No. 17-729

In the Supreme Court of the United States

JOAN YUKINS, PETITIONER

v.

HATTIE TANNER

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF

Bill Schuette
Michigan Attorney General

Aaron D. Lindstrom
Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
LindstromA@michigan.gov
(517) 373-1124

Raina I. Korbakis
Assistant Attorney General
Criminal Appellate Division

Attorneys for Petitioner

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INTRODUCTION

Tanner's response repeats the same errors the Sixth Circuit made.

First, she fails to follow *Jackson* v. *Virginia*, 443 U.S. 307 (1979), and its progeny. She never asks whether the jury's finding of guilt "was so insupportable as to fall below the threshold of bare rationality," which is "the only question under *Jackson*," *Coleman* v. *Johnson*, 566 U.S. 650, 656 (2012), or even mentions that standard. Nor does she view all the evidence presented at trial in the light most favorable to the prosecution. Quite the opposite, she ignores key pieces of inculpatory evidence: that she admitted being at the bar during the late-night window of time when the murder occurred, that her ownership of the murder weapon was also established by her admission that she had used the knife at her mother's house, and that the murder weapon was found in close proximity to the blood that matched her blood type.

She instead presents the evidence in the light most favorable to herself: she suggests that the lack of physical evidence on her clothing exculpates her without mentioning that the clothing was not examined until *months* after the murder; she thinks the jury had to infer that the blood was not hers, even though it would not match 96% to 98% of other people; she implies that the blood matching hers could have resulted from crime-scene contamination, even though there is no evidence any bystanders bled; and she repeatedly questions Detective Walters's credibility. This is exactly the type of "fine-grained factual parsing" of evidence that is not permitted. *Jackson*, 443 U.S. at 655.

Second, much like the Sixth Circuit, Tanner provides no analysis on the "only question that matters" in a habeas case like this one, *Lockyer* v. *Andrade*, 538 U.S. 63, 71 (2003), namely, whether the Michigan Supreme Court's finding that there was sufficient evidence to convict Tanner was "objectively unreasonable, not merely wrong." *Woods* v. *Donald*, 135 S. Ct. 1372, 1376 (2015). Instead, Tanner sets forth the problems that *she* would have with the evidence if she were a juror and asserts that the evidence was insufficient to support her murder conviction. Again, like the court of appeals, Tanner never determines what arguments could have supported the Michigan Supreme Court's decision and never asks whether it is possible fairminded jurists could view the claims the same way that three state courts and the federal district court did.

Instead of answering what this Court has identified as the only questions that matter, Tanner, like the Sixth Circuit, fails to give deference to either the jury's verdict or the state court's decision. The Sixth Circuit's decision warrants summary reversal.

ARGUMENT

I. Like the Sixth Circuit, Tanner fails to follow the standard of *Jackson* and its progeny for reviewing sufficiency claims.

Deference is due to the jury's verdict under *Jackson*, which held that in considering sufficiency claims, "*all of the evidence* is to be considered in the light most favorable to the prosecution." 443 U.S. at 319. It is the jury's responsibility—not the reviewing court's—to

weigh the evidence, to resolve all conflicts in the testimony, and to determine what conclusions should be drawn from the evidence presented at trial. Pet. 15. Further, the "only question under *Jackson* is whether [the jury's finding] was so insupportable as to fall below the threshold of bare rationality." *Coleman*, 566 U.S. at 656. Remarkably, neither Tanner nor the Sixth Circuit ever asked that question or even *mention* that standard.

The errors don't end there. Rather than considering "*all of the evidence*" as required by *Jackson*, Tanner (like the court of appeals) instead takes a divide-and-conquer approach to the evidence, listing "three pieces of inculpatory evidence," then detailing the problems that she has with that evidence to minimize its import. Br. in Opp. 25–29. But the evidence must not be viewed in a vacuum, but in relation to the other evidence. Pet. 28. And the jury reasonably could have bridged the "several gaps" in the evidence that the court of appeals, App. 25a–28a, and Tanner point to.

