

No. 25-862

In the Supreme Court of the United States

MICHAEL NEWBERRY,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

**RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

Questions presented by the Petitioner:

1. Where the Petitioner, the State, and the habeas court all agree that a conviction is unconstitutional and must be reversed, does it violate due process for a state superior court to summarily deny relief without explanation?
2. Did the prosecution violate *Brady v. Maryland*, 373 U.S. 83 (1963), by suppressing evidence contradicting its proof of the aggravating element distinguishing capital murder from non-capital homicide?

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INTRODUCTION

For well over a century, this Court has recognized that law enforcement officers have a “duty” to “frankly concede” when a conviction must be reversed due to constitutional error. *See Cook v. United States*, 138 U.S. 157, 185 (1891). Less than two years ago, after the State of Texas uncovered evidence in Petitioner Michael Newberry’s case that it had long suppressed in clear violation of *Brady v. Maryland*, 373 U.S. 83 (1963), it exercised its duty to confess error and request that his 1997 capital murder conviction and life sentence be vacated. And because the State is still of the firm belief that Petitioner has satisfied his burden for relief under this Court’s precedents, it now acquiesces in certiorari and supports summary reversal.

The State did not take the decision to confess error lightly. As this Court has observed, it is always a “remarkable” step when the State of Texas—or any sovereign—seeks to vacate a judgment in a capital murder case. *See Buck v. Davis*, 580 U.S. 100, 125 (2017). But, after a full investigation of the evidence and an exhaustive review of Petitioner’s trial, the State no longer had confidence in the verdict.

The habeas court, after taking testimony from the trial lawyers and reviewing the entire trial record and thousands of pages of documentary evidence, concluded the same finding that the evidence knowingly withheld by the trial prosecutor could reasonably have put Petitioner’s “whole case in such a different light as to undermine confidence in the verdict.” *See Kyles v. Whitley*, 514 U.S. 419, 435 (1995). Yet, inexplicably, the Texas Court of Criminal Appeals (TCCA)

summarily denied relief in a *per curiam* order devoid of any reasoning whatsoever. In what appears to be a first among cases of its kind, the TCCA's order fails to even acknowledge the State's confession or state the legal standards it applied.

That decision cannot stand. The merits of Petitioner's *Brady* claim are evident, and the TCCA's order stands in direct opposition to this Court's well-established precedent. And while recognizing the court's critical duty to exercise independent judgment, the State of Texas believes that the TCCA's unreasoned and unprecedented decision upsets the public's interest in ordered justice and further denies Petitioner the due process he was deprived of nearly thirty years ago. This Court should grant the Petition so that justice can be done in this case.

STATEMENT OF THE CASE¹

A. Procedural Background

In July of 1997, Petitioner was convicted of the capital murder of Granville Hanks on the theory that he and his separately indicted co-defendant, Lilton Deon Moore, murdered Hanks in the course of committing or attempting a robbery. At trial, the robbery evidence was thin, but uncontradicted. The defense was unable to obtain a lesser-included instruction on non-capital murder because it did not have even "a

¹ Respondent agrees with the facts presented in the Petition's Statement of the Case. *See* Pet. at 2-15. This response therefore sets forth a more truncated history of proceedings, adding additional context where appropriate.

scintilla of evidence” showing that the murder was *not* attendant to a robbery. Pet. App. 22a. Instead, Petitioner argued that his co-defendant acted alone in attempting to rob the victim of his money and shooting him. *Id.* at 19a-20a. The State argued that Petitioner was the shooter, but the jury was instructed that it could hold Petitioner criminally responsible for the offense under the Law of Parties even if Moore was the triggerman. TCCA C.R. 7-8; *see* Tex. Penal Code § 7.02. The jury convicted Petitioner of the sole charge before it, which resulted in an automatic life sentence. Pet. App. 3a.

