No. 14-9409

IN THE
Supreme Court of the United States

JABARI WILLIAMS,
Petitioner,

v.

STATE OF LOUISIANA,
Respondent.

On Petition for a Writ of Certiorari to the Louisiana Fourth Circuit Court of Appeal

REPLY TO BRIEF IN OPPOSITION

Michael Admirand
Counsel of Record
The Promise of Justice Initiative
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955
MAdmirand@thejusticecenter.org

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner Jabari Williams respectfully replies to the State's *Brief in Opposition* to his petition for writ of certiorari. Although the State acknowledges the lower-court split Louisiana has created, it incorrectly asserts that the issue is not properly before this Court.

1. This Court has jurisdiction. At trial, Petitioner repeatedly objected to the State's strike of 11 African-American jurors—*see, e.g.*, Supp. Vol. 173-78, 267-73—and repeatedly objected to the trial court's rulings. *See* Supp. Vol. 270-273. Defense counsel also specifically objected to the trial court's practice of providing race-neutral reasons for three of the stricken jurors. Supp. Vol. 272.[1] In the appellate proceedings below, Petitioner briefed multiple *Batson* issues and devoted half of his allotted oral argument time to them. Indeed, in a divided opinion, the Fourth Circuit Court of Appeal rejected Petitioner's *Batson* claim on the merits, with Judge Belsome dissenting on the precise issue before this Court. *See* Pet. App. 19a (Belsome, J., dissenting).

---

[1] The State insists in its *Brief in Opposition* that, far from objecting to this procedure, defense counsel actually requested that "the court state the reasons" for striking African-American jurors. *Brief in Opposition* at 18. Petitioner strongly disagrees with this characterization of the record. Defense counsel objected to this procedure, and after the objection was denied, asked for the court to order the State to provide reasons for its strikes. In a heated exchange, the trial judge denied the request, and cut off further argument. *See* Supp. Vol. 268-72. This error was not invited, and is ripe for this Court's review.

Petitioner then sought review before the Louisiana Supreme Court, explicitly urging that court to "revisit its holding in *Elie*[2] authorizing trial courts to provide their own reasons for the State's peremptory challenges, a practice that violates *Batson* and its progeny." The Louisiana Supreme Court declined to exercise discretionary review. Pet. App. 20a.[3]

The issue was fairly presented below, the last reasoned state court decision addressed the claim on the merits, and there is no reason to "presume that [a] procedural default has been invoked by a subsequent unexplained order that leaves the judgment or its consequences in place." *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991).

This Court has jurisdiction to consider Petitioner's case, and it should exercise that jurisdiction to review the judgment below.

2. The State's *Brief in Opposition* makes clear that there is a split in the circuits concerning the case. The State argues that the cases upon which

---

[2] *See State v. Elie*, 05-1569 (La. 07/10/2006); 936 So.2d 791, 797 (authorizing trial courts to assume the responsibility of providing race-neutral reasons for the State's peremptory challenges "even though this does not accord with" *Johnson v. California*, 545 U.S. 162 (2005) and this Court's "evolving *Batson* jurisprudence").

[3] Contrary to the State's suggestion, the relevant precedent is not *Adams v. Robertson*, 520 U.S. 83 (1997); it is *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991) (explaining the presumption that, "[w]here there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground.").

Petitioner relied in his *Petition for Writ of Certiorari* "are inapposite to the present case," *Brief in Opposition* at 19, because in each, the trial court either took judicial notice of an apparent explanation for the strike at step one, or required the prosecution to provide an explanation at step two. *See Brief in Opposition* at 19-23.

This argument only underscores the conflict Louisiana's jurisprudence has created. The trial court took neither course, and instead found a *prima facie* case before proceeding to provide race-neutral reasons for the State's strikes. This procedure essentially authorizes a trial judge to make the *prima facie* determination, provide the race-neutral reasons, and ultimately dispose of the *Batson* challenge at once. This Court should not countenance such a procedure.

Instead, this Court should resolve the circuit split that Louisiana has created and that the State has recognized in its *Brief in Opposition*.

3. The role of the trial judge is to "evaluate not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for strike attributed to the juror by the prosecutor." *Snyder v. Louisiana*, 554 U.S. 472, 477 (2008). As this Court has explained, "[t]his is a difficult determination because of the nature of peremptory challenges: They are often based on subtle impressions and intangible factors." *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015). This "difficult determination" becomes an impossible one if the trial judge is allowed to provide race-neutral reasons, and if the prosecutor is relieved of his responsibility "to

state his reasons as best he can and stand or fall on the plausibility of the reasons he gives." *Miller-El v. Dretke*, 545 U.S. 231, 252 (2005).

This Court has emphasized that:

> The *Batson* framework is designed to produce actual answers to suspicions and inferences that discrimination may have infected the jury selection process. The inherent uncertainty present in inquiries of discriminatory purpose counsels against engaging in needless and imperfect speculation when a direct answer can be obtained by asking a simple question.

Johnson v. California, 545 U.S. 162, 172 (2005). The State asks the Court to redesign the framework. This Court should decline the invitation and instead, grant certiorari to review the judgment below.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

Michael Admirand
Counsel of Record
The Promise of Justice Initiative
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955
MAdmirand@thejusticecenter.org

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 29th day of July, 2015, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Mr. Scott Vincent
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
(504) 822-2414

Counsel for the State of Louisiana

_____
Michael Admirand