No. 25-6980

(CAPITAL CASE)

IN THE

Supreme Court of the United States

CEDRIC RICKS,

Petitioner,

v.

TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Cedric Ricks presented uncontested evidence in the lower court that he spent years trying to obtain the State's jury selection notes while investigating a potential claim under *Batson v. Kentucky*, 476 U.S. 79 (1986). When the State finally gave Ricks—by accident—the jury selection notes that he had long requested, they showed that the State was meticulously tracking the race of potential jurors when determining who to strike. *See Foster v. Chatman*, 578 U.S. 488, 514 (2016) ("[T]he focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury."). Armed with this new evidence, Ricks diligently pursued habeas

relief. Ricks tried to use Texas's postconviction review procedures, which explicitly allow claims in subsequent habeas applications where the petitioner diligently pursued the factual basis for their claims before filing their initial application. Tex. Code Crim. Proc. art. 11.071, § 5(e). Yet the Texas Court of Criminal Appeals ("TCCA") refused to allow Ricks's *Batson* claim to proceed to merits review, even though the State did not contest any of Ricks's factual or legal assertions in the Court below. App. A. Indeed, the State filed no responsive pleading at all. The TCCA decision raises serious due process concerns, because it rewarded the State for withholding plainly relevant, material evidence in support of Ricks's *Batson* claim—evidence that was within the State's exclusive possession and control. This Court should intervene to rectify this injustice, otherwise it will reward the State for knowingly hiding for years information Ricks requested proving a *Batson* violation.

I. Ricks could not have raised his due process claim in the court below and the adequate and independent state law ground doctrine is no barrier here.

Respondent contends that Ricks's due process challenge is "waived" because "[h]e never alleged in the court below—or any court—that he had a due process right to consideration of the merits of his *Batson* claims or that it would be fundamentally unfair for the TCCA to refuse to consider the merits of the claims." Brief in Opposition ("BIO") at 8. But Ricks could not have raised this claim in the TCCA. Ricks's argument is that, as applied to him, the TCCA's barring access to Texas's post-conviction review procedures was fundamentally unfair and violated due process. Pet. at 6 (citing *Medina v. California*, 505 U.S. 427, 445–46 (1992)). This claim, of course, could not be raised until Ricks was actually barred access to the state postconviction system.

Moreover, rehearing is not permitted before the TCCA and there is no mechanism by which Ricks could have challenged the denial of due process in the state courts below. *See* Texas R. App. Proc. Rule 79.2(d) ("A motion for rehearing an order that denies habeas corpus relief or dismisses

a habeas corpus application under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case."). This Court is therefore Ricks's first opportunity to challenge the TCCA's denial of due process in barring access to the state postconviction review system to raise his *Batson* claim, and it is ripe for consideration by this Court. *See generally Illinois v. Gates*, 462 U.S. 213, 220 (1983) (recognizing this Court's ability to resolve an issue not raised below where it was related to an issue raised below); *Vachon v. New Hampshire*, 414 U.S. 478, 479 n.3, 480 (1974) (reversing a conviction based on a due process challenge not raised in the court below).

Respondent also asserts that this Court does not have jurisdiction to review the TCCA's dismissal of Ricks's *Batson* claim because it rests on an independent and adequate state law ground. BIO at 16–20. This argument misapprehends the constitutional question before this Court, which asks only whether the TCCA's barring Ricks access to the state postconviction review system denied him due process. That federal due process question is one that the State cannot insulate from review under the adequate and independent state law doctrine, as it is squarely a federal question.

II. No court has adjudicated Ricks's *Batson* claim with all of the relevant facts in accordance with *Batson*'s framework.

Respondent also urges this Court to deny certiorari on the ground that the state and federal courts have already resolved the *Batson* claim against him. BIO at 1 n.1, 19. But this argument ignores that suppression by the State of evidence within its exclusive possession and misapplication of the *Batson* framework have precluded an adjudication of Ricks's allegation in accordance with *Batson*'s framework. That framework requires "that in considering a *Batson* objection . . . all of the circumstances that bear upon the issue of racial animosity must be

consulted." *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008); *see also Flowers v. Mississippi*, 588 U.S. 284, 314 (2019) ("[W]e must examine the whole picture.").

As set out in his Petition, the trial court denied Ricks's request to have the jury selection notes be made part of the record and shut down the *Batson* inquiry at the *prima facie* stage. Pet. at 8, 12. In state habeas, Ricks raised a claim that appellate counsel was ineffective for failing to raise a *Batson* violation on direct appeal. But, based on the truncated record from trial—that did not include the still suppressed jury selection notes—the TCCA found that appellate counsel's decision to forego raising *Batson* error was objectively reasonable. *Ex parte Ricks*, 2020 6777958, *1 (Tex. Crim. App. Nov. 18, 2020); *see also* App. B. In the course of those proceedings, the State gave for the first time a laundry list of supposed reasons for striking the only two Black women who could have served on Ricks's jury. But it did so by affidavit only and argued that no hearing should be held on any of Ricks's allegations, and the trial court agreed. Ricks was thus unable to test and rebut the State's proffered reasons, as envisaged at *Batson*'s step 3. And, the State again stymied Ricks's access to its racially-annotated notes by misrepresenting to counsel that it had turned over all its file. *See* App. C.

Federal habeas was thus Ricks's first opportunity to present "the whole picture" to any court, including the State's race-coded notes and comparator juror analysis, as envisaged by this Court. *Flowers*, 588 U.S. at 315. Although the federal district court purported to adjudicate Ricks's *Batson* claim on the merits, that adjudication runs afoul of *Batson* in two ways. First, the district court entirely ignored Ricks's comparator juror analysis. *See Ricks v. Lumpkin*, 2023 WL 8224931, *7–9 (N.D. Tex. Sept. 26, 2023). Despite Ricks demonstrating that the reasons the State gave for striking the relevant potential jurors also applied to white jurors who were seated, the district court made no mention at all of this evidence of the State's discriminatory intent. *See Miller-El v. Dretke*,

545 U.S. 231, 241 (2005) ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step.").

Second, although the district court did consider the State's annotations on its jury selection notes emphasizing the race of veniremembers, it rejected the relevance of such evidence. *Ricks*, 2023 WL 8224931, *8, *8 n.51 (quoting *Broadnax v. Davis*, 2019 WL 3302840, *43 n.7 (N.D. Tex. 2019) ("No sinister motive can be inferred rationally simply because the prosecution noted the race and gender of every remaining member of the jury venire or highlighted those for whom that office would need to be prepared to offer sound, race-neutral, reasons in the event the prosecution chose to exercise a peremptory strike against such an individual and the defense raised a *Batson* objection.")). The district court's rejection of such evidence ignored that such annotations have been identified by this Court as particularly strong evidence of discrimination in jury selection and contravened *Batson*. *See Foster*, 578 U.S. at 513–14.

III. Conclusion.

This Court should grant *certiorari*. It should also stay Ricks's execution pending the disposition of this petition, as requested by separate application.

Respectfully submitted,

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