No. 20-5923

(CAPITAL CASE)

IN THE

Supreme Court of the United States

CHARLES DON FLORES,
Petitioner,

vs.

TEXAS,
The State.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Capital Case

Gretchen Sims Sween*
P.O. Box 5083
Austin, Texas 78763-5083
(214) 557.5779 (telephone)
gsweenlaw@gmail.com

* *Counsel of Record, Member of Supreme Court Bar*
Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTRODUCTION 1
ARGUMENT IN REPLY 1
I. This Court Has Jurisdiction. 1
II. The State's View of the Merits Is Divorced from the Science That Exposes the Inherent Unreliability of "Investigative Hypnosis." 6
III. The Trial Record Is Devoid of Competent Evidence Supporting the Conviction Beyond the Hypnotized Witness's Testimony. 10
CONCLUSION 15

TABLE OF AUTHORITIES

Cases **Page(s)**

Andrus v. Texas,
140 S. Ct. 1875 (2020) 6

Cone v. Bell,
556 U.S. 449 (2009) 15

Ex parte Flores,
2016 WL 3141662 (Tex. Crim. App. May 27, 2016) 3

Flowers v. Mississippi,
588 U.S. __ (2019) 15

Moore v. Texas,
139 S. Ct. 666 (2019) 6

Rock v. Arkansas,
483 U.S. 44 (1987) 1, 4, 5, 8

State v. Moore,
902 A.2d 1212 (N.J. 2006) 4

Zani v. State,
758 S.W.2d 233 (1988) 4, 5

Statutes

Tex. Code Crim. Proc. art. 11.071 .... 2, 3, 4

Tex. Code Crim. Proc. art. 11.073 .... 1, 2, 5

INTRODUCTION

The Court has jurisdiction to hear Flores's new-science claim raised using a state-law *vehicle* but plainly arising under the Fourteenth Amendment's Due Process Clause and the Eighth Amendment's requirement of heightened reliability in death-penalty cases. The Texas Court of Criminal Appeals (TCCA) did not even acknowledge the constitutional aspects of a claim that relies on *current* scientific understanding of human memory, an understanding in its infancy when *Rock v. Arkansas*, 483 U.S. 44 (1987), was decided and which was still in flux for years thereafter. The State's reliance on arguments-by-distraction should not obscure the significance of the question presented, which rests on the empirically based understanding that hypnosis is a technique insufficiently reliable for forensic use.

ARGUMENT IN REPLY

I. THIS COURT HAS JURISDICTION.

Flores first raised the federal-law issues presented here in a subsequent state habeas application in 2016 pursuant to state law, but these issues were not resolved under state law. The habeas proceeding below was initiated under Articles 11.071 and 11.073 of the Texas Code of Criminal Procedure. *See* AppD. Article 11.073 is a relatively new statute known colloquially as the "junk-science law."[1] To rely on Article 11.073, Flores had to satisfy the threshold requirements for an ordinary

[1] *See Forensic Science: Last Week Tonight with John Oliver (HBO)*, *available* at https://www.youtube.com/watch?v=ScmJvmzDcG0 (last accessed on Jan. 5, 2021) (describing Article 11.073 as Texas's "junk-science law," an attempt to address the role subsequently discredited forensic science has played in wrongful convictions). Unfortunately, no death-sentenced habeas applicant in Texas has yet obtained relief utilizing Article 11.073.

subsequent state habeas application, found in Article 11.071's section 5(a), *and* show that his claim involved "scientific evidence" "currently available" and "not ascertainable through the exercise of reasonable diligence on or before a specific date" because "the field of scientific knowledge, a testifying expert's scientific knowledge, or a scientific method on which the relevant scientific evidence is based has changed[.]" TEX. CODE CRIM. PROC. art. 11.073. Flores did so; attaching to his pleading an affidavit from the foremost expert on forensic hypnosis, Dr. Steven Lynn. AppF. Dr. Lynn explained how laboratory studies had gradually dashed hopes that hypnosis could be a tool for unlocking accurate memories and how scientists in the field who had initially promoted it as a forensic tool (such as Dr. Martin Orne) came to conclude that no guidelines or procedural safeguards could minimize the attendant risks.

