 24 or 25, Taylor told his brother that he "killed Angie and the kids." *Id.* at 490. On November 25, Taylor told his brother that he was staying in the house with the bodies because he was waiting for a letter from his wife in California. *Id.* Taylor's brother asked "how you there with them people? They dead." *Id.* And Taylor told him that he had "turned off the heat and turned on the air conditioning" to keep the bodies cool. *Id.* Telephone records showed that Taylor called his brother four times from his cell phone on November 25 and once from Rowe's landline. *Id.*

Evidence from Rowe's home corroborated Taylor's calls to his brother. When the police entered Rowe's home on December 3, they found the thermostat was on its lowest setting and the air conditioner was on. *Taylor II,* 382 S.W.3d at 82. It was "noticeably cool inside the home, unusual for December in Missouri." *Id.* The police also found an opened, unsigned letter in

the home dated November 22 and postmarked from California. *Id.* The letter was apparently an attempt by Taylor's wife to tell Rowe about Taylor's infidelity. It read: "Is your man faithful??? Eventually it all comes out. Enjoy it now. Because he's not yours." *Id.*

In a taped interview with police on December 8, Taylor's brother said that Taylor called him on November 24 and asked to borrow money so that Taylor could get away after killing the victim and her children. *Id.* at 81. On November 26, Taylor went to his wife's sister's house in St. Louis to get a ride to the airport. *Id.* at 82. Taylor's sister-in-law saw Taylor drop a long-barreled revolver into a sewer before she dropped him off at the airport. *Id.* Once at the airport, Taylor boarded a flight to Phoenix, then California, traveling under a false name. *Id.*

Taylor left his brother's Chevrolet Blazer at his sister-in-law's house. *Id.* Once in California, Taylor told his sister-in-law to hide the Blazer in the garage, and later Taylor's brother came to pick the car up. *Id.* When they searched the Blazer, police found a partial box of .38 caliber ammunition. *Id.*

Taylor was arrested while trying to leave another girlfriend's house in Kentucky. *Id.* Taylor tried to sneak past police by hiding on the floor board of a car. *Id.* When arrested, Taylor used false identification and gave police a false name. *Id.* Police found additional identification with yet another false name and pamphlets about creating a new identity. *Id.* The nose piece on sunglasses

found in Taylor's suitcase tested peremptorily positive for blood and yielded a partial DNA profile that was consistent with Rowe's DNA. *Id*.

Reasons for Denying Certiorari

I. This Court does not have jurisdiction because the Missouri Supreme Court's decision below rests on state-law grounds.

Taylor's petition and request for a stay fail to properly invoke this Court's jurisdiction because the record below demonstrates that the Missouri Supreme Court's decision is necessarily and inextricably bound up with questions of state law and state court procedure,

This Court should deny Taylor's petition under the "well-established principle of federalism" that state-court decisions resting on state law principles are "immune from review in the federal courts." *Wainwright v. Sykes,* 433 U.S. 72, 81 (1977). This rule applies "whether the state law ground is substantive or procedural." *Coleman v. Thompson,* 501 U.S. 722, 729 (1991) (citing *Fox Film Corp. v. Muller,* 296 U.S. 207, 210 (1935)).

A. Taylor's actual innocence claim fails to present a federal issue for review.

Taylor claims that, even though his trial was free of constitutional error, his conviction should be set aside because he claims to be innocent of the underlying offenses. But claims of innocence do not state a basis for federal habeas relief absent an independent constitutional violation. *Herrera,* 506 U.S. at 417; *see also Dansby v. Hobbs,* 766 F.3d 809, 816 (8th Cir. 2014); *Burton v.*

Dormire, 295 F.3d 839, 848 (8th Cir. 2002); *Meadows v. Delo,* 99 F.3d 280, 283 (8th Cir. 1996).

The Missouri Supreme Court has held that Missouri's statutes allow offenders under a death sentence to raise a freestanding claim of innocence. *State ex rel. Barton v. Stange*, 597 S.W.3d 661, 663 (Mo. 2020); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 546–549 (Mo. 2003). Federal courts may only grant habeas relief to state prisoners if their custody violates "the Constitution or laws or treaties of the United States." 28 U.SC. § 2254(a). "Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." *Herrera,* 506 U.S. at 400; *Burton,* 295 F.3d at 848; *Meadows,* 99 F.3d at 283.

