No. 19-6051

ORIGINAL

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

HEZEKIAH WHITFIELD — PETITIONER
(Your Name)

vs.

DEANNA BROOKHART — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court, Northern District of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hezekiah Whitfield, B14293
(Your Name)

10930 Lawrence Rd.
(Address)

Sumner, Illinois 62466
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

Whether Petitioner Made A Substantial Showing Of The Denial Of His Sixth And Fourteenth Amendment Due Process Rights Where Petitioner Was Restricted From Presenting Critical Corroborative Defense Evidence Which Had Previously Been Admitted For The Prosecution's Use Against A Different For The Same Crime

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at 2018 U.S. Dist. Lexis 155262; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 19, 2019.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 19, 2019, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions Involved

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV

§1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Hezekiah Whitfield was tried and convicted for the murder of Fred Reckling which occured on December 9, 1994. Prior to petitioner's prosecution, a man by the name of James Edwards confessed to the murder of Mr. Reckling and numerous other murders and robberies.

During Edwards's prosecution, because he claimed that his confession to Mr. Reckling's murder was false, the State was allowed to use the confession(s) to other-crimes which Edwards had made in order to prove the veracity of Edwards's confession. However, during the prosecution of Mr. Whitfield, it was the State who claimed that Edwards's confession was false, and Petitioner who sought to use the exact same evidence previously used by the STATE, for the exact same purposes, but denied by the Trial Court.

This case presents a unique situation which conflicts with each and every case previously decided by this Court regarding the compulsory process.

REASONS FOR GRANTING THE PETITION

On December 9, 1994, 71-year old Fred Reckling was found beaten to death inside The Grand Appliance, a store he owned in Waukegan Illinois. No arrests were made in connection with the murder. Thirteen months later, on January 4, 1996, James Edwards was taken into custody for questioning related to an armed robbery of the Robert Roost Motel in Waukegan. Edwards confessed to the armed robbery and then indicated to the officers that he had been involved in other criminal incidents. In a signed statement, Edwards said that he got out of prison in 1991 after serving 17 years for murder and admitted to numerous other crimes, including an armed robbery of Hair Crafters beauty salon, and a burgulary of a store at south and Genesee in Waukegan. Edwards also confessed to the murder of a New York man in 1973 and the murder of a woman in Shaker Hights, Ohio in 19774. Edwards also admitted to an armed Robbery of a man in North Chicago approximately two years earlier. Edwards then said that more incidents had happened since he had been released from Jail, possibly including more murders, but said that he needed time to think because he sometimes was so high he had

Trouble remembering details. (see. People V. Edwards, 301 Ill.App.3d 966) (1998).

Later in the interrogation, Edwards admitted his involvement in the 1995 robbery of First American Bank in Waukegan. Edwards signed a statement confessing to that robbery. Edwards eventually admitted that he had committed the murder of Fred Reckling at the Grand Appliance Store. He subsequently signed a type-written statement confessing to the murder and was videotaped while reading the statement. People V. Edwards., 301 Ill.App.3d 966.

In Illinois, statements against penal interest are admissible in a criminal case if the "corroborating circumstances clearly indicate the trustworthiness of the statement." Ill. R. Evid. 804 (b)(3). When such statements against penal interest are admitted, evidence of other crimes may also be admitted if it is relevant to establish the accuracy of the confession to the charged crime. Ill. R. Evid. 801 (d)(2) People V. King, 109 Ill. 2d 514, 531 (1986); People v. Tellez, 235 Ill.App. 3d 542, 554 (1992); People V. Walker, 362 Ill.Dec. 543, 559

(2012); People v. Hale, 365 Ill. Dec. 41, 49 (2012); (For an exhaustive recital of the purposes for which other-crimes evidence may be admissible, see. Michael H. Graham, Clearly and Gram's Handbook of Illinois Evidence § 404.5 (9th ed. 2009))

Because Edwards claimed that his confession to this crime was false, under Ill. R. Evid. 801 (d)(2), the State was allowed to present Evidence of other crimes to which he confessed, in order to establish the accuracy and validity of his confession. ~~People v. Edwards~~., Ibid

The defense at Petitioner's trial called the police detectives who questioned Edwards in order to present Edwards's confession to the jury. People v. Whitfield, 78 N.E.3d 1015, 1034. Thus, the traditional position taken by the prosecution and defense was effectively flipped. It was Petitioner attempting to enter a confession into evidence through the police officer's testimony, while the prosecution was trying to limit the impact of the confession before the jury.