Start with *all* the evidence about whether the murder weapon was hers. Walters testified that Tanner admitted that the knife was hers in the May interview. 11/16/00 Tr. 262, 263 ("Her response was that was her knife."). But while Tanner attacks Walters's credibility as to that statement, saying she admitted only that it looked like her knife, she disregards the fact that she specifically identified the knife in a photograph by its unique blade tip and explained how she altered it and why she did so. E.g, 11/16/00 Tr. 263 ('[T]he reason she could tell . . . it was her knife was that the end—meaning the blade end of the knife—the point portion was—had been altered in that she

altered it herself."); 11/16/00 Tr. 264 ("She said she used a can opener device, something like that, [and] altered the blade to make to like more of a point."). And Tanner ignores the separate admission she made in the June (unrecorded) interview where Tanner referred to the knife and "[h]er usage of it" at "her mother's residence." 11/16/00 Tr. 266. Given that usage, when Detective Walters asked her, "[W]ould it surprise you if your prints were on that knife," 11/17/00 Tr. 63, Tanner told Walters that she thought she had "handled that knife" about three or four weeks before the murder, 11/16/00 Tr. 266.

Tanner's counsel spent considerable time during the trial making this argument that she had admitted only that it *looked like* her knife, not that she had admitted it *was* her knife. 11/17/00 Tr. 25–37 (12 pages of defense counsel cross-examining Walters about whether his memory conflicted with the interview transcript). But the jury specifically considered and, by convicting her, rejected that argument. *Jackson*, 443 U.S. at 326 (explaining that a federal habeas court "must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution"). A reasonable jury could agree with Detective Walters that by admitting that it looked like her knife, that she had personally altered that knife, and that she had used the knife at her mother's house, she had in fact admitted it *was* her knife. And in any event a reasonable jury could believe the memory of the detective, who had "50 to 60" pages of field notes, 11/17/00 Tr. 59, over the transcript Tanner herself contended was riddled with mistakes,

11/21/00 Tr. 33 (Tanner referring to the transcript and stating the "whole interview is wrong").

Next, consider the evidence about the blood found in the bar area near her knife. Tanner says the blood was found in a "contaminated portion" of the crime scene and that "millions of other people" had that same blood type and PGM subtype. Br. in Opp. 2, 11, 19, 25–26, 28. But the jury was aware of these factors, and there was no evidence—contrary to what the court of appeals speculated, App. 27a–28a, and what Tanner seems to imply—that any of the individuals gathered at the bar bled near the sink that morning. And while "millions" of people out of the entire national population may have the same blood type and PGM subtype as Tanner's, Tanner admits that locally that number would be far less—"hundreds." Br. in Opp. 25.

Finally, consider Tanner's presence at the bar around 1:00 to 1:30 a.m., when the murder occurred between 12:52 and 2:00 a.m. (and when hundreds of local residents were *not* at the bar). Tanner contends that her admission to Detective Walters that she was on the premises is "uncorroborated evidence," Br. in Opp. 27, but that just illustrates her repeated failure to view all the evidence in a light that would uphold the jury verdict. The statement of one witness (Tanner herself) is sufficient—and sufficiency is the question here—to establish, without any corroboration, that she was on the premises. A rational jury may believe an admission against interest. Tanner's response, that this admission "does not even place her in the building," ignores the fact that a jury looking at all the evidence could have inferred that she entered the

building, given that she placed herself in Barney's parking lot during the narrow timeframe of the murder, that she admitted the distinctive murder weapon found in Barney's was hers, and that blood found near the murder weapon matched her blood type and PGM subtype and would not match roughly 96% to 98% of the population.