Given the panoply of constitutional rights that apply in criminal trials, the jury's verdict in Taylor's case is the most reliable determination of his guilt, and the Constitution provides no basis for this Court to supplant the jury's verdict based on Taylor's last-minute allegations of innocence. *Herrera,* 506 U.S. at 401. As this Court's cases teach:

> "Federal courts are not forums in which to relitigate state trials." *Barefoot v. Estelle*, 463 U.S. 880, 887, 103 S. Ct. 3383, 3391, 77 L.Ed.2d 1090 (1983). The guilt or innocence determination in state criminal trials is "a decisive and portentous event." *Wainwright v. Sykes*, 433 U.S. 72, 90, 97 S. Ct. 2497, 2508, 53 L.Ed.2d 594 (1977). "Society's resources have been concentrated at that time and place in order to decide, within the limits of human fallibility, the

> question of guilt or innocence of one of its citizens." *Ibid.* Few rulings would be more disruptive of our federal system than to provide for federal habeas review of freestanding claims of actual innocence.

Id.

While Missouri courts can hear capital offenders' claims of innocence, that review presents no federal issue. The Court should deny certiorari.

B. This case does not present a reason to reconsider *Herrera* because Missouri *does* allow prisoners to present claims of innocence, but Taylor is not innocent.

Taylor asks this Court to reconsider whether and how prisoners can raise a freestanding innocence claim in federal court, but those questions are not presented here because Missouri allows several avenues for prisoners to pursue claims of innocence. In *Herrera,* this Court reserved the question of whether "a truly persuasive demonstration of 'actual innocence' made after trial would . . . warrant federal habeas relief *if there were no state avenue to process such a claim*." 506 U.S. at 417 (emphasis added). But that question is not presented here because Missouri allowed ample review for Taylor's claim of innocence.

First, Taylor presented his claim of innocence to the Missouri Supreme Court, and the court denied his claim.

Second, Taylor petitioned the Governor of Missouri for clemency. The clemency process has a central, traditional role in reviewing claims of

innocence. *Id.* at 411–412. The governor has broad clemency powers and exercises them as a matter of grace "upon such conditions and with such restrictions and limitations as he may think proper." *State ex rel. Lute v. Missouri Bd. of Prob. and Parole,* 218 S.W.3d 431, 435 (Mo. 2007). After reviewing Taylor's petition for clemency, Missouri's Governor, Michael Parson, issued the following statement:

> "Leonard Taylor brutally murdered a mother and her three children. The evidence shows Taylor committed these atrocities and a jury found him guilty. Courts have consistently upheld Taylor's convictions and sentences under the facts and the Missouri and United States Constitutions," Governor Parson said. "Despite his self-serving claim of innocence, the facts of his guilt in this gruesome quadruple homicide remain. The State of Missouri will carry out Taylor's sentences according to the Court's order and deliver justice for the four innocent lives he stole."
>
> Taylor murdered his girlfriend, Angela Rowe, and her three children—Alexus (10), AcQreya (6), and Tyrese (5) Conley—in their home just before Thanksgiving in 2004. Each suffered execution-style wounds to the head and multiple other gunshot wounds. Taylor called his brother about the murders specifically describing his current and planned acts, which later matched evidence at the scene. His brother's girlfriend also heard and attested to the content of these calls.
>
> As Taylor fled to California to see his wife, a witness saw him discard the possible murder weapon. Bullets matching the caliber of the murder weapon were both found at the scene and discovered in Taylor's car. Blood was found on Taylor's sunglasses, and the DNA profile was consistent with Rowe's DNA. After a nationwide manhunt, officers found Taylor hiding on the floorboards of a car while leaving another girlfriend's home in Kentucky. Taylor has two prior forcible rape convictions, underscoring a history of violent acts against women.

Press Release, *State to Carry Out Sentence of Leonard Taylor*, Missouri Governor, Feb. 6, 2023, https://governor.mo.gov/press-releases/archive/state-carry-out-sentence-leonard-taylor.

Third, Missouri allows for prosecutors to seek review of a conviction if "he or she has information that the convicted person may be innocent or may have been erroneously convicted." Mo. Rev. Stat. § 547.031 (2021). Taylor submitted his claims to the St. Louis County Prosecutor, who found that "the facts are not there to support a credible case of innocence." Jim Salter, *No new hearing on condemned Missouri's man's innocence claim*, Associated Press, Jan. 31, 2023, *available at* https://apnews.com/article/missouri-state-government-california-st-louis-crime-f527565eb092ff8f1df97db3f216c37c.

