

ORIGINAL

No. 25-6609

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Roger Hoan Brady

— PETITIONER

(Your Name)

VS.

Daniel Cueva, Warden

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roger Hoan Brady CDC# P-34002

(Your Name)

California Medical Facility PO Box 2500

(Address)

Vacaville CA 95696-2500

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. In light of the missing voir dire transcript, did the U.S. District Court erred when it held that Petitioner's Batson claim was procedurally defaulted because this claim was not presented on direct appeal before post conviction?
2. In light of the missing voir dire transcript, did the U.S. District Court erred when it held that Petitioner's Batson claim was procedurally defaulted because this claim was not presented on collateral attack during and after post conviction?
3. Given the fact that 52% of the transcripts are missing due to negligence by the court reporter, did the U.S. Court of Appeals, Ninth Circuit erred by denying the Certificate of Appealability?
4. Did the U.S. District Court erred by failing to read and consider Petitioner's claim of innocence?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Roger Hoan Brady
Petitioner

v.

Daniel Cueva, Warden of California Medical Facility

Jeff MaComber Secretary of the California Department
of Corrections and Rehabilitation

Ellen F. Rosenblum, Oregon Attorney General

Respondents

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- reported at 2025 U.S. Dist. LEXIS 63966 or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was
Dec. 8, 2025

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was
_____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date:
_____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, Amendment IV Seizures, Searches and Warrants

[SECTION 1.] The right of the people to be secure in their persons, houses, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION, Amendment V Criminal Proceedings and Condemnation of Property

[SECTION 1.] No person shall be held to be answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy or life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

UNITED STATES CONSTITUTION Amendment VI Mode of Trial in Criminal Proceedings

[SECTION 1.] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION. Amendment VIII
Bails-Fines-Punishments

[SECTION 1.] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

UNITED STATES CONSTITUTION, Amendment XIV
Citizenship, representation, and Payment of Public Debt

[SECTION 1.] All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION, Article IV, Section 4

OREGON CONSTITUTION, Article I, section 40

OREGON CONSTITUTION, Article VII, section 3

OREGON CONSTITUTION, Article I, section 9

STATEMENT OF THE CASE

1. The Attorney General argues that Brady waived these claims because he failed to raise them on direct appeal. Contrary, to the Attorney General's arguments, however, Brady's claims cannot be raised on direct appeal because the assignment of errors embrace matters outside of the record or outside of the transcripts. Furthermore, the trial record before the State Appellate Court on direct appeal was insufficient due to the fact that approximately half of the transcripts are missing due to negligence by the court reporter.

Under Oregon law, claims raised on direct appeal cannot be supported by missing transcripts. In particular, the Batson error cannot be presented on direct appeal because the voir dire proceedings are lost from the court reporter's notes. The facts supporting the Batson claim rely on a memorandum written by Attorney Tim Dunn. (See Appendix C Information)(Brady v. Cueva 2025 U.S.Dist.LEXIS 63966) (Batson v. Kentucky 476 U.S. 79; 106 S.Ct. 1712; 90 L.Ed.2d 69) (1986)

2. The state post conviction, Oregon Court of Appeals, Oregon Supreme Court and U.S. District Court all determined that Appellate Counsel, Peter Gartland, was not ineffective for omitting the Batson error on direct appeal. In order to make that determination, it was necessary for the courts (both state and federal) to review the merits of the omitted Batson error. (Smith v. Oliver 2024 U.S.Dist.LEXIS 11652) (Eagle v. Linahan 279 F.3d 926)(11th Cir.)(2001) (Pao Lo v. Kane 2011 U.S.Dist.LEXIS 64620).

This review procedure is not independent of Federal Law because it depends upon a Federal constitutional on the merits of the Batson

claim. Both the state and federal courts were required to implicitly rule on the merits of the Batson claim. (Stewart v. Smith 536 U.S. 856; 122 S.Ct. 2578; 153 L.Ed.2d 762)(2002) (Ake v. Oklahoma 470 U.S. 68; 105 S.Ct. 1087; 84 L.Ed. 53)(1985). Thus the Batson error was fairly presented to the state courts at all three levels:

1) post conviction 2) Oregon Court of Appeals 3) Oregon Supreme Court

The Oregon Attorney General argued that only five post conviction claims were presented to the state's highest court. However, contrary to the Attorney General's argument, legal documents proved that, in fact, 107 post conviction claims were presented to the Oregon Supreme Court and not only five. (See Appendix C Information).

3. More than half, 52% of the transcripts in this case are missing due to negligence by the court reporter. Petitioner concedes that the Constitution does not require a perfect, verbatim transcript. Missing pages are allowed. However, Mayer did hold that the state is only required to provide a transcript that is "relevant" or "germane" to the issues presented on appeal. (Mayer v. City of Chicago 404 U.S. 189; 92 S.Ct. 410; 30 L.Ed.2d 372)(1971). Here, to be sure, he had a right to the voir dire transcript because it was "germane" to his Batson claim.

In Boyd v. Newland 467 F.3d 1139, 1150 9th Cir. 2006, the Ninth Circuit explained that the state court's refusal to provide Petitioner with the whole voir dire transcript in the face of a plausible Batson claim involved an unreasonable application of clearly established Supreme Court precedent. The same can be said in this case. By denying the Certificate of Appealability, the Ninth Circuit contradicted Boyd.

4. Judge McShane failed to read the forensic evidence which proved

Petitioner's innocence. This claim was essentially ignored.

(Schlup v. Delo 513 U.S. 298; 115 S.Ct. 851; 130 L.Ed.2d 808)(1995).

REASONS FOR GRANTING THE PETITION

Petitioner hereby implores the highest tribunal in the nation to correct the errors of the lower Federal courts. The U.S. District Court held that Petitioner's Batson claim was procedurally defaulted because he failed to raise this claim on direct appeal. However, it was impossible to present the Batson claim on direct appeal due to the missing voir dire transcript. Negligence by the court reporter to provide a voir dire in light of a plausible Batson challenge is cause for the default.

This petition must be granted. It addresses the very important issue of procedural default as well as cause and prejudice. An issue that, no doubt, affects the court system throughout the United States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roger Hoan Brady

Date: Dec. 31, 2025