Tanner claims the State gave an "incomplete description" of Detective Walters's testimony and the evidence in general. Br. in Opp. 15. But it is Tanner who failed to present *all of the evidence in the light most favorable to the prosecution* when summing up the evidence. Br. in Opp. 28–29. There, she fails to refer to: (1) her own admission to being in the small-town parking lot of the bar where the murder occurred, during the very narrow timeframe of the murder; (2) the close proximity between her knife (the murder weapon) and the blood that matched her blood type and PGM subtype; (3) her blood type and PGM subtype *not* matching 96% to 98% of the population; (4) her reference to the deceased as a "bitch" and her admission to being capable of committing this type of murder for the trivial offense of someone "treat[ing] her bad;" and (5) evidence of motive, namely, that she and her friend Cady were smoking crack together earlier and needed more cash to buy more crack (over $1,000 was stolen during the murder).

Tanner ignores other evidence as well. For example, from the first page of her brief she repeatedly states that the clothing she wore on the night of the murder contained no trace evidence linking her to the crime scene. Br. in Opp. 1, 13, 16–17, 19, 24. But she leaves out important evidence on this point too: she

fails to mention that the police did not obtain that clothing until *months* after the murder, which means the clothing could well have been laundered multiple times in the interim. 11/17/00 Tr. 55 ("Q: [The] search warrant was in June of '95," "[s]o we're talking two, three months after the [March] crime had occurred?" A: "Yes."). And the police also had to trust that the items Tanner provided for testing were what she was actually wearing on the night of Watson's murder. 11/17/00 Tr. 55. But the jury reasonably could infer either that Tanner did not provide police with what she was really wearing on the night of the murder or that she had laundered the clothing, given the many changes and inconsistencies in Tanner's stories, her lies about even minor details, Pet. 18–21, and her question about the "bloody clothes" to Detective Walters. 11/16/00 Tr. 277–78.

Tanner also repeats the Sixth Circuit's departure from *Jackson* by questioning the credibility of the State's witnesses, instead of viewing their testimony in the light most favorable to the State—that is, as credible testimony. Like the Sixth Circuit, she alleges problems with Detective Walters's testimony about what she said, Br. in Opp. 7–10, 28, including that there was only a partial transcript of their May 1995 interview and contradictions between Walters's trial testimony and that transcript, Br. in Opp. 7–8, 28, that there was "no recording" of their June 1995 conversation, Br. in Opp. 9, and that Tanner's version of events was "markedly different" than Walters's. Br. in Opp. 10. But the very nature of this he-said-she-said argument highlights that such credibility determinations are for *the jury* to resolve. Pet. 14–15, 23.

Tanner also follows the Sixth Circuit by contending that the prosecution's inability to explain the presence of an unidentified female's blood on the victim means there was insufficient evidence to convict Tanner. But *Jackson* rejects the "theory that the prosecution [has] an affirmative duty to rule out every hypothesis except that of guilt beyond a reasonable doubt." 443 U.S. at 326. And more fundamentally, the Sixth Circuit's focus on the exculpatory evidence, App. 28a–29a, revealed that it was engaging in "precisely the sort of reweighing of facts that is precluded by *Jackson* . . . ." *Cavazos* v. *Smith*, 565 U.S. 1, 8 n.* (2011); Pet. 27. Tellingly, Tanner does not deny that the Sixth Circuit reweighed the evidence.

In fact, she goes further in reweighing this evidence, asserting that this DNA evidence "*proved* that an unknown third party—not Tanner and not Cady—murdered Watson." Br. in Opp. 23 (emphasis added). But this unexplained evidence does not necessarily exonerate Tanner, and the jury was not required to draw that inference in Tanner's favor. Pet. 27. Tanner asserts that it was not the prosecution's theory that there was another accomplice, Br. in Opp. 30–31, but that is beside the point; the jury was instructed that it could convict based on a finding that Tanner either committed the murder or aided someone else, not based on agreeing with the prosecution's theory. The bottom line is that more than one plausible inference could have been drawn from this unexplained evidence, which the jury knew about.

The other unexplained evidence, Br. in Opp. 5–6, 13–14, 18–19, also does not mean there was insufficient evidence to convict. The jury may not have given

that evidence much weight, given that it is not unusual to find footprints inside of a bar or tire tracks and vehicles outside of a bar, and the testimony about the victim finding a knife was brief and partly based on hearsay. 11/17/00 Tr. 80–82.