Given the results of the state-court review, Taylor's claim before this Court is simply whether this Court should provide him an additional forum to relitigate his meritless claims of innocence that have been repeatedly considered and rejected. That question does not invoke this Court's jurisdiction. *Herrera,* 506 U.S. at 401.

C. This Court should decline to issue a writ of certiorari to respect our system of dual sovereignty.

Even presuming the Missouri Supreme Court's order below can be read to pass on a federal question, this Court should not grant certiorari review of state post-conviction claims because this Court has found federal habeas proceedings provide a more appropriate avenue to consider federal constitutional claims. *Lawrence v. Florida,* 549 U.S. 327, 328 (2007), *Kyles v. Whitley,* 498 U.S. 931, 932 (1990) (Stevens, J., concurring in the denial of certiorari).

"To respect our system of dual sovereignty," this Court and Congress have "narrowly circumscribed" federal habeas review of state convictions. *Shinn v. Ramirez,* 142 S. Ct. 1718, 1730 (2022). The States are primarily responsible for enforcing criminal law and for "adjudicating constitutional challenges to state convictions." *Id.* at 1730–31 (quotations and citations omitted). Federal intervention intrudes on state sovereignty, imposes significant costs on state criminal justice systems, and "inflict[s] a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Id.* at 1731 (quotations and citations omitted).

To avoid the harms of unnecessary federal intrusion, "Congress and federal habeas courts have set out strict rules" requiring prisoners to present

their claims in state court and requiring deference to state-court decisions on constitutional claims. *Id.* at 1731–32; 28 U.S.C. § 2254(d), (e). Taylor petitioned for federal habeas review, his claims were denied, and that denial was affirmed by the United States Court of Appeals for the Eighth Circuit and this Court. There is no basis for this Court to afford Taylor successive federal habeas review by granting certiorari here.

Taylor's conviction and sentence have been exhaustively reviewed and affirmed in state and federal courts. And his claims of innocence have been considered and rejected by the Missouri Supreme Court. A grant of certiorari now would allow Taylor an end-run around the rules that Congress and federal courts have crafted to maintain our federalist system of government. To respect "Our Federalism," "finality, comity, and the orderly administration of justice," this Court should enforce the limits on federal review of state convictions and deny Taylor's petition. *Younger v. Harris,* 401 U.S. 37, 44 (1971) (first quote); *Shinn,* 142 S. Ct. at 1733 (quoting *Dretke v. Haley,* 541 U.S. 386, 388 (2004)) (second quote).

II. Taylor fails to state a claim that he is innocent in the shadow of the "mountain of evidence" that he is guilty.

Whether or not Taylor's claims of innocence present a federal issue, that issue does not warrant this Court's review because Taylor is not innocent. In the Court below, Taylor failed to present new evidence that could prove his

innocence, and instead he simply attempted to relitigate the jury's verdict at trial. Taylor's only allegations of new evidence were: (1) an affidavit from Dr. Jane Turner claiming that she may have an opinion in the future that conflicts with expert testimony at trial, Pet. 18; Mo. Sup. Ct. Pet. at 21, 43;[1] (2) a preliminary report from James Trainum, who Taylor alleges would comment on the credibility of his brother's trial testimony, Pet. at 16; Mo. Sup. Ct. Pet. at 20, 33; and (3) statements from his daughter, step daughter, and their mother, which are facially incredible and cumulative of evidence presented at trial, Pet. at 13–14; Mo. Sup. Ct. Pet. at 16, 43. As below, Taylor's claims here raise no doubts about his guilt and do not credibly challenge the evidence presented at trial.

A. Legal Standards for Actual Innocence

Under this Court's precedent and Missouri law, gateway claims of actual innocence require newly discovered evidence of actual innocence that show it is more likely than not that no reasonable juror would vote to convict. *Schlup v. Delo,* 513 U.S. 298, 327 (1995); *Barton*, 597 S.W.3d at 665; *see also Amrine*, 102 S.W.3d at 546 (citing *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. 2000)). This Court has held that gateway claims of innocence must be supported by

[1] Respondent cites to Taylor's petition in this Court as "Pet." and his petition filed below as "Mo. Sup. Ct. Pet." Because Taylor did not file an appendix and cited to the exhibits filed in the court below, Respondent will do the same.

evidence that is both new and reliable. *Schlup,* 513 U.S. at 324 (1995). Missouri courts likewise require newly discovered evidence to support claims of innocence and have adopted a due diligence requirement. *State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 88 (Mo. 2015) (adopting the master's finding that the due diligence requirement applies to new evidence in actual innocence); *Barton*, 597 S.W.3d at 665 (finding evidence that was available before trial is not "new evidence"); *State ex rel. Nixon v. Sheffield*, 272 S.W.3d 277, 284–85 (Mo. App. 2008) (quoting *Amrine v. Bowersox*, 238 F.3d 1023, 1029 (8th Cir. 2001)).