Flores also federalized his new-science claim, alleging that the State's reliance on now-discredited "science" to put unreliable, hypnotically induced identification testimony before the jury violated his constitutional rights to due process and to be free from cruel-and-unusual punishment. AppF0060-63. Flores was able to bring an out-of-time claim in a subsequent state habeas proceeding because of Texas's new junk-science law; but that statute does not preclude alleging violations of the U.S. Constitution. Yet after his claim was remanded for further factual development, and after a multi-day evidentiary hearing, the habeas court and then the TCCA entirely ignored the constitutional components of his claim—as well as most of the evidence adduced to support it. *See* AppA & AppC. That the Texas courts ignored allegations of serious constitutional violations in a death-penalty case does not mean this Court

cannot review the TCCA's judgment and right the wrong. That is, the TCCA's decision to ignore a question arising under the Fourteenth and Eighth Amendments is not an adequate or independent state-law basis for denying relief.

No federal court has yet considered Flores's claim. Although Flores had previously challenged the State's reliance on the hypnotically induced testimony of Jill Barganier, those challenges were based on *the trial record* and the science operative at that time. Not until 2016 was he able to get back into state court, utilizing Article 11.073, and ask to expand the record. Then, only *because* Flores had established that his claim involved a change in scientific understanding since his initial state habeas application was filed in 2001, was his claim remanded for further factual development. *See Ex parte Flores*, WR-64,654-02, 2016 WL 3141662 (Tex. Crim. App. May 27, 2016). The State argued against a remand then, insisting incorrectly, as it does now, that the due process element of his claim had previously been presented to and rejected by the federal courts. Brief in Opposition (BIO) at 27-30 (citing *Flores v. Thaler*, 2011 WL 11902115 (N.D. Tex. Mar. 3, 2011)). The TCCA rejected the State's argument in 2016, finding that the new habeas claim "satisfies the requirements of Article 11.071 § 5." *Ex parte Flores*, 2016 WL 3141662, at *2. To satisfy section 5(a), a habeas applicant must establish that "the current claims and issues *have not been and could not have been presented previously* in a timely initial application or in a previously considered application … because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application[.]" TEX. CODE CRIM. PROC. art. 11.071, sec. 5(a)(1) (emphasis added). In

other words, the decision that is now being appealed to this Court would not exist if the issues had been previously raised and adjudicated by federal courts, as the State contends. *See id.*

Again, an evidentiary hearing on Flores's claim was authorized only because it was based on new, previously unavailable science. During that multi-day evidentiary hearing, the new science became part of the record. Experts on forensic hypnosis (Lynn) and on memory and eyewitness identification (Kovera) testified that no sound science supports the belief that hypnosis can be a reliable memory-retrieval tool; and it is now generally accepted in the scientific community that there is no way to gauge the reliability of hypnotically induced testimony and no support for the proposition that hypnosis can "improve" recall.[2] Critically, scientific studies have now shown that hypnotized subjects produce the greatest *divergence* between an initial recorded memory and the memory as relayed weeks later. There is now a near consensus in the field of cognitive psychology that forensic hypnosis is so problematic that there is no way to guard against the "dangers" the TCCA identified in *Zani v. State*, 758 S.W.2d 233 (1988), a case reflecting the legal position adopted in many jurisdictions after *Rock* was decided. Intervening changes in scientific understanding have prompted most jurisdictions to adopt *per se* bans on admitting hypnotically induced testimony. *See, e.g., State v. Moore*, 902 A.2d 1212 (N.J. 2006). That is,

[2] *See* AppC 44-113; *see also* Brief of The Innocence Project as *Amicus Curiae* in Support of Petitioner describing numerous "troubling" aspects of the circumstances surrounding Barganier's identification, adduced for the first time in this habeas proceeding, and explaining how "[r]obust scientific research over the last two decades" has illuminated "a number of specific factors that erode the reliability of eyewitness evidence" generally, a situation compounded by "the use of hypnosis—a discredited and highly suggestive method of eliciting identification evidence[.]" *Id.* at 2.

laboratory studies have demonstrated that the "procedural safeguards" adopted in cases like *Zani* do no more than "allow evaluation of what transpired during the hypnosis rather than to minimize risks of memories being tampered [with]." AppC79.