After Petitioner’s capital murder conviction and sentence became final, the State formally entered into a plea agreement with his co-defendant, Moore, in which Moore pled guilty to the lesser offense of aggravated robbery. TCCA C.R. 688-94.

The State opposed each of Petitioner’s first three attempts to overturn his conviction. His judgment was affirmed on direct appeal, *Newberry v. State*, No. 02-97-00486-CR (Tex. App.—Fort Worth May 7, 1998, no pet) (unpublished), and his first two state habeas petitions were denied and dismissed in 2005 and 2008, respectively. *Ex parte Newberry*, No. WR-62,159-01 (Tex. Crim. App. Aug. 31, 2005) (denying application); *Ex parte Newberry*, No. WR-62,159-02 (Tex. Crim. App. Aug. 13, 2008) (dismissing application as unauthorized subsequent writ).

Also in 2005, the prosecutor from his trial—then-District Attorney Janelle Haverkamp—first became

the presiding judge of the court in which Petitioner was convicted.² Pet. App. 5a n.3.

B. State's Investigation and Confession of Error

More than a decade later, in response to records requests, the State provided Petitioner with its full set of files from the prosecution and 1997 trial. When counsel for the Petitioner raised concerns that the boxes contained favorable witness statements and other material that was never disclosed, the State—through the Cooke County District Attorney's Office—initiated an investigation into the potential misconduct and conducted a full review of Petitioner's case. The exhaustive review involved independent assessments of the record by each attorney within the District Attorney's office, cataloguing and studying each document in the prosecution files, analyzing all of the evidence, speaking with witnesses, and consulting with outside counsel.

Ultimately, after a thorough investigation, the State reluctantly concluded that its former top prosecutor, Haverkamp—who now sits as the elected judge of the county's only felony court—intentionally withheld exculpatory and otherwise favorable evidence that directly undermined the murder-robbery theory she presented at trial and plainly met the standard of *Brady* materiality.

² Hon. Janelle Haverkamp remains the elected judge of the 235th District Court of Cooke County, Texas in 2026.

The State further determined that the *Brady* error represented a grave violation of constitutional prosecutorial standards, and that it rendered Petitioner's capital murder conviction untenable, such that basic principles of justice demanded a new trial. The State thus made the difficult yet necessary decision to confess error and join Petitioner's request for relief in his latest state habeas application. It also explained that its decision came "after lengthy consideration," that it "has a legitimate interest in the integrity of the conviction," and that it would waive any potential procedural bars "in the interests of justice." TCCA C.R. 220-21.

C. Proceedings on Petitioner's Third Writ

Petitioner filed his third state writ application in the final week of 2024. The former Chief Justice of the Second District Court of Appeals of Texas was appointed to hear the petition. Pet. App. 5a n.3. The habeas court ordered hearings and began an in-depth investigation of the merits of Petitioner's claims, admitting hundreds of pages of exhibits and taking live testimony from five witnesses, including the attorneys who represented both the State and the Petitioner at trial.

In the initial evidentiary hearing, former District Attorney (now Judge) Haverkamp, testified at length and argued in support of the conviction. *See* TCCA Ans. to Order Vol. 2. After hours of testimony, and at Haverkamp's request, the court reset the case to allow Haverkamp additional time to present evidence and testimony opposing Petitioner's claims. *Id.* at 80. At

the second hearing, Haverkamp testified in narrative form, explaining why she withheld the evidence and again argued in opposition to relief being granted.³ See TCCA Ans. to Order Vol. 3.

