No. 20-7687

IN THE SUPREME COURT OF THE UNITED STATES

Ronald Hamilton, Jr.,
Petitioner,

-v-

Texas,
Respondent.

On petition for writ of certiorari from the
Texas Court of Criminal Appeals

Reply Brief of Petitioner Hamilton

Jonathan Landers
917 Franklin; Suite 300
Houston, TX 77002
Jlanders.law@gmail.com
Member, Supreme Court Bar
(713) 685-5000 (work)
(713) 513-5505 (fax)
Counsel of Record

Bryan W.L. Garris
300 MAIN ST STE 300
HOUSTON, TX 77002
bryan@txdefense.net
Member, Supreme Court Bar
(832) 722-8915 (work)
(713) 655-1812 (fax)

ATTORNEYS FOR PETITIONER RONALD HAMILTON, JR.

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ARGUMENT

I. THE RESPONDENT, LIKE THE COURT OF CRIMINAL APPEALS, ERRS BY FAILING TO CONSIDER THE ENTIRETY OF THE RECORD.

The Respondent's argument opposing a grant of certiorari centers around the erroneous idea that the jury heard the "essence" of the evidence presented to the post-conviction court and the unsupportable claim that no one identified the bottle in question as having been handled by the shooter. *See* Br. Opp'n at 2-4, 21, 23-24, 28-30, 32-33, 38. This argument, like the Court of Criminal Appeals opinion, simply fails to consider the entire record, and for that reasons runs afoul of this Court's precedent.[1]

The Respondent omits the pretrial proceeding where the prosecutors were asked if they had any "scientific test like DNA or voice comparisons or *fingerprint comparisons* or any of that?" 2 RR at 8 (*emphasis added*). One prosecutor answered "no." *Id.* The prosecution had also previously been ordered to turn over the results of fingerprint examinations. *Id.* at 7. The defense team later clarified that the trial judge's rulings on these matters applied to both the offense of conviction and the extraneous Holman murder. 2 RR at 13-14.

At trial, Detective Park testified that the police called a print unit to the scene. 18 RR 13. She affirmed that there was a latent print on the glass door which did not point to Mr. Hamilton. *Id.* at 40. She was also questioned about the 40-ounce bottle:

[1] *See, e.g., Turner v. United States*, 137 S. Ct. 1885, 1893 (2017) ("We must examine the trial record, "evaluat[e]" the withheld evidence 'in the context of the entire record,' . . . and determine in light of that examination whether 'there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.'").

[Counsel:] Did you collect that bottle?

[Park:] Yes, we did. Our latent lab examiner did.

[Counsel:] And any prints on the bottle?

[Park:] Yes.

[Counsel:] Okay. Did it tie back to my client?

[Park:] No.

[Counsel] Did it tie up to Mr. Smith, Shawn Smith?

[Park:] No.

[Counsel] Okay. Any physical evidence that came back to my client or to Shawn Smith?

[Park:] No, not in this investigation.

18 RR 40–41. This is the testimony which the Court of Criminal Appeals and the Respondent believe captures the "essence" of the evidence proven during post-conviction proceedings.

In the context of the trial proceedings, this testimony simply furthered the false narrative created by the prosecution's suppression that Hamilton was excluded from leaving the fingerprints on the bottle handled by the shooter. The testimony merely showed that fingerprints had been recovered on the 40-ounce bottle[2] and no fingerprint comparisons had been completed. It makes sense that defense counsel would pursue this line of questioning because the worst that could happen is that Detective Park would state that no comparisons had been attempted. Defense counsel stated as much in the post-conviction proceedings, noting that she "asked

[2] This would have been known from the offense report. *See* Pet. Appx at 2.022.

those questions because of experience" and because of the prosecution's "answer at the hearing about disclosing scientific results" she knew there "would be no connection to Ronald James Hamilton, Junior and Shawon D. Smith." Hr'g June 4, 2019 at 50-51; *see also id.* at 131 (noting that the prosecutors told the court there were no scientific testing reports).