Decades of empirical research on the nature of memory and the effect of hypnosis on recall now show that "the four-prong dangers of hypnosis" noted in *Rock* and *Zani*—hyper-suggestibility, loss of critical judgment, confabulation, and memory cementing—cannot be protected against; thus, the foundational premise underlying *Rock* and *Zani* has eroded. *See* AppC049-93; *see also* Brief of Dr. Steven Penrod and 27 Additional Cognitive Scientists as *Amici Curiae* in Support of Petitioner ("Brief of Cognitive Scientists") at 10 ("Scientific findings now clearly show that hypnotically enhanced memories are often unreliable and likely to be held with undue confidence and safeguards cannot eliminate these problems."); *id.* at 14-18 (describing stages of memory retention and retrieval that render hypnotized subjects especially vulnerable to memory corruption).

Flores successfully used a state law (Article 11.073) to reopen the record; but the question presented here was not resolved by application of state law. Additionally, the petition does not arise from federal habeas review of a state judgment. The question presented comes directly from a judgment in the state habeas proceeding. Once the TCCA denied relief, Flores had a right to bring the federal issues raised in the state proceeding to this Court, which is free to take up the question presented unincumbered by the Antiterrorism and Effective Death Penalty Act's highly deferential standard of review, as it has done in other recent Texas death-penalty

cases where state habeas applicants' federal claims had received short shrift in the state court system. *See, e.g.*, *Andrus v. Texas*, 140 S. Ct. 1875 (2020) (granting state habeas applicant's petition, vacating TCCA's judgment, and remanding for further proceedings on federal claim); *Moore v. Texas*, 139 S. Ct. 666 (2019) (same).

II. THE STATE'S VIEW OF THE MERITS IS DIVORCED FROM THE SCIENCE THAT EXPOSES THE INHERENT UNRELIABILITY OF "INVESTIGATIVE HYPNOSIS."

The habeas record established that Barganier had been permitted to testify regarding her hypnotically induced identification because: several witnesses during the hastily convened "Zani hearing" were not honest with the trial court or were unfamiliar with key facts;[3] the lead prosecutor at trial propagated a myth of "corroborating" evidence that the trial court accepted at face value;[4] and the trial court did not have the benefit of contemporary science, which thoroughly discredits using hypnosis as a memory-retrieval tool and demonstrates that the practice is more likely to induce undue confidence in *false* memories that emerge later, while making witnesses peculiarly resistant to cross-examination. AppC014-15, 51-52, 60-110. The State attacks the merits of Flores's claim with a string of assertions, BIO at 36-40, divorced from the science and factual background adduced in the habeas proceeding.

First, contrary to the views of both Barganier and the hypnotist, the State asserts that she was not really hypnotized. Experts for both parties agreed that the

---

[3] *See* AppC110-122. Additionally, no one in the Zani hearing asked the officer-hypnotist about his experience. But in the habeas proceeding, he admitted that the hypnosis performed on Barganier was his first and only experience hypnotizing anyone. AppC114.

[4] *See* 36 RR 117-18 (trial court allowing the hypnotically induced identification testimony based on the recitation of purportedly "corroborating" evidence as "enumerated by the Prosecutor").

subject's belief that she had been hypnotized was dispositive. AppC136. Also, the hypnosis session's content shows that Barganier was highly motivated to come up with information helpful to the police and earnestly believed that hypnosis would enable her to do that. At the session's conclusion, she repeatedly asked the officer: "Did I do ok? . . . Did I help in any way?" AppC103. Moreover, studies have established that, even if a subject is less susceptible to being hypnotized, the process still has an intrusive effect. AppC127-30.

Second, the State insists that, because Barganier "did not enlarge on her descriptions of the men" *during* the hypnosis session, that shows that her subsequent courtroom identification was unrelated to the hypnosis. BIO at 14, 31, 32. In short, the State argues there is no causal link between the events. But the considerable temporal gap between (1) Barganier's initial observation (made through her miniblinds, looking across the length of her house, before dawn, at unfamiliar men in the driveway next door while she was preoccupied with her morning routine) resulting only in a vague memory of seeing a second "white male" with "long, wavy hair" and (2) her in-court identification thirteen months later of heavy-set Hispanic Flores with short, shaved hair is *only* explained by the false confidence instilled in her during the hypnosis session when she was repeatedly told that she could "remember more" as time passed. AppC065. No empirical science supports the State's contention that a vague, initial impression can later give rise to a true memory upon seeing someone in person months later. The science adduced during the habeas proceeding shows that Barganier had not encoded a sufficiently specific memory of

the passenger in the first place and thus had nothing to retrieve a few days later during the hypnosis; that exercise served only to contaminate whatever memory she may have had and to instill false confidence in her ability to "remember more" after she was repeatedly exposed to Flores's picture before then seeing him in court. AppC096-107.