After several months, the court issued extensive, independent findings of fact and conclusions of law in which it concluded that the State suppressed favorable, material evidence under *Brady*. Pet. App. 3a-47a. After finding that Haverkamp failed to turn over the transcripts of Moore’s police statement and grand jury testimony, the court emphasized that the action was *knowing*. See *id.* at 32a. The prosecutor “knew” Moore had testified that “there was no intent to commit a robbery,” that his account directly contradicted the testimony of the State witnesses on that point, and that “capital murder required proof of that element,” but she chose to withhold it anyway. *Id.* Expanding on the significance of that evidence, the court explained:

[T]he testimony was material because Haverkamp’s entire approach to this case was that [Petitioner] intended to commit a robbery and shot Hanks. “The State may not suppress evidence incompatible with its own theory of the case or that supports the defense’s case.” It is material also because Petitioner needed merely a scintilla of evidence showing he was guilty only of the lesser-included offense of

³ Haverkamp also employed attorneys who filed two purported “*amicus curiae*” briefs” opposing relief in the habeas court. See TCCA C.R. 1000-28; TCCA Supp. C.R. 9-9-2025.

murder to entitle him to the lesser charge, which was requested at trial.

Pet. App. 33a.

The court emphasized that it—like the State—carefully considered the fact that Petitioner’s statements were admitted at trial. *Id.* at 34a n.18. Nonetheless, disclosure of Moore’s statements, along with the remainder of the evidence, “could reasonably have put the whole case in a different light so as to undermine the verdict.” *Id.* at 34a.

The TCCA denied relief months later in an unsigned written order containing no reasoning:

The trial court has determined that Applicant is entitled to relief on the basis that the State withheld exculpatory evidence. The trial court recommends granting Applicant a new trial. However, based on our independent review of the entire record, this Court finds that Applicant has not met his burden to prove that he is entitled to relief. We deny relief.

Pet. App. 1a-2a.

Extraordinarily, the TCCA’s order does not acknowledge the State’s concession of error, nor does it reject the fact-findings of the habeas court.

REASONS FOR GRANTING CERTIORARI

When Texas discovered that its prosecutor baldly violated Petitioner's due process rights under *Brady* to secure his capital murder conviction, it had no choice but to confess error: The precedents of this Court clearly dictate that Petitioner met his burden for relief. The TCCA's unreasoned decision to the contrary raises its own due process concerns, is flatly wrong on the merits, and cries out for this Court's intervention.

A. The State Agrees That Relief Is Warranted Because Its Misconduct Under *Brady* Precluded The Possibility Of A Fair Trial.

The State of Texas, like all sovereigns duly constrained by the United States Constitution, "wins its point whenever justice is done its citizens in the courts." *Brady*, 373 U.S. at 87 (citation omitted). Accordingly, its representatives should "prosecute with earnestness and vigor," but must "refrain from improper methods calculated to produce a wrongful conviction." *Berger v. United States*, 295 U.S. 78, 88 (1935); *see also* Tex. Code Crim. Proc. art. 2.01 ("It shall be the primary duty of all prosecuting attorneys . . . not to convict, but to see that justice is done."). Thirty years ago, the State's prosecutor flouted that foundational duty by withholding exculpatory documents she knew would not fit with her theory of the case.

To protect "[t]he very integrity of the judicial system and public confidence in the system," *United*

States v. Nixon, 418 U.S. 683, 709 (1974), due process requires the State to provide defendants with all evidence in its possession that is favorable and “material to either guilt or punishment, irrespective of the good faith or bad faith of the prosecution,” *Brady*, 373 U.S. at 87. When, as here, the State has failed to do so, reversal is required. *Id.*

1. Suppression of the Moore transcripts clearly violated *Brady*.

The State agrees with the well-reasoned conclusion of the habeas court that the recorded statement and grand jury testimony of Deon Moore “put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles*, 514 U.S. at 419. In order to convict Petitioner of capital murder, the State was required to prove beyond a reasonable doubt that he intended to rob Granville Hanks. And the evidence the prosecutor suppressed undermines the already-thin proof of that essential element.