The Prosecution argued the confession was not supported

by the DNA evidence. Id. at 1041. The Prosecution also attempted to emphasize on cross-examination the inconsistencies between Edward's confession and the evidence at the scene. Id. at 1034. Finally, the Prosecution moved to preclude a discussion of Edwards's other crimes before the jury. Id. at 1040.

As to the other-crimes evidence, the prosecution moved to bar both testimony regarding the fact that Edwards committed a series of robberies prior to his arrest, and questioning about the robberies that resulted in his confession to the police. Id. at 1040. The Prosecution believed the evidence was irrelevant because the circumstances of Edwards's other robberies were too dissimilar to the robbery in this case. Id. This, despite the fact that this very same evidence was used by the Prosecution in order to convict Edwards.

The trial court ruld that Edwards's other-crime evidence was not relevant to Petitioner's trial because those crimes were too dissimilar and there was no indication that Edwards's robberies were intertwined

with Reckling's Murder.

This Court has held That The Compulsory process Clause, which provides That The accused shall have The right "To have compulsory process for obtaining witnesses in his favor," Together with The Due Process Clause of The Fourteenth Amendment, embodies a substantive right To present a meaningful and complete criminal defense. See Holmes V. Carolina, 547 U.S. 319, 324, 126 S.Ct 1727, 164 L.Ed.2d 503 (2006); Taylor V. Illinois, 484 U.S. 400, 408, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988). "The right To offer The testimony of witnesses, and To compell Their attendance, ... is in plain terms The right To present a defense, The right To present The defendant's version of The facts as well as The prosecution's To The jury so it may decide where The Truth lies." Washington V. Texas, 388 U.S. 14, 19, 87 S.Ct 1920, 18 L.Ed.2d 1019 (1967). "Few rights are more fundamental Than That of an accused To present witness in his own defense," Taylor, 484 U.S. at 408, 108 S.Ct 646 - a right Chief Justice Marshal described as "sacred." United States V. Burr, 25 F.Cas. 30, 33 (C.C.D. VA. 1807). The compulsory process

right is an "essential attribut of the adversary system itself," Taylor, 484 U.S. at 408, 108 S.Ct. 646, and "imparative to the function of the courts," which "depends on full disclosure of all the facts, within the framework of the rules of evidence." United States V. Nixon, 418 U.S. 683, 709, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974).

Of course, the right is not unlimited. The defendant "must comply with established rules of procedure and evidence designed to assure both fairness and reliability." Chambers V. Mississippi, 410 U.S. 284, 302, 93 S.Ct 1038, 35 L.Ed.2d 297 (1973). The accused "does not have unfettered right to offer Testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." Taylor, 484 U.S. at 410, 108 S.Ct. 646. While a "Trial Court may not ignore the fundamental character of the defendant's right to offer Testimony of witnesses in his favor," the "countervailling public interest [ ]" in the presentation of reliable evidence and the rejection of unreliable evidence, ... must also weigh in the balance," Id. at 414, 415, 108 S.Ct. 646. Thus, the compulsory process clause does not require criminal courts to admit

evidence That is irrelevant, Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986), Testimony by persons who are mentally infirm, see Washington, 388 U.S. at 23 n.21, 87 S.Ct 1920, or evidence That represents a half-truth, See United States v. Nobles, 422 U.S. 225, 241, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975)