Under Missouri law, a freestanding claim of actual innocence requires production of newly discovered evidence that shows by *clear and convincing* evidence that the petitioner is actually innocent of the offense. *Barton*, 597 S.W.3d at 665; *Amrine*, 102 S.W.3d at 548. A claim that is insufficient to meet the gateway innocence standard is necessarily insufficient to meet the higher freestanding innocence standard. *Barton*, 597 S.W.3d. at 665.

B. Dr. Turner's affidavit is not new reliable evidence and does not support Taylor's claim of innocence.

Taylor presents an affidavit from a forensic pathologist, Dr. Turner, dated January 25, 2022. Pet. Ex. 21. Dr. Turner asks for time to perform a full review of the autopsy report, photographs, and investigative materials because there is allegedly a significant possibility this would discredit the testimony of

the pathologist who testified at trial. *Id.* Dr. Turner's affidavit suggests that she has not reviewed the autopsy report, photographs, or investigative materials, but has made a preliminary opinion based on a pre-trial statement of Joseph Lebb, an investigator for the medical examiner's office. Lebb reported that, when he examined the victims' bodies at the crime scene, he found rigor mortis in two of the four victims. Resp. Ex. B at 19–20. But Lebb had never been trained in how to identify rigor mortis and had learned to do it "by just watching somebody else." *Id.* at 28–29. Dr. Phillip Burch, the pathologist who performed the autopsies, found that rigor mortis had already completed in all four victims' bodies and that the bodies were in the early stages of decomposition when he performed the autopsies. Resp. Ex. A at 20; Resp. Ex. B at 1.

At trial, Dr. Burch testified that Rowe and her children could have been killed as much as two or three weeks before their bodies were found. Tr. 1196. Taylor claims that this testimony "drastically changed" from Dr. Burch's pretrial opinion that the time of death was "two to three days before the bodies were found." But Taylor is wrong. In his pretrial deposition, Dr. Burch testified that the time of death could have been up to a week and a couple of days before the bodies were found on December 3, and that the time of death was probably not before November 23. Resp. Ex. A at 24–27. Dr. Burch's deposition testimony was therefore consistent with a time of death on November 23, 24,

or 25. Resp. Ex. A at 24–27; Tr. 1219. At trial, Dr. Burch explained that he had further considered the degree to which the air-conditioned winter temperatures would slow decomposition, and concluded that the window for the time of death was even broader than the range he gave in his deposition testimony. Resp. Ex. E, Tr. 1220–23. The original testimony at the deposition placed the window when death could have occurred as going back to November 23.

Taylor hopes to present some future opinion of Dr. Turner, who he speculates will conclude that Dr. Burch's trial testimony about the time of death was wrong. The Missouri Supreme Court rejected a similar claim in *Barton* 597 S.W.3d at 661. In *Barton*, the Missouri Supreme Court rejected a claim of innocence based on new expert testimony. The Missouri Supreme Court found that expert testimony from a blood-spatter expert "might have been useful to counter the testimony of the State's expert," but "simply provide[d] competing expert testimony" and "would not require the jury to find [the defendant] was actually innocent." *Id*. The same would be true here if Taylor had presented any expert testimony from Dr. Turner.

The Missouri Court of Appeals rejected another similar claim in *In re McKim v. Cassady*, 457 S.W.3d 831 (Mo. App. 2015). In *McKim*, the court of appeals found that new expert testimony about the cause of the victim's death could not show gateway innocence. *Id*. at 843–52. The court of appeals was "not

persuaded that competing expert opinions . . . would have persuaded the jury to accept [the defendant's] alibi defense." *Id.* As in *McKim* and *Barton,* Taylor's new expert testimony, *if* it materializes, and *if* it is favorable to him, would *at best* support his alibi defense. That testimony would be, *at best,* another "pebble" against the "mountain of evidence" that proves Taylor is guilty. *Taylor II,* 382 S.W.3d at 81.