The jury likely interpreted Detective Park's testimony as meaning that forensic testing was not completed, and the minimal value to this line of questioning would have been further reduced by the false assertion by the prosecution during closing statements that "there weren't any prints found at either scene[.]" 21 RR at 22. The State's response before the state post-conviction court is evidence of how the jury likely interpreted Park's testimony. There, the State noted that there was no indication that "anyone requested any fingerprint or DNA comparisons in the case prior to trial." CR-B at 40. The State explained that when they reviewed their own file "there was no indication in either the State or police files that these items had ever been compared to the applicant, or anyone else." *Id.* at 41. After discussing Detective Park's testimony, the State continued with its arguments that the evidence had never been forensically tested prior to trial. *Id.* at 40-41. That the State's own attorneys did not understand Park's testimony to mean that Hamilton was excluded from leaving the prints on the 40-ounce bottle is strong medicine against the Respondent's current argument.

Finally, that the defense did not act surprised and ask for a continuance when the "tie back" testimony came out is further proof that the trial participants did not

understand Park's testimony as suggesting forensic testing had been performed on the bottle. The Respondent twice faults defense counsel for not asking for a continuance or raising an objection after the "tie back" testimony. Br. Opp'n at 25, 31. What the Respondent overlooks is that defense counsel's lack of surprise supports that neither the jury nor defense team understood Park's testimony as revealing that the fingerprints on the bottle had been compared to Hamilton's.

Recognizing that the "tie-back" testimony provided little in the way of defense, we must now consider the evidence suppressed by prosecution team (that Hamilton and Smith were excluded from leaving the fingerprint found on the bottle) and the new evidence discovered when the fingerprints were retested (that the fingerprints on the bottle belong to Marshall Knight). Clearly, as the Respondent appears to recognize, if the shooter touched the bottle and Hamilton's prints are not on the bottle, then the logical inference is that Hamilton is not the Holman shooter.[3] The Respondent does his best to support the CCA's finding that no one identified the bottle in question as being handled by the shooter, and in doing so the Respondent, like the CCA, ignores large portions of the record.

First, the Respondent attempts to cast doubt on Wanda Johnson's statements, claiming her original statement made to Detective Hoffmaster was merely a "hearsay statement by the reporting officer." Br. Opp'n at 28. During Hoffmaster's deposition, and after laying the proper predicate showing that the statement would be a recorded recollection admissible under Texas Rule of Evidence 802 (5), counsel asked Mr.

[3] Meaning that the evidence tending to show he was the Holman shooter is false.

Hoffmaster to read certain portions of his offense report into the record. Mr. Hoffmaster explained:

> "It was not mentioned in the statement, but she also saw the same man sit down and empty 40-ounce beer bottle on the rail that runs along Burkett side of the store. Wanda, then saw the man get back in the car and talk to the driver before he got out again and went inside the store."

CR-B at 861-62. The state's objection to this testimony was specifically overruled. *Id.*at 833. This statement shows that two days after the murder, Ms. Johnson knew that the shooter had handled the bottle. Of course, Detective Hoffmaster also certified that all of the facts in his offense report would have been accurate. CR-B at 841.

At the post-conviction hearing before the trial court, Ms. Johnson once again remembered that the shooter "set [the bottle] on this little iron bench and then he urinated over it and then he walked in the store." *See* Pet. App'x E at 9, 12. She was positive it was set down on the metal railing, and that the bottle was a 40-ounce bottle. *Id.* The shooter then went into the store to shoot Mr. Huynh. *Id.*at 10. Consistent with her second statement to Detective Hoffman, she never saw the shooter pick the bottle back up. *Id.* at 13.

The State did a good job of confusing Mr. Johnson on cross examination, but one thing never changed, she remained adamant about the shooter setting the bottle down. *Id.* at 18. And on recross examination, she explained that she "wouldn't forget that part [about the bottle]," she had told the police about the bottle, and, of course, she was so sure the shooter touched the bottle, she "would put [her] life on it." *Id.* at 26-29. The evidence is clear that the shooter sat a 40-ounce bottle down on the metal

rail outside of Mr. Hyun's store prior to killing him.