On The otherhand, The exclusion of defense evidence "abridge [s] an accused's right To present a defense" where The restriction is "arbitrary 'or disproportionate To The purpos ' [it is] designed To serve," and The evidence "implicate [s] a sufficiently weighty interest of The accused." United States v. Scheffer, 523 U.S. 303, 308-09, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998), quoting Rock v. Arkansas, 483 U.S. 44, 56, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)

For example, This Court has struck down under The Compulsory Process Clause a rule against introducing The Testimony of an alleged accomplice, Washington, 388 U.S. at 22-23, 87 S.Ct. 1920; an application of The hearsay bar To statements That "were originally made and subsequently offered at Trial under circumstances That

provide considerable assurance of their reliability, Chambers, 410 U.S. at 300, 93 S.Ct. 1038; The exclusion of evidence bearing on the credibility of a voluntary confession, Crane, 476 U.S. at 688-91, 106 S.Ct 2142; and a per se rule excluding all post-hypnosis testimony, Rock, 483 U.S. at 56-62, 107 S.Ct 2704. This Court has acknowledged the "power of States to exclude evidence through the application of evidentiary rules that themselves serve the interests of fairness and reliability - even if the defendant would prefer to see that evidence admitted." Crane, 476 U.S. at 690, 106 S.Ct. 2142. But this Court has simultaneously observed that the "opportunity [to be heard] would be an empty one if the State were permitted to exclude competent, reliable evidence ... when such evidence is central to the defendant's claim of innocence." Id.

Thus, to establish that his right to Compulsory Process was violated by the exclusion of critical corroborative defense evidence, Petitioner must show that (1) the exclusion was "arbitrary" or "disproportionate" to the evidentiary purpose advanced by the exclusion, Scheffer, 523 U.S. at 308, 118 S.Ct. 1261, quoting

Rock, 483 U.S. at 56, 107 S.Ct 2704, and (2) The Testimony would have been "both material and favorable" To his defense, United States V. Valenzuela-Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440, 73 L.Ed.2d 1193 (1982)

This Court has had only limited occassions To deal in detail with The arbitrary or disproportionate prong of Compulsory Process Clause analysis. One pattern That has emerged is The "Parity" principle: A state rule That restricts The presentation of testimony for the defense but not The prosecution will generally be deemed arbitrary. See Akhil Reed Amar, Sixth Amendment First Principle, 84 Geo. L.J. 641, 699 (1996). As Professor Amar noted, "The Court has repeatedly struck down Asymmetric witness rules, and noted The asymmetry." Id. at 700, citing Pensylvania V. Ritchie, 480 U.S. 39, 57 & n. 14, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987) (distinguishing between symmetric and asymmetric privileges in due process analysis); Green V. Georgia, 442 U.S. 95, 97, 99 S.Ct 2150, 60 L.Ed.2d 738 (1979) (invalidating on due process grounds, exclusion of hearsay statement That defendant sought To introduce where government introduced same

statement in another criminal proceeding); Cool v. United States, 409 U.S. 100, 103 n.4, 93 S.Ct. 354, 34 L.Ed.2d 335 (1972) (rejecting as "fundamentally unfair" an instruction telling jury it could convict solely on basis of accomplice testimony but not telling jury it could acquit solely on this basis, where defendant put accomplice on stand); Chambers v. Mississippi, 410 U.S. 284, 295-98, 93 S.Ct 1038, 35 L.Ed.2d 297 (1973) (invalidating, under due process clause, verdict where defendant was barred from impeaching his own witness while government was free to impeach that witness); Texas v. Webb, 499 U.S. 95, 96, 98, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972) (per curium) (trial judge intimidated sole witness for defense but not prosecution witness); Washington v. Texas, 388 U.S. 14, 22, 87 S.Ct 1920, 18 L.Ed. 2d 1019 (1967) (accomplices were allowed to testify for government but not for defendant); see also id. at 24-25, 87 S.Ct. 1920 (Harlan, J., concurring in the judgement) (stressing this fact).