In addition, Taylor's claims must be rejected if they are based only on expert testimony that would have been available at trial. *Schlup,* 513 U.S. at 324, *Clemons*, 475 S.W.3d at 88; *Sheffield*, 272 S.W.3d at 284–85. Even if Taylor secures a report based on facts that were available at trial, he will fail to produce new evidence because, "[e]vidence is 'new' only if it was not available at trial and could not have been discovered earlier through the exercise of due diligence." *Id.* (citations and quotations omitted). Dr. Turner's affidavit cannot help Taylor.

C. James Trainum's preliminary report is not new and would not lead to admissible evidence or support Taylor's claims.

Taylor has also included preliminary reports from James Trainum and Dave Thompson, who Taylor hopes will "call into question the veracity of [Taylor's brother's] statements" at trial. Pet. at 16; Mo. Sup. Ct. Pet. at 43. These preliminary reports contain no new evidence. Taylor's brother testified at trial and was available for cross-examination about his interview with police

or any inconsistencies between his statements and other evidence. Tr. 854–907. The jury found that Taylor's brother's statements to police were credible and his attempts to recant those statements to help Taylor were not credible. Taylor offers no reason he could not have hired a similar expert to provide similar testimony about police interview techniques at his trial. Because the preliminary reports offer nothing new, they cannot support Taylor's claim. *Clemons*, 475 S.W.3d at 88; *Sheffield*, 272 S.W.3d at 284–85.

Further, Trainum and Thompson's preliminary report are based on Taylor's cherry-picked evidence and do not review or account for the considerable evidence corroborating Taylor's phone-call confession to his brother. *See* Pet. Ex. 20 at 7 (list of documents reviewed).

Even if Trainum and Thompson finished reviewing relevant materials, Taylor's allegations about their reports would not yield admissible evidence. Taylor alleges that Trainum and Thompson would testify that his brother's trial testimony was incredible, but, in Missouri, expert witnesses cannot testify about the credibility of another witness. *State v. Churchill,* 90 S.W.3d 536, 538–39 (Mo. 2003). So even if Trainum or Thompson offered a final report to that effect, that evidence would not be admissible and would not support Taylor's claim.

D. The statements of Taylor's daughter, her mother, and her mother's sister are not new or credible, and Taylor admits that they are cumulative of evidence the jury rejected at trial.

Taylor's remaining allegations similarly fail to yield new or credible evidence. Pet. Ex. 1, 2, 3. Taylor offers statements from his daughter, step-daughter, and their mother in which they claim to recall a phone call to Rowe and her children after Taylor left the state of Missouri. As an initial matter, these statements fail to meet the requirements for reliable evidence under Missouri law because they are not signed, sworn, and acknowledged by someone who may administer oaths. *State ex rel. Nixon v. McIntyre,* 234 S.W.3d 474, 477–78 (Mo. App. W.D. 2007); *Garzee v. Sauro,* 639 S.W.2d 830, 831–32 (Mo. 1982). Because Taylor's declarations are not competent evidence under Missouri law, the Missouri Supreme Court could have found that they were not new, reliable evidence on that basis alone, and this Court should not look behind that evidentiary rule. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991).

Besides these technical defects, the declarations are rife with evidence of bias and make clear that these witnesses are only offering their statements in an attempt to stop Taylor's execution because of their personal relationship with him. But even if the statements were not plainly biased, they do not provide new evidence. If, as he claims, Taylor called Rowe and her children while with these witnesses, he could have presented that testimony at trial.

He did not—because it did not happen. As Taylor admits, the testimony of these witnesses would merely have been cumulative of other testimony that Taylor offered in an attempt to dispute the time of the victim's death. Pet. at 43. For example, at trial, Taylor tried to offer evidence that Rowe's sister, Gerjaun, spoke with Rowe on November 27, but her trial testimony makes clear that she was mistaken. *See Taylor I,* 298 S.W.3d at 490– 491. Other neighbors who thought they saw Rowe or her children after they were killed were similarly mistaken. *Id.*

E. Taylor's allegations failed to raise even a colorable claim of innocence and did not warrant a hearing.

Taylor's remaining arguments merely repeat arguments the jury rejected at trial, based on evidence that was presented at trial. There is nothing here that could show under any standard that no reasonable juror would convict. There is nothing here that could not previously have been presented through due diligence at trial or in the many years since trial. And there is nothing here that could explain why Taylor waited until days before his scheduled execution to file his claims. Given that Taylor has failed to present a colorable claim of innocence, the Missouri Supreme Court correctly denied his claims without an evidentiary hearing.