In the end, properly construing the evidence in the light most favorable to the prosecution means accepting Walters's testimony that Tanner admitted the knife was hers during *both* the May and June interviews, 11/16/00 Tr. 262–66; that she specifically identified the knife in a photograph by its unique blade tip and explained how she altered it and why she did so, 11/16/00 Tr. 262–65; that she said her fingerprints, and possibly Dion Paav's, would be on the knife because they handled it "approximately three or four weeks" before the murder and that she had used it at her mother's house, 11/16/00 Tr. 265–66; that she admitted to going to Barney's with Cady on the night of the murder between 1:00 a.m. and 1:30 a.m., 11/16/00 Tr. 269–70, 273; that she admitted that she and Cady went to several other places that night and to possibly being a "little buzzed," 11/16/00 Tr. 272–74; that she admitted she was capable of committing this type of murder under the right circumstances—such as if "the bitch" (i.e., the victim) had "treated her bad," 11/16/00 Tr. 276–77; and that she told Walters that the murderer would have had blood on them and asked, "what would I have done with the bloody clothes." 11/16/00 Tr. 277–78. And the fact that Detective Walters's credibility played such an important role in this trial is a point that cuts against Tanner, not in her favor, because the jury here reasonably found Walters credible and Tanner not credible.

The sufficiency question is whether, viewing the evidence in a light most favorable to the prosecution, the jury's finding of guilt "was so unsupportable as to fall below the threshold of bare rationality." *Coleman*, 566 U.S. at 656. Properly viewing the evidence in this case, the answer is no. This Court should summarily reverse on the *Jackson* point alone.

II. Like the Sixth Circuit, Tanner fails to apply AEDPA deference to her sufficiency claim.

But this case is not merely about review under *Jackson*; it also involves a second, substantial layer of deference to the state courts that Tanner cannot overcome. One of the fundamental flaws in her brief is her failure to apply the double deference that must be afforded to sufficiency claims under AEDPA on federal habeas review. Tanner mentions the word "deference" once in her brief, Br. in Opp. 2, and makes several passing references to AEDPA. Br. in Opp. 22, 33–34. But, like the court of appeals, she never actually addresses "the only question that matters" under AEDPA, *Lockyer*, 538 at 71: exactly how the Michigan Supreme Court's ruling was unreasonable. While Tanner and the court of appeals obviously thought that Michigan's highest court was wrong to reject her sufficiency claim, that is not enough to undue a state-court murder conviction. *Woods*, 135 S. Ct. 1376 (state-court ruling must be "objectively unreasonable, not merely wrong," and federal judges must "afford state courts due respect by overturning their decisions only when there could be no reasonable dispute they were wrong"); *Harrington* v. *Richter*, 562 U.S. 86, 102 (2011) (federal habeas guards against "extreme malfunctions" in the state criminal justice system).

Under this Court's precedent, the Sixth Circuit and Tanner should have determined what arguments could have supported the state court's decision and then ask whether fairminded jurists could view the claims the same way as only the court of appeals did. *Harrington*, 562 U.S. at 103. Instead, they essentially reviewed the sufficiency claim de novo, while reweighing the evidence, questioning the credibility of the witnesses, and drawing their own inferences along the way. And because they lacked confidence in the jury's verdict, they concluded that the state-court decision finding otherwise was necessarily unreasonable. Pet. 28. But this Court has cautioned that the inevitable consequence of the double deference requirement under AEDPA is that "judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold." *Cavazos*, 565 U.S. at 3. The substantial error of failing to defer to the state-court decision warrants summary reversal.

CONCLUSION

The petition for certiorari should be granted and summarily reversed.

Respectfully submitted,

Bill Schuette
Michigan Attorney General

Aaron D. Lindstrom
Solicitor General
Counsel of Record

Raina I. Korbakis
Assistant Attorney General
Criminal Appellate Division

Attorneys for Petitioner

Dated: FEBRUARY 2018