No. 18-7536

In The Supreme Court Of The United States

JASON REEVES,

Petitioner,

v.

DARREL VANNOY, Warden,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

REPLY BRIEF OF PETITIONER

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REASONS FOR GRANTING THE WRIT

The Questions Presented By Petitioner Are Properly Before This Court And Merit Certiorari Review.

The Respondent erroneously asserts that Petitioner's questions presented are not properly before this Court. Brief in Opposition Filed on Behalf of Darrel Vannoy, Warden (Opposition), p. 1. Respondent posits that Petitioner raised an issue in this Court that varies from the issue presented to the state court below. In fact, as seen throughout Appendix H, Petitioner's Claim VI in his Petition filed in state district court, the *Batson* issue and analysis of what constitutes a *prima facie* case of race discrimination in jury selection that could have been raised by trial counsel has been presented to this Court in this certiorari application was presented and addressed in the pleadings in state court below. Moreover, the traditional rule of this Court is that once a federal claim is properly presented, a party can make any argument in support of that claim and is not limited to the precise arguments they made below. *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 378 (1995).

In his state post-conviction petition, Petitioner presented a strong *prima facie* case of racial discrimination in the jury selection of his trial under the first step in a *Batson*[1] analysis, "showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose," citing *Johnson v. California*, 545 U.S. 162, 168 (2005) (quoting *Batson*, 476 U.S. at 93-94). In contrast, in state court, the Respondent failed to counter any of the *prima facie* evidence of racial discrimination presented for the first time in post-conviction. Appendix I, Respondent's Claim VI in Merits Answer filed in state district court. Instead, the Respondent argued that the *Batson* issue was without merit because the state courts (with a prior undeveloped factual basis) had denied the *Batson* issue on direct review. *Id.*

In post-conviction, Petitioner had presented the readily available, but previously unintroduced factual basis of the racial identity of relevant potential jurors for this now-properly developed *prima facie* case in his *Batson* claim. Appendix H. The Respondent, in state court, failed to concede this new factual

[1] *Batson v. Kentucky*, 476 U.S. 79 (1986).

basis, going to the extent of erroneously arguing to the contrary that the "record offers *no support* for this defendant's belated *Batson* challenge." Appendix I (emphasis added).

Only now in its Opposition, p. 1, does the State briefly concede the racial actuality that struck potential juror Ian Joseph was black, and that accepted, empaneled juror Craig Phillips was white. However, despite conceding this fact that it previously had disputed, the Respondent then introduced new arguments concerning why the *Batson* challenge had been properly denied at trial: surmising that juror questionnaires that had not been filed into the record below, would now provide further basis for an analysis to support a denial of a *Batson* challenge. Opposition, pp. 12, 21. Notably, these juror questionnaires that Respondent cites are precisely the kind of information that can be introduced by the State at the second step of a *Batson* hearing to assist the state district court judge in reaching a reasoned decision. It bears repeating that this Court has noted that the framework of the three-step *Batson* inquiry is designed to encourage direct answers from simple questions, thus avoiding speculation. *Johnson v. California*, 545 U.S. at 172.

Moreover, the Respondent soon returns to its original denial of the newly produced data on race, contradicting its initial concession, by continuing to assert that Petitioner has not provided evidence of the race of individual jurors:

> Moreover, Petitioner presented no new evidence of prosecutorial discriminatory intent—no testimony, no newly discovered material from the prosecutor's file, no juror questionnaires, *no evidence of the race of the individual jurors*; he only made different arguments than trial and appellate counsel had made based on the same record.

Opposition, p.20 (emphasis added).

Respondent further errs in arguing that Petitioner's citation to *Foster v. Chatman*[2] is inapposite to the proposition that previously defeated *Batson* claims may be renewed in post-conviction. Opposition, pp. 19-20. The issue of whether a *prima facie* case had been made in the *Batson* claim directly raised on direct review and the *Batson* claim raised in post-conviction via the ineffective assistance claim is the same: *Foster* holds that despite the denial of a *Batson* claim on direct review, with additional evidence argued in post-conviciton, this Court can review the *Batson* claim anew. It is up to this Court to determine whether

[2] *Foster v. Chatman,* 136 S.Ct. 1737, 1745-1747 (2016).

the quantum of evidence submitted in post-conviction of the *prima facie* first step that could have been raised at trial now merits a remand to the state court to compel the Respondent to present race-neutral reasons for the striking of venire member Ian Joseph.

Respondent chronicles the selection and striking of numerous jurors on the last day of jury selection. Opposition, pp. 7-8. Despite the painstaking detail, however, the bottom-line result remains the same as presented by Petitioner, namely, that Respondent accepted Mr. Craig Philips and its next action was to strike[3] Mr. Ian Joseph. Pet. App. D, 62-64.

On the second question presented, the Respondent argued that Petitioner erred by arguing that the Louisiana Supreme Court had surmised that the State must have had a race-neutral reason for its racially discriminatory jury strike. Opposition, p. 12. Petitioner bases this argument on the language from the Louisiana Supreme Court's 2018 writ denial of Claim VI on writ of review:

> Moreover, [Petitioner's side-by-side comparison of Joseph and Phillips] does not include the *entirety of voir dire*, which this Court considered on direct review. In short, Reeves cites no *evidence* this Court has not *already assessed* to support this *Batson*-related ineffective assistance claim. This claim lacks merit.

State v. Reeves, 254 So. 3d 665, 674 (La. 2018) (emphasis added). By making sweeping references to the "entirety of voir dire" and unspecified "evidence [it] has … already assessed" with no reference to any specific evidence other than the assertion that the Court had already looked at the entire record on direct appeal (which lacked the specific racial identification for side-by-side comparison of unsympathetic and unattractive white juror Phillips and sympathetic and attractive black juror Joseph), the court below must have concluded that there was an unspecified "something else" in the record that would have supported a denial of Claim VI, in addition to its rejection of the specific argument of Petitioner's side-by-side comparison of venire-members Joseph and Phillips.

As to relief, Petitioner requests summary reversal of this matter.

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[3] Petitioner acknowledges that Respondent's racially discriminatory action in jury selection was actually a peremptory strike of venire member Ian Joseph and not a backstrike. Opposition, p. 8.

CONCLUSION

For all the foregoing reasons, petitioner respectfully prays that this Court grant his writ of certiorari and summarily reverse this case for remand to the state court for an evidentiary hearing on the second and third steps of the *Batson* inquiry.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that Petitioner's Reply Brief was served via regular U.S. Mail, on this 3rd of May, 2019 upon Assistant District Attorney Cynthia Killingsworth, of the Calcasieu Parish District Attorney's Office, 901 Lakeshore Drive, Suite 800, Lake Charles, LA 70601. All persons required to be served have been served.

Respectfully submitted

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