In this case, the best defense evidence petitioner had to offer were Edwards's confession, and his confession to other-crimes which had previously been admitted by the trial court for the state's use against Edwards. On

review in Edwards's case, The Illinois Appellate Court noted That:

"

In allowing The other crimes evidence, The Trial court carefully weighed The prejudice To defendant and excluded any evidence of other murders committed by defendant as Too prejudicial. Any prejudice To defendant was further diminished because The other crimes evidence was limited To The armed robberies at Robert Roost, Best Inn, and Hair Crafters, even Though defendant had confessed To as many as nine other crimes when making his statements. In addition, before allowing Testimony concerning The other crimes, The Trial Court told The jury That The Testimony was To be considered only as Those Statements related To The Truthfulness, believability, or accuracy of defendant's statement in The present case. The State did not call any victims or witnesses To The other crimes To Testify and

instead called Officer Quinn to testify concerning defendant's statements about the three armed robberies. The State then called other officers to testify concerning the details of the armed robberies and that the victims of the armed Robberies had identified defendant as the perpetrator of those robberies. Because defendant chose to attack the veracity of his statement through the cross-examination of Thadlerz, the trial court did not abuse is discretion in allowing the State to present evidence of other crimes to refute the claim that defendant's statement was false.

People V. Edwards, 301 Ill.App.3d at 980-81, 704 N.E.2d at 993-94

However during Petitioner's trial, the trial court excluded the use of other crimes for the defense's use stating that the other crimes were "seperate and distinct," and thus, "simply not relevant to these proceedings."

The appellate court's justification of this error was to simply state that "The admission of evidence in one proceeding is no indication that it should be admitted automatically in a different proceeding." (see attached appendix D. at paragraph 114)

Under Habeas Corpus review, 28 U.S.C § 2254 (d)(1), the District Court's ruling implied that although the rulings of the Illinois state courts were unreasonable, they weren't objectively unreasonable. If however they were objectively unreasonable, under Brecht V. Abrahamson, 507 U.S. 619 (1983), they were harmless error. The District Court concluded that Petitioner had not made a substantial showing of the denial of a constitutional right. (See Appendix B. at 19)

Under the Antiterrorism and Effective Death Penalty act of 1996 (AEDPA), a habeas petitioner cannot appeal from the District Court Judgement unless he makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(1)(A)(2).

To make a substantial showing "obviously the

Petitioner need not show that he should prevail on the merits. He has failed in that endeavor." Barefoot v. Estelle, 463 U.S. 880, 893 (1983). Rather, the Petitioner need only show that the petition contains an issue (1) that is "debatable among jurists of reason;" (2) "that a court could resolve in a different manner;" (3) that it is "adequate to deserve encouragement to proceed further;" or (4) that it is not "squarely foreclosed by statute, rule, or authoritative court decision, or . . . [that it is not] lacking any factual basis in the record." Id. at 893 N.4 and 894 (internal quotations and citation omitted).

Petitioner's claim meet these standards in that the harmless error analysis under Brecht v. Abrahamson, 507 U.S. 619 (1993), applied by the District Court is contrary to the harmless error analysis mandated by this Court in United States v. Valenzuela-Bernal, 458 U.S. 858 (1982), where this Court held that for a Chambers violation the harmless error analysis is not the "substantial and injurious effect on the jury's verdict," but the Petitioner "must show a reasonable likelihood that the excluded evidence could have effected the

verdict." United States V. Valenzuela - Bernal., Id, at 874.

The excluded evidence in this case had already been used by the Prosecution for the purpose of securing a conviction against James Edwards. Had Petitioner been allowed to present this same evidence during his trial, the jury deciding this case, just as the jury that decided Edwards's case, would have correctly concluded that it was James Edwards who murdered Mr. Reckling.

Because the District Court applied a harmless error analysis contrary to the harmless error analysis mandated by this Court in Valenzuela - Bernal., 458 U.S. at 848, this Court should find that reasonable jurists could conclude that the District Court's assessment and resolution of this claim was wrong. Slack v. Mc. Daniel, 529 U.S. 473, 484 (2000); F. App. P. Rule 22(b).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: September 17, 2019