

No. 20-5048

IN THE  
SUPREME COURT OF THE UNITED STATES

JOSH BOWMAN, Petitioner

vs.

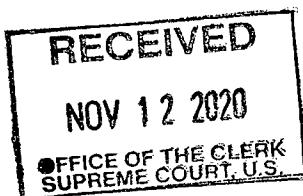
BERT BOYD, WARDEN, Respondent

ON PETITION TO REHEAR DENIAL OF CERTIORARI,  
PURSUANT TO U.S. SUPREME COURT, RULE 44

PETITION TO REHEAR DENIAL OF CERTIORARI

*Josh Bowman*

Josh Bowman  
Petitioner *pro se*  
NECXU-08-00321732  
Northeast Correctional Complex  
5249 Highway 67 West  
Post Office Box 5000  
Mountain City, Tennessee 37683-5000



### QUESTIONS PRESENTED

1. Whether Mr. Bowman's confession should have been suppressed due to threats by police?
2. Whether Mr. Bowman's federal constitutional rights under Batson v. Kentucky, 476 U.S. 79 (1986), were violated by the trial court?

Comes the petitioner, Josh Bowman, pro se, and moves this court to reconsider its denial of petitioner's application for Writ of Certiorari. In support, petitioner submits the following:

Rule 44

Per U.S. Supreme Court Rule 44 this petition is timely filed, and a copy has been forwarded to the TN. Attorney General's Office (Certificate of Service Attached.)

When a Court issues a Full Opinion which details the reasoning behind a denial, an appealing petitioner may address that reasoning in a request for the Court to reconsider. When, as here, the original appeal is a discretionary appeal and the Court declines to hear it, the petitioner must presume the Court has affirmed the earlier Opinion of a lower Court. In crafting a Motion to Rehear, an appellant must therefore address the Opinion of the lower Court.

Petitioner does so here.

Rule of Lenity

Petitioner is a pro se litigant without a recourse to counsel. He is a special needs person with no legal training. Further, access to a prison library has been sporadic, as the institution with custody has been locked down for Covid quarantine.

For these reasons, petitioner invokes the Rule of Lenity, and requests that this court disregard any procedural defects in this brief, reading only the relative merits of his issues.

I. Whether petitioner's confession was induced by threats.

As previously stated, petitioner was threatened by police. At the very least, petitioner made known at the earliest opportunity that he had been threatened by police. The specific threat began, "I ought to do to you what you did to that old man." Threats continued, suggesting petitioner cooperate, "if [petitioner wanted] to see your kids again."

In general, this Court will defer to the judgement of a State Courts determination of a Factual issue. 28U.S.C. 2254 (e) (I); Saranchek v. Sec'y of PA Doc 802, F.3d 579 (3<sup>rd</sup> Cir. 2015). That deference may be overcome by clear and convincing evidence.

In the instant case, the trial court held a suppression hearing on the matter, finding not enough evidence existed to support a Finding petitioner has been threatened, finding also that petitioner did not tell detectives of the threats until his initial recorded interview.

However, two important factors disprove the courts findings: as to the latter, in the initial interview petitioner can be heard saying, "You know I told you about that, where they threatened me." Detectives brushed his concerns aside, saying, "You know that wasn't us." The conversation obviously refers to an earlier conversation, not recorded for the record. However, it contradicts the findings of the court's suppression hearing denial.

As to the former, the suppression court heard from Sgt. Aaron Yarnell and Sgt. Hopkins, who were not actually present at the time of petitioner's arrest. Mr. Yarnell was behind petitioners house; Sgt. Hopkins stated he was "beside the house, and was not present for the takedown."

The State's only witness could not state one way or the other, then, whether petitioner was threatened. Arresting officers Sgt. Henderson and Sgt. Webber were not made available for questioning.

The presumption of correctness is overcome when the state court failed to adjudicate a claim on the merits when “materially incomplete” *Batchelor v. Cain*, 682 F.3d. 400(5<sup>th</sup> Cir. 2012).

Having overcome the presumption of correctness, petitioner must address the legal aspect of the issue. Petitioner is entitled to “a fair hearing and a reliable determination on the issue of volunteers.” *Sims v. Ga.*, 385 U.S., (1967); *Jackson v. Denno*, 378 U.S. 368 (1964).

Petitioner did not have that hearing.

The Exclusionary Rule would then preclude the use of petitioner’s statements at trial. *Mapp v. OH.* 367 U.S. 643 (1961).

Petitioner submits that the findings of the lower courts are in opposition to established U.S. Supreme Court precedent and thus mandate intervention by this court.

II. Whether petitioner’s right to an impartial jury under Batson was violated.

The lower courts have stated and this court has tacitly agreed with an impossibly high standard.

The U.S. District Court held that petitioner had to clearly and convincingly prove African Americans were systematically excluded from his jury pool.

The actual legal standard, *Batson v. KY.*, 476 U.S. 79 (1986), requires only that an appellant show that his jury is not composed of a cross section of his community.

Often, the State, particularly in the South, has used a pretext for excluding African Americans from juries. See *Snyder* 552 U.S. at 482 (2008). In *Miller-El v. Cockrell*, 537 U.S.

(2003), the appellant "marshalled powerful statistical evidence of racial bias in jury selection."

Per the Microsoft Encarta Encyclopedia, Knoxville was 16% African American in 2005. The Court does not have to make inferences here; statistically, the likelihood of an all-white jury pool is less than 1%. "Powerful statistical evidence," indeed.

To require an indigent pro se litigant to find "compelling evidence" of systematic exclusion, above and beyond the actual and blatantly apparent exclusion itself, is to overturn Batson, de facto ending African Americans' right to a jury of their peers.

Relief

For the foregoing reasons, petitioner requests this Court:

\*Reverse petitioner's conviction;

\*Remand petitioner's case to the County Court for such proceedings as the State deem fit;

\*And such other relief as this Court deem appropriate.

Respectfully Submitted;



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Petitioner, In Pro per