

CASE NO. 24-6541 (CAPITAL CASE)
IN THE SUPREME COURT OF THE UNITED STATES

BARTHOLOMEW GRANGER,
Petitioner,

v.

ERIC GUERRERO, DIRECTOR,
Respondent.

**On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit**

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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I. THIS COURT SHOULD GRANT CERTIORARI, VACATE THE FIFTH CIRCUIT’S JUDGMENT, AND REMAND FOR RECONSIDERATION IN LIGHT OF *GLOSSIP V. OKLAHOMA*, 145 S. CT. 612 (2025).

A GVR Order is appropriate “[w]here intervening developments . . . reveal a reasonable probability that the decision rests on a premise that the lower court would reject if given the opportunity for further consideration, and where it appears such a redetermination may determine the ultimate outcome of the litigation.” *Lawrence v. Chater*, 516 U.S. 163, 167 (1996).

Here, the intervening development is this Court’s decision in *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025). In *Glossip*, this Court held the Oklahoma Court of Criminal Appeals’ imposition of a state procedural jurisdictional bar posed no barrier to this Court’s review because the Oklahoma court “made application of the procedural bar depend . . . on the determination of whether federal constitution error had been committed.” 145 S. Ct. at 626 (quoting *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)). Similarly, in Mr. Granger’s case, the Texas Court of Criminal Appeals’ (“CCA”) application of its state procedural bar relied on, or was intertwined with, a federal question.

In *Glossip*, this Court emphasized that when “the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed federal law required it to do so.” 145 S. Ct. at 624 (quoting *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983)); *see also Harris v. Reed*,

489 U.S. 255 (1989) (extending *Long* to cases on federal habeas review). This Court once again made clear that when a state court’s reasoning regarding application of a procedural rule is “insufficiently clear from the face of the opinion,” reliance on federal law is presumed. 145 S. Ct. at 626, citing *Long*, 462 U.S. at 1040–41.

That same ambiguity regarding the state court’s reasoning exists in Mr. Granger’s case. As set forth in Mr. Granger’s Petition for Certiorari, the CCA’s ruling is opaque and provides no basis for determining its actual basis. *Ruiz v. Quarterman*, 504 F.3d 523, 528 (5th Cir. 2007) (“The boilerplate dismissal by the CCA of an application for abuse of the writ is itself uncertain on this point, being unclear whether the CCA decision was based on the first element, a state-law question, or on the second element, a question of federal constitutional law.”). It is “insufficiently clear from the face of the opinion” whether the CCA based its decision on federal law, and, thus, this Court should presume it did. *Glossip*, 604 S. Ct. at 627.

In its brief in opposition, the State relies on *Coleman v. Thompson*, 501 U.S. 722, 735 (1992), to argue that this Court should not presume the CCA’s decision was interwoven with federal law because “there is no clear indication” it relied on federal law. BIO at 14. Here, the State has mischaracterized *Coleman*, interpreting it too broadly. In *Coleman*, this Court declined to extend the *Harris/Long* presumption of federal question to all state court dispositions in which the state court made no clear statement of reliance on an independent state procedural ground. 501 U.S. at 740. *Coleman* did not disturb *Long*’s presumption in favor of federal review for ambiguous state court decisions *without* a clear statement of reliance on an independent state

procedural ground, like the one in this case. Indeed, the *Harris/Long* presumption remains good law as demonstrated by this Court’s decision in *Glossip*. Moreover, *Coleman* does not apply to Petitioner’s case. In *Coleman* there was no ambiguity about the basis or nature of the state court’s decision. *See* 501 S. Ct. at 724. That lack of ambiguity was dispositive in that case. Here, however, ambiguity exists. The opaque nature of the CCA’s ruling provides no basis for determining the state court’s actual reasoning.

In its brief in opposition, the State attempts to distinguish *Glossip*. BIO at 16–17. The State argues that the two-step process applied by the Oklahoma court in *Glossip* first addressed the federal constitutional question, while the two-step process typically applied by the CCA first addresses a state-law question (whether the claim was legally or factually unavailable at the time of prior filings), then a federal question (whether the applicant has made a prima facie showing of a federal constitutional violation).¹ The State argues that “there is no indication that the CCA proceeded to a prima facie merits analysis” in Mr. Granger’s case. BIO at 15. The State is not incorrect. However, it is equally true that the CCA’s opinion provides no indication as to the basis for its application of the abuse of the writ bar. As explained above, nothing on the face of the CCA’s boilerplate order indicates the court grounded

¹ As set forth in Mr. Granger’s petition for certiorari, the unavailability prong may also be interwoven with federal questions, as it requires the state court to review the state of federal law in order to determine if the legal basis of the claim was recognized by, or reasonably flowed from, a final decision of this Court or a federal court of appeals. Pet. at 13.

its decision on the first question. This parsing and interpretation of state laws is precisely what this Court hoped to avoid in deciding *Long*. *See* 463 U.S. at 1039 (“The process of examining state law is unsatisfactory because it requires us to interpret state laws which we are generally unfamiliar . . .”). In light of the ambiguity in the CCA’s order, this Court should presume that the CCA’s application of the procedural bar was interwoven with federal law.

