

No. 25-938

In the Supreme Court of the United States

JAMES GARFIELD BROADNAX, PETITIONER

v.

STATE OF TEXAS, RESPONDENT

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

REPLY BRIEF FOR THE PETITIONER

**CAPITAL CASE
EXECUTION SCHEDULED FOR APRIL 30, 2026**

STEVEN C. HERZOG
Counsel of Record
PIETRO J. SIGNORACCI
EVA WENWA GAO
JENNIFER R. KIM
SOPHIA CHUNG
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com*

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The State asserts that Mr. Broadnax’s claim is meritless and that this Court lacks jurisdiction over this petition. The State is wrong on both fronts. *First*, no court has ever reviewed the totality of the evidence indicating that the State purposefully struck all seven qualified prospective Black jurors from Mr. Broadnax’s jury, because the State withheld critical evidence concerning its actions, and the Texas courts have refused to permit a factfinder to hear and review that evidence. That evidence shows that the State impermissibly tracked and then struck prospective jurors because they were Black, and because selecting the jury based on race was part of the State’s trial strategy. *Second*, this Court has jurisdiction to review the Texas Court of Criminal Appeals’ (“TCCA”) decision

because Mr. Broadnax’s claim is a constitutional *Batson* claim, and the TCCA’s order is an appealable final decision. This Court should not permit Mr. Broadnax’s scheduled April 30th execution to go forward when no court has fully considered whether the State’s efforts to strike all seven qualified Black prospective jurors from his jury violated Mr. Broadnax’s (and the prospective jurors’) constitutional rights.

A. Mr. Broadnax’s *Batson* Claim Presents an Important Federal Constitutional Issue Warranting This Court’s Review.

“In considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, ***all of the circumstances that bear upon the issue of racial animosity must be consulted.***” *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008) (emphasis added). Yet, no court has ever heard Mr. Broadnax’s *Batson* claim with all of the relevant evidence presented—including the spreadsheet on which the State noted the race of prospective jurors and bolded Black jurors, the related metadata, the questionnaire of a Black prospective juror where the State noted its “only concern” regarded this juror’s son’s age and race, and the *voir dire* chart from his co-defendant’s trial on which the State noted the race of prospective jurors. Indeed, since his trial, no court has held a hearing or received this evidence, which only became available after his initial state habeas proceedings had concluded. The State’s effort to minimize this critical evidence fails.

1. The State fails to rebut the evidence in its own documents that establishes that it engaged in a consistent, discriminatory practice of marking prospective jurors by race, with the goal of striking Black prospective jurors.

First, the State does not account for the fact that metadata relating to the spreadsheet prepared by the State and used at Mr. Broadnax’s trial, on which prospective jurors were tracked by race, indicates that the spreadsheet was created, used, modified, and printed by the State during jury selection. *See* First Subsequent Habeas Corpus Appl., *State v. Broadnax*, No. F08-24667-Y (Feb. 8, 2023) (“Appl.”) at 27 (citing Ex. F, Document Properties). The spreadsheet was created and last printed on July 10, 2009. *Id.* at Ex. F. This metadata confirms that the spreadsheet was created in advance of final jury selection and the exercise of peremptory strikes, which took place on July 20, 2009. *Id.* at 27; 38 RR 1–86. All the State can say in response is that there is an email sending the spreadsheet at a later date to an appellate prosecutor. Opp’n 26–27 n.9. But the metadata confirms that the spreadsheet was prepared in advance of jury selection.

Second, the State is unable to coherently respond to the critical fact that a similar document was created in Mr. Cummings’s case. If, as the State contends, it only created a racially marked spreadsheet in Mr. Broadnax’s case “to prepare for . . . the *Batson* hearing,” then why did it bother to create a similarly racially marked *voir dire* chart in Mr. Cummings’s case where ***there was no Batson hearing?*** *Id.* at 27. The State’s only attempt to explain this discrepancy is to assert that it had to note prospective jurors’ races in Mr. Cummings’s trial in case a *Batson* challenge arose. *Id.* at 30. But this is contrary to the State’s previous argument that it only prepared the spreadsheet in Mr. Broadnax’s case ***after*** jury selection was complete. As this Court noted in *Foster v. Chatman*, the State’s shifting justifications for its consistent focus

on race in its files “reeks of afterthought.” 578 U.S. 488, 490–91 (2016).