The Moore transcripts are littered with exculpatory and impeaching information that directly contradict what the prosecutor argued to the jury. In just one of dozens of examples, the State claimed, “the sole and exclusive reason why these two gentlemen, the defendant and his co-defendant, got out of the car was to rob Granville Hanks.” 8 Trial R.R. 20-21. On the other hand, in his testimony to the grand jury, Deon Moore stated, “I didn’t have no idea it was going to be a robbery. I thought we was going to sell some dope.” TCCA C.R. 455. This one statement by Moore *alone* constitutes a “scintilla of evidence” that, when admitted at

trial, would have entitled the defense to an instruction on the lesser-included offense of first-degree murder.

Moreover, as the habeas court summarized in its findings, Moore's grand jury testimony is rife with other admissions and information tending to negate Petitioner's intent commit a robbery and to show that Moore was the sole aggressor. *See* Pet. App. 15a-18a. The court noted that, in addition to "remov[ing] the aggravating element of an intent to commit robbery," the evidence "also shows":

Moore's possession of the murder weapon and Moore's detailed history of crimes, including a drive-by shooting. . . . Moore's involvement in this offense was a pivotal point in dispute; and [the State's witnesses] each testified about [Moore's] role. Knowledge of Moore's intentions, possession of and experience with the type of gun used to kill Hanks, and propensities for violence could have provided [defense counsel] with relevant, strong cross-examination material. Morris was denied the ability to impeach the State's witnesses by the failure of the prosecutor to provide the information in her possession.

Pet. App. 33a.

The State concedes that this represents a particularly troubling *Brady* violation. Throughout the proceedings in state habeas court, the trial prosecutor (now *judge*) advanced a striking misconception of her constitutional duty under *Brady*. According to her

testimony, she did not believe she had to turn over *any* of the material within *any* of the witness statements—including the Moore transcripts—because they were “incriminating” on the whole. *See* TCCA Ans. to Order Vol. 3 at 36, 38-45, 48, 68, 87-88. For example, she argued, “[Moore’s] grand jury testimony incriminated Mr. Newberry. It was not in any way exculpatory.” *Id.* at 38.

This Court has been very clear that that is not how *Brady* works. *See, e.g., Kyles*, 514 U.S. at 435 (recognizing State’s obligation to turn over any evidence that has “some value” in countering its arguments); *Cone v. Bell*, 556 U.S. 449, 470-71 (2009) (noting favorable nature of evidence that “strengthens an inference” of a helpful fact). And it has expressed substantial concern when a State appears to misapprehend the scope of *Brady*. *See Strickler v. Greene*, 527 U.S. 263, 282 n.21 (1999) (“We reject respondent’s contention that these documents do not fall under *Brady* because they were ‘inculpatory.’ Our cases make clear that *Brady*’s disclosure requirements extend to materials that, whatever their other characteristics, may be used to impeach a witness.”); *see also* Transcript of Oral Argument at 29-32, 37-38, 43-45, 50-52, *Smith v. Cain*, 565 U.S. 73 (2012) (No. 10-8145) (eight Justices faulting Louisiana for not conceding *Brady* error and/or expressing concern over its argument that witness statements need not be disclosed unless “the prosecutor makes a determination that they would materially affect the outcome”).

2. The TCCA’s denial is unprecedented, unreasoned, and requires correction.

The TCCA’s decision to deny relief not only fails to adhere to this Court’s due process precedents; it also strays from its *own*. Based on an extensive case review, in each case before the TCCA in which (1) the State joined with the habeas applicant in recommending relief due to a *Brady* violation, and (2) the district court issued findings also recommending relief, the State was not able to find a single case in which relief was not granted.⁴ Given that Petitioner’s may be the