Third and Fourth, the State notes that Texas law permits admitting hypnotically enhanced testimony into evidence, and it posits (contrary to the habeas record) that the hypnosis session complied with Texas law. Yet the question presented to this Court challenges the constitutionality of that law because it is contrary to the present consensus that hypnosis is too unreliable to be used in the forensic context. *See* Brief of Cognitive Scientists at 24-26.

Fifth, the State notes that, because hypnosis has always been "controversial," none of the intervening scientific studies exposing its unreliability generated anything really new. This argument amounts to a cynical suggestion that, because investigative hypnosis was always potentially junk science, now that we have overwhelming proof to that effect, "no harm, no foul." While it is correct that concerns about the practice existed when *Rock* was decided, numerous findings since then have established that *no* warnings or procedural safeguards can preclude the formation of false memories and that hypnosis increases the risk of forming false memories *later*. AppC065. Scientific fields are never monolithic. Debate always exists. But since Flores's 1999 trial, empirical studies have significantly changed the debate such that those experts concerned about the reliability of hypnosis now hold the dominant view.

See Brief of Cognitive Scientists at 22 (noting that, while the use of "hypnosis in psychotherapy may yield beneficial outcomes regarding chronic pain, anxiety, or addiction, expectancies that hypnosis produces accurate memories pose grave dangers when imported into a forensic setting.") (citing authorities).

Sixth, the State unreasonably suggests that, because Dr. Lynn was already voicing concerns about forensic hypnosis in 1999, he could have testified at Flores's trial. This argument ignores the fact that Flores, an indigent, was broadsided mid-trial with the news that Barganier intended to make an identification and the requisite "Zani hearing" was hastily convened the very next morning. AppC107-10.

Finally, the State revisits its go-to argument: that Flores would have been convicted even without Barganier's testimony. The State does not acknowledge that, in this habeas proceeding, it aggressively resisted Flores's efforts to expose the unreliability of the other evidence that reputedly supports the 1999 conviction. The State argued that looking at anything other than the hypnosis session was not "relevant" to evaluating whether Flores should be awarded a new trial. AppC038-39; AppC158 n.35; 3 EHRR 23 (State's counsel arguing "this is not a hearing where they're going to be able to come in and challenge all of the other record evidence."). Using this argument, the State convinced the habeas judge to dramatically truncate Flores's witness list. Then, having succeeded at slamming the door on efforts to expose past misrepresentations of the trial record's contents, the State now (as it did below) invokes an inaccurate summary of that record, discussed further in Section III, to discourage review of the hypnosis issue. AppC157-58. This gamesmanship is

not a reason to forego deciding whether, in light of the current scientific consensus, the guarantee of a fundamentally fair trial is incompatible with the use of investigative hypnosis and whether the requirement of heightened reliability in death-penalty cases is offended by convictions that hinge on such a practice.

III. THE TRIAL RECORD IS DEVOID OF COMPETENT EVIDENCE SUPPORTING THE CONVICTION BEYOND THE HYPNOTIZED WITNESS'S TESTIMONY.

Flores's 1999 death-penalty trial featured incoherent, farfetched, circumstantial evidence buttressed at the eleventh hour by compelling, yet wholly unreliable, hypnotically induced testimony. That testimony was deemed admissible in reliance on the scientific understanding at the time that "procedural safeguards" could be and had been used to guard against the known "dangers" associated with hypnosis. To this day, the State stands by its trial expert's opinion that procedural safeguards were complied with such that the hypnosis session at issue here was proper. BIO at 34. Moreover, the State argues that using hypnosis as an investigative tool, despite current scientific understanding, is constitutional—as is relying on hypnotically induced "memory" to obtain convictions. The State mostly eschews discussing the relevant science, however, and insists instead that the trial was replete with competent evidence that otherwise supports Flores's conviction.[5]

The misrepresentations, material omissions, and inaccuracies in the State's description of a trial record, not yet before this Court, are too numerous to inventory