Third, the State fails to explain—or even acknowledge—the handwriting on a Black prospective juror’s questionnaire that the juror “seems okay . . . **only concern** . . . [Defendant’s] **age + race** w/ Juror’s son **age + race**.” Appl. at Ex. B (emphasis added). This notation, which demonstrates that “**age + race**” were of singular importance to the prosecutors, refutes the State’s assertions that it tracked race only to answer the *Batson* challenge and only struck jurors for race-neutral reasons.

Fourth, the State ignores the fact that throughout *voir dire*, it subjected Black prospective jurors to disparate questioning, which this Court found in *Miller-El v. Cockrell* was clear indicia of discriminatory intent. 537 U.S. 322, 332–33 (2003) (“*Miller-El I*”). In contrast to White prospective jurors, the State provided Black prospective jurors with graphic descriptions of the execution process, directed them to look at Mr. Broadnax when asked whether they could sentence him to death, and explicitly questioned them as to whether their race would inhibit their ability as a juror. *See* Pet. 13–14.

Fifth, the State still fails to offer a plausible explanation for the stark statistical racial disparity of its jury strikes. The State struck **all seven qualified Black jurors, eliminating 100% of the eligible Black jurors**. *See, e.g., Flowers v. Mississippi*, 588 U.S. 284, 287 (2019) (finding a *Batson* violation where the State “struck five of the six [or 83%] black prospective jurors”); *Miller-El v. Dretke*, 545 U.S. 231, 240–41 (2005) (“*Miller-El II*”) (finding a *Batson* violation where the State struck “91% of the eligible African-American venire members”).

Sixth, the State fails to address the Dallas County District Attorney’s Office’s long-standing history of *Batson* violations and specifically, its unbroken history of tracking race in their jury selection materials in order to facilitate the exclusion of Black citizens. In fact, this office previously offered the same explanation that it does here—that it only tracked jurors by race as an effort to comply with *Batson* before this Court, an explanation this Court dismissed as impossible. *See Miller-El II*, 545 U.S. at 264 n.38. Since then, in an unbroken line of cases,¹ the same office has been repeatedly admonished for its history of race-based jury selection practices. This historical context, combined with the facts and evidence presented in Mr. Broadnax’s case, makes it even more urgent that this Court once again step in to remedy the State’s misconduct.

2. The record shows that the State’s proffered “race-neutral” reasons for excluding Black prospective jurors do not withstand scrutiny.

First, the State misrepresents the Black prospective jurors’ beliefs concerning the death penalty in its attempt to manufacture “race-neutral” reasons for its strikes. The State mischaracterizes its own juror questionnaire options when it argues that the prospective jurors who selected the statement, “Although I do not believe that the death penalty ever ought to be invoked, as long as the law provides for it, I could assess it under the proper set of circumstances” are equivalent to jurors who “were not in favor of the death penalty and/or believed it should never

¹ *See Reed v. Quarterman*, 555 F.3d 364, 365-68 (5th Cir. 2009); *Miller-El I*, 537 U.S. at 347; *Miller-El II*, 545 U.S. at 266; *Ex parte Robertson*, 603 S.W.3d 427, 428 (Tex. Crim. App. 2020); and *Watkins v. State*, 245 S.W.3d 444, 454–55 (Tex. Crim. App. 2008).

be invoked.” Opp’n 20–21. In direct opposition to what the State asserts, this statement itself makes clear that those who select it are capable of invoking the death penalty under the law—i.e., “*as long as the law provides for it, I could assess [the death penalty] under the proper set of circumstances.*”

Second, the State asserts that because “[n]either prospective Hispanic juror’s name is in bold type on the Excel spreadsheet,” this shows that the State was not focused on race during jury selection. *Id.* at 27. The fact that Hispanic prospective jurors were not marked on the spreadsheet does not prove that the State was not concerned with race. Rather, it shows that the State was focused, at least in this case, on excluding Black jurors. That makes sense, given that the State’s strategy in this case was to depict Mr. Broadnax as an animal-like Black predator, who would always be dangerous and thus deserving of death. *See* Pet. 6; *see also* 53 RR 74–75 (“[W]hen a predator whose normal prey is not a human being preys on a human being, the villagers, they go out and they find them and they kill them, because they know that once he’s tasted the human blood, he ain’t going to be able to stop. And, folks, James Broadnax is a predator. James Broadnax is the worst kind of predator. And he’s not going to stop.”). Notably the State provides no explanation of why, in its closing argument, it compared Mr. Broadnax to “the worst kind of predator” that “we like to watch” on “Animal Planet.” *See* Opp’n 33–34; 53 RR 74–75. And in fact, there is direct evidence showing that the State was critically preoccupied with exactly that, with the prosecutor’s handwriting on a Black juror’s questionnaire that the juror “seems okay . . . **only concern** . . . [Defendant’s] **age + race** w/ Juror’s son **age + race.**” Appl. at Ex. B (emphasis added).