III. The Missouri Supreme Court has rejected Taylor's claims of innocence, and he has no right to more avenues to press his meritless claims.

In his final argument for certiorari, Taylor asserts that this Court should grant certiorari to consider whether the Supreme Court of Missouri violated his due process and equal protection rights by not holding a hearing on his belated claim of innocence and in allegedly failing to review to the proportionality of his death sentence. Pet. at 32–33. Neither of these arguments are supported by this Court's cases or the record below.

First, and as discussed above, Taylor's freestanding claim of actual innocence does not state a basis for relief in this Court. *See Herrera*, 506 U.S. at 417; *see also Dansby*, 766 F.3d at 816; *Burton*, 295 F.3d at 848; *Meadows*, 99 F.3d at 283. Therefore, Taylor's reliance on *Williams v. Kaiser*, 323 U.S. 471, 479 (1945), and *Case v. Nebraska*, 381 U.S. 336, 337 (1965), is misplaced. Indeed, in both *Williams* and *Case*, the question presented to the State courts and the basis for federal review was the alleged denial of a *federal* constitutional right. *See Case*, 381 U.S. at 336–37 (discussing the right to appointment of counsel); *see also Williams*, 323 U.S. at 473–74 (same). Further, both *Williams* and *Case* were decided before the enactment of AEDPA, which curtailed the issuance of the writ to guard "only against 'extreme malfunctions in the state criminal justice systems.'" *Shinn*, 142 S. Ct at 1731 (quoting *Harrington v. Richter*, 433 U.S. 86, 102 (2011)).

Second, Taylor's argument that the Missouri Supreme Court did not engage in proportionality review is wrong for several reasons. At the outset it is important to note that statutorily-authorized-comparative-proportionality review is not a constitutional necessity. Indeed, this Court stated in *Pulley v. Harris*, "Needless to say, that some schemes providing proportionality review are constitutional does not mean that such review is indispensable. We take statutes as we find them. To endorse the statute as a whole is not to say that anything different is unacceptable." *Pulley v. Harris,* 465 U.S. 37, 44–45 (1984). So, Taylor's apparent argument that the Missouri Supreme Court's proportionality review is somehow required by the federal constitution is incorrect. "There is thus no basis in our cases for holding that comparative proportionality review by an appellate court is required in every case in which the death penalty is imposed and the defendant requests it." *Id.* at 50–51.

Taylor's claim that the Supreme Court of Missouri, as a matter of state law, did not engage in proportionality review is similarly flawed. As a matter of simple fact, the Missouri Supreme Court did engage in comparative-proportionality review as required by statute in denying Taylor's direct appeal. *Taylor I*, 298 S.W.3d at 512–13. There, the Supreme Court of Missouri found that: (1) that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; (2) that the evidence at trial supported the jury's finding of five aggravating factors; and (3) that Taylor's

death sentence was neither excessive nor disproportionate when compared to other similar cases. *Id.* Taylor, however, claims that he was entitled to another proportionality review at a time of his choosing because his first proportionality review was fundamentally flawed. Pet. at 36–37. This belief is based on an assertion that: (1) the Missouri Supreme Court did not consider the strength of the evidence presented at trial; and (2) that the Missouri Supreme Court did not conform with the requirements of § 565.035.3. *Id.* Both arguments are incorrect.

At the outset, due process requires only that, if a State engages in comparative-proportionality review, it compares the case at issue with other similar cases. "Proportionality review satisfies due process when a state court compares the defendant's case with other similar cases." *Hall v. Luebbers*, 296 F.3d 685, 700 (8th Cir. 2002). The Missouri Supreme Court engaged in that review in *Taylor I*. 298 S.W.3d at 512–13. There is no federal constitutional requirement that the Court consider the strength of the evidence presented as matter of proportionality. *See Pulley*, 465 U.S. at 44–45. But, even with that being so, the Missouri Supreme Court's opinion considered the strength of the evidence presented. *See Taylor I*, 298 S.W.3d at 512–13. Next, Taylor's argument that the Missouri Supreme Court "recognized" its earlier proportionality review "provided less than the full proportionality review required by statute," Pet. at 37, is unavailing because the Missouri Supreme

Court has found that any apparent change in the Missouri Supreme Court's understanding of its statutory proportionality review obligation was not retroactive. *State v. Nunley*, 341 S.W.3d 611, 614 (Mo. 2011). And the Missouri Supreme Court's proportionality review of Taylor's case occurred in 2009, before the cases cited by Taylor were decided. Pet. at 37. And because these changes were not retroactive, any hypothetical, later-arriving comparator and Taylor are not similarly situated, which is fatal to his equal protection claim.