---

[5] For instance, the State spends pages on the extraneous offenses it relied on during the guilt-phase of trial to inflame the jury and mask the State's weak, entirely circumstantial case. BIO at 10-13. Flores never denied panicking and trying to destroy the flamboyant Volkswagen Beetle, which Ric Childs had abandoned outside of Flores's trailer, when Flores learned that Childs was wanted for a murder committed after he was seen getting out of that rather distinctive car at the murder victim's house.

here. But debunking some examples is warranted, as the State's primary argument for denying *certiorari* is its characterization of *other* evidence purportedly supporting the conviction. The State cites, for instance, evidence that Flores was with Ric Childs soon before Barganier saw Childs outside of the murder victim's house. The State fails to note that this "other evidence" came solely from two of Childs' drug-addled girlfriends, one of whom was an accomplice to the crime. Moreover, these highly compromised witnesses only succeeded at putting the men together in two *different* parts of the Dallas metroplex at the same time—and at a time that contradicted Barganier's timeline. 34 RR 153; 35 RR 71-89; 36 RR 281.

Likewise, the State does not mention that evidence of Flores's supposed "admissions" that he had been present at the scene but had "only shot the dog" came from two utterly unbelievable witnesses: Homero Garcia and Jonathan Wait. Garcia, a meth addict then facing charges for being a felon in possession of drugs and a firearm, signed a statement purporting that Flores had confessed to Garcia. But that statement, typed up by law enforcement, was signed months after-the-fact while Garcia was in FBI custody, coming off a four-day meth binge, and facing accusations that he had been caught with the murder weapon. 36 RR 229, 232-33. At trial, he said of the typed statement: "I don't recall telling the FBI half of this stuff." 36 RR 228. He also dodged a subpoena and was not attached in time to be cross-examined. 38 RR 68-69. Wait, a self-professed drug addict and alcoholic, was a habitual FBI snitch. He barely knew Flores. After Wait had spent months trying to ingratiate himself with the FBI, during trial he shared, for the first time, a far-fetched story about having

obtained a "confession" from Flores. 37 RR 79-96. These individuals were not fairly characterized as "those close to" Flores, as the State contends. BIO at 38.

The State also devotes considerable space to describing, as settled fact, a convoluted "bigger-gun-was-used-to-shoot-the-dog" hypothesis that the prosecution had pushed in its Opening Statement, absent any evidentiary support. BIO at 2-3. The State urged the jury to accept a chain of inferences that would make any logician cringe: Mrs. Black had been killed by a bullet, recovered from the scene, fired from a .380 pistol; a bigger gun, a .44 magnum revolver, was found at Childs' grandmother's house a few days after the murder; therefore, this bigger gun must have belonged to Childs; Childs (who was indisputably present) must have used this bigger gun to shoot the dog; and Flores, who had been with Childs hours before, must also have been at the Blacks' house, armed with the .380 pistol (never recovered) and thus Flores must have shot Mrs. Black. 34 RR 27-29, 38. In treating this baseless "bigger-gun-was-used-to-shoot-the-dog" hypothesis as fact, the State cites 36 RR 147-50 of the trial record. Yet if one looks to the underlying record, those pages encompass testimony from the medical examiner who expressly *disavowed* an ability to opine about what kind of weapon may have been used to shoot the dog, 36 RR 147:

> Q (prosecutor). Before we look at the photographs, did you form an opinion after observing Elizabeth Black and this dog as to whether or not the shot from Elizabeth Black could potentially have come from a weapon with higher or lesser velocity than the shot from the dog? Were you able to make any conclusions based on what you saw?
>
> A (medical examiner). No, not a firm conclusion.

Despite pressure from the prosecutor, the medical examiner maintained that she could *not* conclude that the dog had been shot with a gun of a "higher velocity" because dogs are smaller than humans. *Id*. She also noted that the gunshot wound that the dog had sustained was atypical. 36 RR 148. Importantly, the medical examiner noted "let's face it, I don't routinely do dogs." 36 RR 146. Aside from noting a lack of experience performing autopsies on dogs, the medical examiner emphasized that, while she could analogize to humans such as herself, "I hope it's obvious I'm not a Doberman." *Id.* Yet the prosecutor kept pressing (36 RR 149):

> Q. Has it been your experience that a larger caliber of bullets and weapons, would typically produce a larger bullet hole in a typical case?
>
> A. In a typical case, but remember, the gunshot wound of probable entrance in the dog is not a typical entrance defect.