Third, the State argues that the more diverse make-up of Mr. Cummings’s seated jury proves that “the State did not engage in race discrimination.” Opp’n 25–26. Again, this simply proves Petitioner’s point. In Mr. Cummings’s case, the State did not seek the death penalty, which brings into issue the future dangerousness of the defendant. There was no motive for the State to employ the racial stereotypes of young Black men as violent predators in Mr. Cummings’s case as it did in Mr. Broadnax’s, and it did not do so.

Finally, the recent declarations of three of the struck Black jurors confirm that the State’s reasons for excluding Black prospective jurors were impermissibly motivated by the desire to keep Black jurors off of the jury. *See* Pet. 21–25. The State asks this Court to disregard these excluded jurors’ declarations, Opp’n 30–31, despite the fact that they are the voices of the very community the State should seek to serve.

This Court should not do so. None of the State’s proffered “race-neutral” reasons explain why these three Black prospective jurors were struck, let alone all seven. What does explain the State’s peremptory challenges is its recurring focus on *race*—as seen in the juror charts where race is marked before jury selection; the handwritten comment noting as the “*only concern*” the Black prospective juror’s son’s “*age + race*” in relation to the Black defendant’s “*age + race*,” the disparate questioning; the overwhelming statistical disparity; the inconsistent outcomes between prospective Black and White jurors, even though they all affirmed they were capable of invoking the death penalty; and the history of a district attorney’s office that has been repeatedly admonished for its race-focused practices over decades. Mr. Broadnax should not be executed before a court has heard and considered the

evidence that the State violated his right to a jury not selected based on race.

B. This Court Has Jurisdiction to Review This Claim.

1. The TCCA’s denial of Mr. Broadnax’s Suggestion for Reconsideration is an appealable final decision.

First, as the State acknowledges, the Texas appellate rules allow the TCCA to reconsider a habeas case “on its own initiative.” Opp’n 12; *see also id.* at 14 (“The TCCA[] . . . enjoys the unfettered prerogative to reopen long-dormant habeas proceedings.”). It is thus undisputed that the TCCA has a well-developed practice of rehearing decisions “on its own initiative” following the filing of a suggestion for reconsideration. *See, e.g., Ex parte Rene*, 2021 WL 710308, at *1 (Tex. Crim. App. Feb. 24, 2021); *Ex parte Dyson*, 2021 WL 359461, at *1 (Tex. Crim. App. Feb. 3, 2021); *Ex parte Matamoros*, 2011 WL 6241295, at *1 (Tex. Crim. App. Dec. 14, 2011); *see also infra* pp. 10.

In fact, the State itself utilized this “suggestion” mechanism in *Escobar v. Texas*, requesting that the TCCA reconsider its order denying the applicant’s state habeas petition. *See* Pet. for a Writ of Cert. at App. E, No. 21-1601 (June 24, 2022). This Court then later granted certiorari to review the underlying decision. *Escobar v. Texas*, 143 S. Ct. 557 (2023).

Indeed, the Fifth Circuit has held that because “the [TCCA] has entertained motions for reconsideration, notwithstanding the language in . . . Rule 79.2(d)” a habeas petitioner’s filing of a suggestion for reconsideration constitutes a “**properly filed application for State postconviction** or other collateral review.” *Emerson v. Johnson*, 243 F.3d 931, 932, 934–35 (2001). The Fifth Circuit recognized this point before engaging in and independent of the

tolling analysis in that opinion; the State’s argument that the court’s holding “hinged” on federal principles of tolling is incorrect. Opp’n 16.

Second, the State accepts that Rule 13.3 specifically contemplates the “denial of rehearing” from a lower court’s “*sua sponte* consider[ation],” in addition to, and separately from, a lower court judgment following a grant of rehearing. *See* Opp’n 15–16. The fact that this Court’s rule contemplates this specific situation clearly indicates that the Court has jurisdiction to review such orders. The State’s “timeliness” argument is a red herring because Tex. R. App. P. 79.2(d) provides that the TCCA may *sua sponte* reconsider the case at any time.