In an attempt to minimize ambiguity and decipher some reasoning in the CCA’s ruling, the State asserts that Mr. Granger did not argue “either factual or legal unavailability” of the underlying ballistics claim in state court. BIO at 15. This is false. Mr. Granger argued that this claim was unavailable when his initial state habeas application was filed. *See* ROA.15807, ROA.15894.

II. THE UNDERLYING BALLISTICS CLAIM HAS MERIT AND THE STATE MISCHARACTERIZES THE EVIDENCE IN THIS CASE.

As detailed in Mr. Granger’s petition for certiorari, the only contested issue at the guilt phase was whose bullets hit and ultimately killed Minnie Sebolt as she approached the courthouse entrance: those fired by Mr. Granger from the parking lot or street, or those of the law enforcement officers who immediately responded, firing from the courthouse. ROA.1451–53. The State’s evidence at trial did not resolve this issue, and, inexplicably, trial counsel presented a pathologist who concluded the fatal shots came from Mr. Granger’s direction. ROA.11148–49.

The State’s medical examiner, Dr. Lisa Funte, testified that the entrance wound for the fatal shot was on the front of Sebolt’s thigh, ROA.10878–84, which suggested it was fired from the direction of the courthouse, where law enforcement

officers were located. However, defense counsel presented their own pathologist, Dr. Lee Ann Grossberg, who testified to the contrary: that the entrance wound for the shot that killed Sebolt was on the back of her thigh, which showed the fatal bullet was fired from the direction of the street—where Granger was located. ROA.11148–49.

In his federal habeas petition, Mr. Granger alleged, among other claims, that trial counsel were constitutionally ineffective in their handling of the ballistics evidence. ROA.184–92. Mr. Granger alleged that trial counsel were ineffective for presenting Dr. Grossberg’s testimony, which was harmful to his defense and amounted to the sole evidence that the fatal gunshots were fired not from the courthouse, but from where Mr. Granger was standing.

In its brief in opposition, the State argues the Fifth Circuit correctly denied COA because Mr. Granger’s claim lacked merit. First, the State argues that the direction of the bullet was irrelevant because the evidence shows that temporally only Mr. Granger was firing when the fatal bullets hit Ms. Sebolt. BIO at 19-20. While Mr. Granger agrees that the timing of the shots is important in identifying the source of the fatal shots, the State ignores that the evidence about the timing of the shots does not clearly point to Mr. Granger. William Anderson testified that Granger fired in several distinct sequences, and that it was only during the final sequence of gunfire that he saw Ms. Sebolt fall—but he testified that by that time, police officers were already firing, too:

Q. And you—you saw a commotion or some people fall at the front door of the courthouse?

A. Right, right on the—on the right-hand side where the—the rotating door would be.

Q. Could you point where you saw that.

A. Right—

Q. Okay.

A. —there (indicating).

Q. *All right. At that point was the defendant the only one firing a weapon?*

A. Yes, sir. *No—no police had begun to fire at him at that point.*

ROA.6168–69 (emphasis added).

Contrary to the State’s assertion, the timing simply does not point unambiguously to Mr. Granger, and trial counsel’s failure to emphasize this ambiguity prejudiced Mr. Granger. If trial counsel had done so, the prosecutor would not have been able to make the damning argument he made that “[t]here is not one iota, not one microbit of proof” that anybody but Granger fired when Ms. Sebolt was hit. ROA.11242.

Next, the State mischaracterizes Dr. Grossberg’s testimony and, in doing so, underscores the severity of trial counsel’s failure. In defending the Fifth Circuit’s determination that trial counsel did not perform deficiently regarding this issue, the State asserts that Mr. Granger “presented an expert to establish a reasonable doubt as to the State’s ballistics evidence based on the trajectory of the entrance and exit wounds and relied on inconsistencies in the expert testimony to suggest that ‘Miss Sebolt had to be shot from inside the courthouse.’” BIO at 20.

However, as stated above, Dr. Grossberg's testimony was actually contrary to this theory. Dr. Grossberg testified that the entrance wound for the shot that killed Ms. Sebolt was on the back of her thigh, which showed the fatal bullet was fired from the direction of the street—where Mr. Granger was located. ROA.11148–49. This evidence was adverse to Mr. Granger on the sole issue in dispute. Without Dr. Grossberg's testimony, uncontested evidence would have shown that the fatal shots came from the direction of the courthouse—far from Mr. Granger.

CONCLUSION

For all the reasons set forth here and in Petitioner's prior submissions, this Court should grant this petition for a writ of certiorari. In the alternative, this Court should grant certiorari, vacate the decision below, and remand this case to the Fifth Circuit for reconsideration in light of *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025).

Respectfully submitted,

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