The State's recitation of the reputed "bigger gun" facts also fails to share that: (1) multiple witnesses had told law enforcement that Childs routinely carried a small handgun, likely a .380; (2) that when arrested, Childs had an opened box of the *exact* brand of ammunition for a .380 as the lone bullet and casing recovered from the crime scene; and (3) the only evidence suggesting that the .44 magnum had been used in the crime came, *mid-trial*, from a subsequently disgraced trace-evidence analyst with a track record of crossing the line to provide the Dallas County DA's office with special assistance in death-penalty cases. 34 RR 265-66; 35 RR 256; 36 RR 208-15; AppC165-67. Likewise, the State does not mention that this expert from the local crime lab found evidence of potato inside the .44 magnum to suggest a link to the crime scene only *after* the gun had been lying around the DA's office for over a year. Nor does the

State mention that this expert was called to the stand the day after his hasty "testing" as the State's case was unraveling (and before the State knew that Barganier was going to be allowed to testify about her hypnotically induced identification). The State refers to this unsound evidence in notably passive voice, concealing the troubling context: "Polarized-light microscopy of granular material found inside the Magnum barrel identified starch grains consistent with those from a potato." BIO at 9. Co-defendant Childs did not testify and thus did not attest to what gun he had used. But soon after Flores was convicted and sent to death row, Childs signed a judicial confession stating that *he* had shot Mrs. Black; he received a 35-year sentence, served 15 years, and was then paroled. AppC017.

Most critically, the State misrepresents the record regarding the hypnosis session central to the question presented. For instance, the State asserts that "[n]either officer" who participated in the hypnosis session "knew that Flores was a potential suspect in the murder." BIO at 16. Yet, during this habeas proceeding, it was established that both officers who had sat in on the hypnosis session were active in the investigation and one had pointedly lied to the trial court about already knowing that Flores was a suspect. AppC119. Additionally, the State declares that the officer-hypnotist "suggested nothing to Barganier, provided no feedback, and avoided reinforcing any aspect of her recollection." BIO at 16. As support, the State again cites only the trial record—which contains only the prosecutor's leading questions during the Zani hearing. BIO at 16. Even looking only to the hypnosis session itself one finds:

- The officer-hypnotist suggested many things to Barganier, including repeatedly asking her leading questions about the suspects' hair: "Is his hair short, is it shaved, is it neatly cut?" [asked about the driver whom she had already identified as Childs and whose hair she had described as "dirty, long, and wavy"]; "Does he have it neatly cut or is it trimmed?" [asked about the passenger whose hair she had already described as "A lot like his friend's" and "long."] AppC104.

- The officer-hypnotist provided considerable "feedback" by repeatedly making comments to Barganier such as "you're doing good" and "you're doing fine." AppC103.

- The officer-hypnotist repeatedly reassured Barganier that her memory might improve after the hypnosis session, *e.g.*: "You will also remember everything that you've said in this session and you might find yourself being able to recall other things as time moves on."; "You'll remember everything that was said in this interview. And as I said, you'll be able to recall more of these events as time goes on." AppC065.

Any objective reading of the trial and habeas records reveals that Barganier's mid-court epiphany regarding her ability to identify Flores saved the State's incoherent case, which had been crafted on the fly largely from highly compromised drug addicts and dealers looking for leniency. A response to a petition invoking this Court's heightened-reliability jurisprudence that relies on unreliable descriptions of the trial and habeas records should kindle concern—and amount to an additional basis for granting *certiorari*. *Cf. Flowers v. Mississippi*, 588 U.S. __ (2019) (granting *certiorari* where State's arguments against further review were, per petitioner, based in part on mischaracterizations of the trial and post-conviction records); *Cone v. Bell,* 556 U.S. 449, 464 (2009) (granting *certiorari* and noting accusation that State had engaged in a "falsification of the procedural record").

CONCLUSION

This Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

/s/ *Gretchen Sims Sween*
Gretchen Sims Sween,
Counsel of Record
P.O. Box 5083
Austin, Texas 78763-5083
(214) 557.5779
gsweenlaw@gmail.com

Counsel for Petitioner

January 6, 2021