Third, Taylor's true complaint in raising this due process claim under *Hicks v. Oklahoma*, 447 U.S. 443, 446 (1980), appears to be that the Missouri Supreme Court summarily denied his late-arriving petition for writ of habeas corpus, in which he asserted claims of actual innocence. Pet. at 39. Taylor's argument is that the Missouri Supreme Court, in *Amrine*, announced that its statutory proportionality review obligations allowed it to consider claims of freestanding of actual innocence from capital offenders. *Id.* And, by not delaying his execution to hold a hearing on his dilatory petition for writ of habeas corpus, the Missouri Supreme Court denied him due process in relation to its statutory comparative-proportionality review obligation. *Id.*

This argument is incorrect for many reasons. Federal courts employ a presumption that state courts know and follow the law. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002). Here, this Court should employ that presumption to find that the Missouri Supreme Court understood its own pronouncement in

Amrine, reviewed the evidence presented by Taylor in his late-arriving petition for writ of habeas corpus, and found that same evidence to be lacking as a matter of state law. As discussed above, the review contemplated in *Amrine* is a matter of state law, and this Court may not look behind the finding made by the Missouri Supreme Court on this issue. *Estelle*, 502 U.S. at 67–68. *Amrine* did not announce a hearing requirement, see *Amrine*, 102 S.W.3d at 548–49 (granting relief without a hearing), and this Court cannot require one its place. Taylor fails to demonstrate that Missouri courts have failed to follow state law and his due process claim should be denied.

Reasons for Denying a Stay

A stay of execution is an equitable remedy that is not available as a matter of right. *Hill v. McDonough,* 547 U.S. 573, 584 (2006). A request for a stay must meet the standard required for all other stay applications, including a showing of significant possibility of success on the merits of pending claims. *Id.*; *see also Hilton v. Braunskill,* 481 U.S. 770, 776 (1987). A "preliminary injunction [is] not granted unless the movant, by a clear showing, carries the burden of persuasion[.]" *Id.* (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). This Court has held that it is an abuse of discretion to stay an execution without finding a significant possibility of success on the merits in litigation. *Dunn v. McNabb,* 138 S. Ct. 369, 369 (2017) (mem.).

This Court has held that "a stay of execution is an equitable remedy[,]" and an inmate is not entitled to a stay of execution as "a matter of course." *Hill,* 547 U.S. at 548. This is because "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Id.*; *accord Bucklew*, 139 S. Ct. at 1133–34. This Court must 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." *Nelson v. Campbell,* 541 U.S. 637, 650 (2004)). "[L]ate-breaking changes in position, last-minute claims arising from long-known facts, and other 'attempt[s] at manipulation' can provide a sound basis for denying equitable relief in capital cases." *Ramirez v. Collier,* 142 S. Ct. 1264, 1282 (2022) (quoting *Gomez v. United States Dist. Court for N. Dist. Of Cal.,* 503 U.S. 653, 654 (1992)) (alteration in original). The last-minute nature of an application may be reason enough to deny a stay. *Hill,* 547 U.S. at 584.

Both the State and the victims' family have an important interest in the timely enforcement of Taylor's sentence. *Bucklew*, 139 S. Ct. at 1133–34. Taylor has been litigating his conviction and death sentence for many years in his direct appeal, his rule 29.15 post-conviction proceedings, and his federal habeas proceedings. Both Taylor and the State were permitted adequate time in those proceedings to litigate Taylor's claims. There is nothing here that has any merit, and nothing that could not have been presented years ago. Filing a

78-page habeas petition after hours on the Thursday before a scheduled Tuesday execution, as Taylor did here, is only abusive litigation for the purpose of delay. Any additional delay simply frustrates the interests of justice.

Conclusion

This Court should deny the petition for the writ of certiorari and the motion for stay of execution.

Respectfully submitted,

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