IN THE
SUPREME COURT OF THE UNITED STATES

MANUEL JAVIER PEREZ	§	
	§	
V.	§	CASE NO. 25-5183
	§	
THE STATE OF TEXAS	§	

PETITIONER'S PRO SE REPLY TO
TEXAS' RESPONSE IN OPPOSITION

Not once in her Brief in Opposition did the State of Texas assert that Petitioner, Manuel Javier Perez, made any "perceived mistatement of fact" in his PRO SE Petition for Writ of Certiorari or that there was anything that "occurred in the proceedings below" which should prevent review herein. See, Rules of the Supreme Court of the United States, Rule 15(2).[1] Rather, Texas repeatedly argued from the standpoint of § 2254 Federal Habeas review instead of direct review of State habeas proceedings. Indeed, Texas wants this Court to deny certiorari and demand Perez to use § 2254 which Texas conceeds is time barred. Moreover, Perez could not seek any further development of the Brady precedents on § 2254 as he does in his certorari Petition. In any event, while it may be rare, this Court can, ane more often now does, correct a lower court's misapplication of a so-called "properly stated rule of law" even on direct review of State habeas proceedings when this Court is unrestrained by the dictates of 28 U.S.C. § 2254(d). See, Z. Payand Ahdout, Direct Collateral Review, 121 Colum. L. Rev. 159 (2011); See also, S. Ct. Rule 10(c).

Justice Ginsburg has priorly respnded to the same argument made by Texas in her Brief in Opposition filed herein,:

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1. At the time of writing thie REPLY Perez, who is incarcerated and acting PRO SE, has not yet received the paper copy of Texas' Response and Perez relies on notes made as it was read over the prison phone system. Thus, Perez has no page numbers to cite to Texas' Response. See, S. Ct. Rule 15(6) ("...consideration ... will not be deferred pending its receipt..

> "... Since AEDPA, however, our consideration of state habeas petitions has become more pressing. ... Even if rare, the importance of our review of state habeas proceedings is evident."

Lawrence v. Florida, 549 U.S. 327, 343 n. 7 (2007)(GINSBURG, J. dissenting). And, Justice Alito has also acknowledged that, "[r]ecently, this Court has evidenced a predilection for granting review of state-court decisions denying postconviction relief." Foster v. Chatman, 578 U.S. 488, 523 (2016)(ALITO, J., concurring). Justice Alito even pointed to a Brady case -- Wearry v. Cain, 577 U.S. 385 (2016) (per curiam) -- as an example. Indeed, "the Supreme Court is far more likely to recognize and further define the contours of Brady rights on [State] collateral" review because the AEDPA prevents that on § 2254. See, Ahdout, 121 Colum. L. Rev. at 189; See also, 28 U.S.C. § 2254 (d)("clearly established Federal law"). Likewise, "AEDPA creates an incentive for the Court to grant certiorari and cure [a severe miscarriage of justice], even if in a messy vehicle such as direct collateral review." Ahdourt, 121 Colum. L. Rev. at 199. Perez's case is the proper, and perhaps only, "vehicle" in which this Court may address the technological advances of DNA evidence and its impact on Brady claims.

Then, Texas, while not pointing to even one instance where Perez misstated the facts in his Petititon, wants this Court to believe that the Court of Criminal Appeals of Texas ("TCCA") did not "adopt" the State Habeas Trial Court's (SHTC) Findings. Even if that were true, it does not chnage anything as Brady materiality is a mixed question of law and fact which is reviewed "de novo." See, Diamond v. State, 613 S.W.3d 536, 545 (Tex.Crim.App.2020). What is clear is that in the court's decision in Perez's case the