The Respondent argues, however, that the 40-ounce Schlitz malt liquor bottle found on the rail outside of the store might not be the bottle touched by the shooter, maybe it is simply trash in a high traffic location? Br. Opp'n at 28, 30, 38. Once again, the Respondent simply ignores evidence presented at the post-conviction evidentiary hearing. First, Ms. Benningfield explained she would not simply pick up trash outside of store. Hr'g May 30, 2019, at 84-85. In this case, she noted she might have picked up the bottle because of a comment by the "daughter or the complainant informing me that the business was kept clean by her father . . . that might have been a reason." *Id.* at 86.[4] When identifying the bottle as the one she had performed forensic testing on she noted that it was the only 40-ounce Schlitz Malt Liquor bottle picked up from the scene and that it was collected from the top of metal strip which runs along the side of Mr. Huynh's store. *Id.* at 136-38, 142. This is of course exactly where Ms. Johnson told us the bottle touched by the shooter would be found.

Fingerprint Examiner Green explained that she compared the fingerprint from "from a 40-ounce Schlitz Malt Liquor bottle recovered on metal rail outside beside store." Hr'g May 29, 2019 at 66. The prints on that bottle were identified to Marshall Knight. *Id.* The prints did not match Mr. Hamilton's. *Id.* at 75. In summary, it was shown at the post-conviction hearing that Mr. Huynh's shooter sat a down a 40-ounce beer bottle on the rail outside of the store just prior to killing Mr. Huynh, that shortly after the murder, police were told that Mr. Huynh kept the premises of his store clean,

[4] This statement was specifically omitted to show the effect on the listener.

that a single 40-ounce beer bottle was recovered from the rail outside of the store, that Hamilton was excluded from leaving the fingerprints on that bottle prior to trial, and that Marshall Knight's fingerprints are on the bottle meaning that he is the person who handled the bottle just before shooting Mr. Huynh.

The state district court, which conducted the evidentiary hearing, found that "[t]he evidence is clear: the Holman shooter sat down the 40-ounce bottle prior to shooting Mr. Huynh." CR-B at 971. The court found "[t]he fingerprints on the bottle belong to Marshall Knight." *Id.* at 972. The court found "that the fingerprints found on the 40-ounce bottle are the most direct and reliable evidence showing who committed the Holman Murder." *Id.* at 978. The court found the prosecution team actively suppressed the fingerprint evidence (a finding not contested by the Respondent). *Id.* at 25-37. Yet the Court of Criminal Appeals claims that the jury heard the "essence" of the suppressed evidence. The Court of Criminal Appeals recognizes that district courts are "[u]niquely situated to observe the demeanor of witnesses first-hand, [and] the trial judge is in the best position to assess the credibility of witnesses." *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008). For that reason, the Court defers to the trial court's findings unless its "independent review of the record reveals that the trial judge's findings and conclusions are not supported by the record." *Id.*

In this case, the trial court's findings were supported by the record, and only by ignoring evidence presented to the trial court during post-conviction proceedings could the Court of Criminal Appeals deny relief while complying with this Court's

precedent. "The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate." *Napue v. People of State of Ill.*, 360 U.S. 264, 271 (1959). When this Court reviews the facts of this case it will see that the Court of Criminal Appeal's decision is at odds with the prior decisions of this Court and Mr. Hamilton was sentenced to death in violation of right to Due Process and the Eighth Amendment.

II. THE "TIE BACK" TESTIMONY DID NOT TURN WHAT WAS OTHERWISE A TAINTED TRIAL IN TO A FAIR ONE.

It was undisputed during the post-conviction hearing that the trial prosecutors were aware that Hamilton had been excluded from leaving the fingerprints on the 40-ounce malt liquor bottle handled by the shooter, but the Court of Criminal Appeals and the Respondent claim that because the jury heard the prints did not "tie back" to Hamilton, the suppression of evidence was immaterial. *Ex parte Hamilton*, 2020 WL 6588560, at *2; Br. Opp'n at 21, 23, 27, 33. However, this Court's reasoning in *Napue* forecloses that argument.

The facts of *Napue* are simple:

> At the murder trial of petitioner the principal state witness, then serving a 199-year sentence for the same murder, testified in response to a question by the Assistant State's Attorney that he had received no promise of consideration in return for his testimony. The Assistant State's Attorney had in fact promised him consideration, but did nothing to correct the witness' false testimony. The jury was apprised, however, that a public defender had promised 'to do what he could' for the witness.