Third, the State’s assertion that “[t]he TCCA did not reconsider anything” is disproved by the TCCA’s consistent responses to suggestions for reconsideration on the court’s own motion. Opp’n 16. *See, e.g., Ex parte Moussazadeh*, 361 S.W.3d 684, 687, 692 (Tex. Crim. App. 2012) (granting reconsideration after receiving petitioner’s suggestion for reconsideration and consequently granting relief); *Ex parte Wood*, 568 S.W.3d 678, 679–80 (Tex. Crim. App. 2018) (granting reconsideration and explaining reasons for denying relief); *Ex parte Robertson*, 603 S.W.3d at 428 (granting reconsideration after receiving petitioner’s suggestion for reconsideration and remanding for further fact finding).² Of course, in other cases, like Petitioner’s case, the TCCA denied the suggestion for rehearing. But it defies logic to assert that the TCCA is not deciding whether to grant or deny

² Contrary to the State’s assertion, Opp’n 31 n.12, the TCCA did grant relief in *Ex parte Robertson*, in that it remanded the case to the trial court for further fact finding based on Mr. Robertson’s suggestion for reconsideration, 603 S.W.3d at 428.

suggestions for rehearing when the TCCA has an established practice of doing just that.³

2. This Court has jurisdiction to review the TCCA’s dismissal based on Tex. Code Crim. Proc. Art. 11.071, § 5(a)(1).

Tex. Code Crim. Proc. Art. 11.071, § 5(a)(1) does not function as an automatic state “procedural bar” precluding this Court’s review. Opp’n 18. As the Fifth Circuit explained in *Rocha v. Thaler*, “prior to *Campbell*, our decisions had assumed that a dismissal under § 5(a)(1) always rested on an independent and adequate state-law ground,” but “[t]hat assumption cannot survive *Campbell*.” 626 F.3d 815, 835 (5th Cir. 2010).

The State’s referenced cases provide no support for their position because those cases all rested their finding of no independent federal question upon the fact—*undisputed in those cases*—that the petitioner raised no factual or legal basis that purported to be previously unavailable, thus precluding the TCCA from reaching the *prima facie* review of the underlying constitutional claim. Opp’n 10–11, 17–18 (citing *Balentine v. Thaler*, 626 F.3d 842, 857 (5th Cir. 2010) (noting that the petition “made no effort to show that the facts or law underlying his [§ 5(a)(1)] claim were unavailable to him”); *Buntion v. Lumpkin*, 31 F.4th 952, 962 (5th Cir. 2022) (noting that petitioner raised the

³The State’s argument that the fact that the TCCA notified Petitioner of its decision by way of a “postcard” somehow disqualifies the denial from being an appealable final decision has no merit. The Texas appellate courts regularly send out postcards for notification of various types of decisions, including denials of motions of rehearing. *Cf. Townsend v. Lucas*, 745 F.2d 933, 934 (5th Cir. 1984) (a separate written opinion is not required for a final and reviewable judgment) (citing *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 383–84 (1978)).

same claims presented in previous habeas proceedings based on the same record). That is not the situation here, where Petitioner’s claim is based on new evidence that was previously withheld by the State.

Second, the State asserts that “[b]y explicitly indicating it had not considered the merits, the TCCA left no doubt as to the independent, state-law character of its dismissal.” Opp’n 10. However, the TCCA order contains no such explicit statement; it merely states that “the applicant’s suggestion for reconsideration has been denied without written order.” Pet., App. A at 1a.

In fact, the TCCA’s denial of Mr. Broadnax’s Suggestion for Reconsideration necessarily encompassed a matter of federal law because the only claim presented was a *Batson* claim. The State agrees that when “the decision” of the state court “fairly appear[s] to rest primarily on federal law or to be interwoven with federal law[,]” then federal law consideration exists. Opp’n 17 (citing *Coleman v. Thompson*, 501 U.S. 722, 735 (1991)). Since Mr. Broadnax only presented a single claim – a *Batson* claim – and that claim was based on previously withheld evidence that was unavailable to Petitioner, the TCCA necessarily considered this federal claim to reach its denial.

* * * * *

The petition for a writ of certiorari should be granted.

Respectfully submitted,

STEVEN C. HERZOG
Counsel of Record
PIETRO J. SIGNORACCI
EVA WENWA GAO
JENNIFER R. KIM
SOPHIA CHUNG
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
sherzog@paulweiss.com

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