TCCA did not use any of the terms that court normally uses to reflect the court rejected any of the SHTC's factual findings when the TCCA disagrees with a recommendation to grant relief in a summary or unpublished Order/Opinoin. See e.g., Ex parte Salazar, No. WR-78,761-02, 2025 Tex. Crim. App. LEXIS 641 (Tex.Crim.App. Sept. 17, 2025)(PUBLISHED) ("independent review of the record" and "claims lack evidentiray and factual support"), Ex parte Newberry, No. WR-62,159-03, 2025 Tex. Crim. App. Unpub LEXIS 285 (Tex.Crim.App. Sept. 17, 2025)(Brady claim -- "independent review of record" and "not met his burden to prove"), Ex parte Hopper, No. WR-94,327-01, 2025 Tex. Crim. App. Unpub. LEXIS 48 (Tex.Crim.App. Feb. 5, 2025)(:unsupported by the record"_ -- Ex partHooper, 710 S.W.3d 708)(Tex.Crim.App.2025)(concurring opinion published) -- Ex parte Trigo, No. WR-95,064-01, 2024 Tex. Crim. App. Unpub. LEXIS 418 (Tex.Crim.App. Nov. 6, 2024)("independent review" and "findings are not supported by the record"), Ex parte Toney, No. WR-95,170-01, 2024 Tex. Crim. App. Unpub. LEXIS 291 (Tex.Crim.App. July 31, 2024)("thorough review" and "habeas record does not support"); See also, Ex parte Sheppard, No. WR-78,132-01, 2013 Tex. Crim. App. Unpub. LEXIS 1049 (Tex.Crim.App. Oct. 9, 2013)(when SHTC recommend grant one and deny some, TCCA explictly rejected specific findings); See cf., Ex parte Gerhardt, No. WR-32,805-02, 2023 Tex. Crim. App. Unpub. LEXIS 170 (Tex.Crim.App. April 5, 2023) (TCCA disagree with SHTC on legal grounds and nothing about record or findings), Ex parte Blackman, No. WR-52,123-03, 2012 Tex. Crim. App. Unpub. LEXIS 1085 (Tex.Crim.App. Oct. 10, 2012)(Brady claim -- "conclusion ... not supported" and "independent review ... fails to demonstrate"), Ex parte Lara, No. WR-66,394-01 & -02, 2007 Tex. Crim. App. Unpub. LEXIS 1281 (Tex.Crim.App. June 20, 2007)(when SHTC recommend grant one and deny some TCCA disagree because "none of the facts found by the" SHTC demonstrated prejudice).

The real problem is that Texas, not Perez, got the facts wrong,:

(1) The SHTC did recommend granting relief on more than the Brady claim, as the SHTC also recommended granting relief on the Ralph Petty postconviction issue. Pet. PRO SE Cert., App. B - p. 26-27)#69).

(2) There is nothing in the record to support that the suppressed DNA evidence of a third-party contributor could simply be "noise" or "static." See contra, Pet. PRO SE Cert., App. F - p. 1 ("another person to have contacted the victim's neck." and "looking for a second female so ... important"); App. G - p. 5 (#1)("at least three individuals"), P. 8 (#10 & #11)("possible third person contributor"), p. 11 (#20)("three person mixture), p. 11 (#21)("is she a potential source"). In fact, Texas did not present thrie own DNA expert during the habeas proceedings below in an attempt to explain the suppressed DNA in a different manner.

(3) There is nothing in the record to support that there were "copious" amounts of Perez's DNA on M.M.'s neck. Rather, what was tested was just from a swab that had been diluted with water and a tiny fragament of DNA which was copied "billions of times" in the lab. 5 RR 41, 203. Indeed, the State's DNA expert at trial was worried she would use up the available DNA if she did additional test and the State's SANE expert had "no idea" the size of the area the swab was taken from. 5 RR 57-58, 61, 65, 220.

What Texas did get correct was that Count III - the touching of the breast over clothing allegation -- was alleged to have happen at the bodu shop. That allegation relied on the hickey DNA evidence and there were perhaps even more problems with the hickey, or neck, DNA evidence including that,:

(1) it should have washed off in the shower M.M. said she took at the motel, Pet. PRO SE Cert., App. E - P. 14-15,

(2) there was nothing like the "motel records" to try and corroborate M.M.'s story at the body shop and there was testimony that Perez did not go to the body shop on FRIDAY the 13th, 6 RR 47-50, 77-78, and

(3) the suppressed third-aprty DNA from the nack swab had more foregin DNA material (or more "loci"). Pet. PRO SE Cert., App. F - p. 1.

Yet, the TCCA's reasoning of simply comparing the suppressed non-sperm DNA to the sperm DNA from trial explictly only addressed the "thigh

and anus" swabs. So, even the TCCA's sufficiency-of-the-evidence type of review failed to include the precieved "value" of the hickey DNA (either from trial or suppressed). Which, contrary to Texas' Response in Opposition, means the TCCA did not follow Kyle's requirment to consider all the suppressed evidedence cumlatively. Kyles v. Whitley, 514 U.S. 419, 436-437 (1995).[2]

Perez asks this Court to GRANT certiarari review in spite of Texas' attempt to put up a smoke screen in front of the real issues.

Respectfully Submitted,

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2. Of course, as Texas acknowledges, in his Petition Perez asked this Court to apply the reasoning of Kyle to also consider other evidence which would have been presented at trial had the suppressed DNA evidence been disclosed and the defense strategy been altered. See also, U.S. v. Bagley, 473 U.S. 667, 683 (1985)("the reviewing couort may consider directly any sdverse effect the prosecutor's failure to [disclose] might have had on the preparation or presentation of the defendant's case."). Perez continues to press that argument.