Napue, 360 U.S. at 265. In *Napue*, the Court had to address the question of whether the fact that the witness had conceded a potential source of bias meant that Napue

was not entitled to relief. The Court explained, "[w]e do not believe that the fact that the jury was apprised of other grounds for believing that the witness Hamer may have had an interest in testifying against petitioner turned what was otherwise a tainted trial into a fair one." *Id.* at 270.

In much the same way, the idea that the jury in Hamilton's case heard that the fingerprints did not "tie back" to Hamilton does not mitigate the harm from the prosecution's suppression of the evidence showing that Mr. Hamilton was *excluded* from leaving the fingerprints found on the malt liquor bottle. As explained in the petition, when considering the effect of suppressed evidence, we must look at the "context of the existing or *potential* evidentiary record. *Kyles v. Whitley*, 514 U.S. 419, 439 (1995) (emphasis added). The potential record in Hamilton's case would include, at a minimum, detailed testimony about Ms. Johnson seeing the shooter handle the 40-ounce bottle prior to shooting Mr. Huynh and additional evidence that *someone else's fingerprints were on the bottle.*

Contrary to the Respondent's argument, this suppressed evidence is even stronger than that leading to a *Brady* reversal in *Floyd v. Vannoy*, 894 F.3d 143 (5th Cir. 2018). Br. Opp'n at 25-26. In *Vannoy,* there was no evidence that the person who touched the glass in question was the murderer. In that case, "[t]he presence of a third party's fingerprints at a crime scene does not itself prove Floyd was not present; but, it is evidence that a third party, not Floyd, touched an item that was singled out for dusting by investigators and linked to the commission of the crime through Detective Dillmann's testimony." *Vannoy*, 894 F.3d at 164. In Hamilton's

case, because the 40-ounce bottle can be linked directly to the shooter, the suppressed evidence shows that Hamilton was not the person who shot Mr. Huynh, and that all of the evidence suggesting otherwise was false (just like the false confession in Vannoy's case).

III. *JOHNSON'S* HOLDING IS NOT AS LIMITED AS THE RESPONDENT SUGGESTS.

Johnson's foundation is that "[t]he fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case. *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988). In *Johnson,* this Court found that the use at sentencing of a conviction later declared invalid rendered the defendant's death sentence unreliable. The death sentenced had to be reversed because "the jury was allowed to consider evidence that has been revealed to be materially inaccurate." *Id.*at 590.

Citing *Hernandez v. Johnson*, 213 F.3d 243, 252 (5th Cir. 2000), the Respondent suggests *Johnson* is limited to cases dealing with invalid convictions,[5] but in *Hernandez* the Fifth Circuit applied *Johnson* to a case involving false testimony.

The Respondent correctly understands Hamilton's Eighth Amendment argument: because he did not commit the Holman murder, the evidence suggesting that he did commit the murder is necessarily false. Hamilton was not required to

[5] *See* Br. Opp'n at 36.

prove his innocence using the heightened standards of *Schlup v. Delo,*[6] but rather had to prove his false evidence claim by a preponderance of the evidence.[7] After reviewing all the evidence, including the evidence presented at the post-conviction hearing, the trial court found "that Hamilton has proven by a preponderance of the evidence that the State presented materially inaccurate evidence at Hamilton's punishment trial. Further, the Court finds it is more likely that Marshal Knight committed the Holman murder than Hamilton." It is only by failing to consider all of the evidence presented at both trial and in post-conviction proceedings that the Court of Criminal Appeals was able to reach a different conclusion.

CONCLUSION

This Court should grant the petition and order merits review.

Respectfully submitted,

/s/ Jonathan Landers
Jonathan Landers
917 Franklin; Suite 300
Houston, TX 77002
Member, Supreme Court Bar
Counsel of Record

[6] 513 U.S. 298 (1995).
[7] *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002) ("To prevail upon a post-conviction writ of habeas corpus, applicant bears the burden of proving, by a preponderance of the evidence, the facts that would entitle him to relief.")

CERTIFICATE OF COMPLIANCE

I hereby certify that this document is within the page limits prescribed by Rule 33.2(b).

_/s/ Jonathan Landers__
Jonathan Landers