⁴ *Ex parte Causey*, 710 S.W.3d 829 (Tex. Crim. App. 2025) (State agreed it violated *Brady* by suppressing information regarding police’s pattern of taking false confessions and trial court adopted the parties’ agreed findings); *Ex parte Spencer*, No. WR-69,994-02, 2024 WL 167709 (Tex. Crim. App. May 15, 2024) (State admitted it failed to disclose key witness’s financial motivation to testify and trial court adopted parties’ agreed findings that *Brady* required relief); *Ex parte Nicholson*, Nos. WR-92,799-01, WR-92,799-02, WR-92,799-03, 2021 WL 5229424 (Tex. Crim. App. Nov. 10, 2021) (State and trial court agreed the suppression of evidence consistent with mistaken-identity defense required relief under *Brady*); *Ex parte Chaney*, 563 S.W.3d 239 (Tex. Crim. App. 2018) (State found previously-undisclosed impeachment evidence in its files during habeas investigation and trial court adopted parties’ agreement that *Brady* standard was met); *Ex parte Childers*, Nos. WR-61,119-14, WR-61,119-15, WR-61,119-16, 2018 WL 2438346 (Tex. Crim. App. May 23, 2018) (State agreed its suppression of alternate-perpetrator evidence violated *Brady* and trial court adopted parties’ agreed findings); *Ex parte Nolley*, No. WR-46,177-03, 2018 WL 2126318 (Tex. Crim. App. May 9, 2018) (trial court, with the State’s agreement, recommended relief on *Brady* claim involving State’s failure to disclose multiple documents); *Ex parte Allen*, No. WR-56,666-03, 2018 WL 344332 (Tex. Crim. App. Jan. 10, 2018) (State admitted it

first case in which the TCCA has not recommended relief in similar circumstances, its failure to explain the basis of its denial makes it all the more extraordinary and in need of this Court's intervention.

B. There Is No Impediment to Summary Reversal.

The State agrees that there is nothing preventing the Court from exercising its jurisdiction to summarily reverse the TCCA and vacate Petitioner's conviction. First, the TCCA's unreasoned order gives no indication that it based its denial on an adequate or independent or dependent state law ground. *See Ake v. Oklahoma*, 470 U.S. 68, 74 (1985). Moreover, as the Court recently acknowledged, the evidentiary record in a state habeas court need not be "free of doubt" for this Court to reach the merits of a due process claim, especially when the prosecutor "confesses that his own office erroneously obtained a capital [murder] conviction." *Glossip v. Oklahoma*, 604 U.S. 226, 258 (2025).

Here, as in *Glossip*, the Court has the record it needs to find a *Brady* violation and there is no need for further factual development. *See id.* at 256-58. The district court issued its findings after conducting

failed to disclose its agreements with testifying jailhouse informants and trial court adopted parties' agreed findings recommending relief on *Brady* claims); *Ex parte Miles*, 359 S.W.3d 647 (Tex. Crim. App. 2012) (State conceded its failure to disclose favorable police reports amounted to *Brady* violation and court adopted the parties' agreed findings); *Ex parte Wyatt*, No. AP-76,797, 2012 WL 1647004 (Tex. Crim. App. May 9, 2012) (same).

evidentiary hearings with live witnesses, reviewing the entire record from Petitioner's trial, and reviewing hundreds of pages of exhibits. Unlike in many other cases before the TCCA where the State and Petitioner agree on relief, the district court in this case authored its own findings of fact and conclusions of law and actually found against the parties on several factual issues and claims. Moreover, despite the State's confession, the critical issues *were* essentially "contested:" the trial prosecutor testified in narrative form in defense of her actions and argued against *Brady* materiality in support of the conviction. Finally, on the critical facts necessary to grant relief, the findings are undisputed. *See id.* at 258 ("[T]here is no reason to allow state courts a second (or third, or fourth) bite at the apple. . . . The facts as conceded by the [State] and supported by the record establish a violation of [*Brady*]. A new trial is the remedy for a [*Brady*] violation.").

CONCLUSION

For the foregoing reasons, the Court should reverse the TCCA's ruling and remand with instructions to vacate the judgment and conviction. Alternatively, the Court should grant the petition and set for argument or GVR with instructions for further proceedings consistent with this Court's precedents and the Constitution.

Respectfully submitted,

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