

20-5613

In the

UNITED STATES SUPREME COURT

October Term, 2020

KEITH SMITH, #221412

Petitioner,
v.

NOAH NAGY
Respondent

FILED
AUG 18 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Petition for a Writ of Certiorari to the
United States Court of Appeals
from the Sixth Circuit

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

Keith Smith, Pro se
MDOC No. 221412
Cotton Cork Facility
3500 N. Elm Street
Jackson, Michigan 49201

Dated: August 13, 2020

QUESTIONS PRESENTED

7. DID THE TRIAL COURT INTERFERE WITH PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR JURY TRIAL WHEN SHE REFUSED TO HOLD AN EVIDENTIARY HEARING PURSUANT THIS COURT'S RULING IN REMMER V. UNITED STATES, 347 U.S. 227 (1954), WHERE THERE WAS EXTRANEOUS CONTACT WITH A DELIBERATING JUROR, AND WHERE THE COURT, BASED UPON AN INADEQUATE RECORD, ERROREOUSLY DETERMINED THE CIRCUMSTANCES OF THE CONTACT, THE IMPACT OF THE EXTRANEOUS CONTACT UPON THE JUROR, THE PREJUDICIAL EFFECT OF THE CONTACT UPON THE DEFENDANT, AND ALL INTERESTED PARTIES WERE NOT PERMITTED TO PARTICIPATE?

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PETITION FOR WRIT OF CERTIORARI

Keith Smith (hereinafter "petitioner") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, which judgment affirmed the denial of by the District Court for the Eastern District of Michigan of his 28 U.S.C. § 2254 petition for writ of habeas corpus from criminal convictions imposed by the Third Judicial Circuit Court for the County of Wayne, Detroit, Michigan - which was affirmed by the Michigan Court of Appeals, and leave denied by the Michigan Supreme Court, upholding the erroneous decision of the trial court in denying petitioner a fair trial when (1) she refused to hold an evidentiary hearing pursuant to this court's ruling in *Remmer v. United States*, 347 U.S. 227 (1954), where there was extraneous contact with the deliberating jury during petitioner's trial. However, the

Court inadequately determined that circumstances of the contact, the impact of the extraneous contact upon the juror, the prejudicial effect of the contact upon the petitioner, and all interested parties were not permitted to participate. (2) There was insufficient evidence to support the jury's guilty verdicts, and the Michigan Court of Appeals unreasonably applied Jackson v. Virginia, 443 U.S. 307 (1979). (3) The district court erred in failing to consider the import of the newly discovered evidence which went to support petitioner's claim of actual innocence.

OPINIONS BELOW

The opinions of the Court of Appeals (Pet. App. 1a - 13a) and the district court opinion and judgment (Pet. App. 14a - 30a).

JURISDICTION

The judgment of the court of appeals was entered on June 15, 2020. [App. 1a] The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is timely pursuant to 28 U.S.C. § 2101(c).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to be tried by an impartial jury and be given a fair trial.

STATEMENT

The facts underlying this claim is detailed in the opinions of the lower courts attached hereto.

Clearly established federal law mandates that the trial court must hold a Penner hearing if a defendant asserts a colorable claim of extraneous influence on the jury.

Before sentencing, petitioner alleged that a juror came forward and admitted that more than one member of the jury changed their vote from not guilty to guilty based on incorrect outside information regarding the potential sentence. During the argument on whether to grant a hearing, the trial court acknowledged that the jurors admitted after trial they were confused that felony murder was equivalent to first degree murder, and that they were not sure about whether petitioner committed the offense. Nonetheless, the trial court denied petitioner's request for an evidentiary hearing to explore whether the introduction of the potential sentence information affected the verdict.

REASONS FOR GRANTING PETITION

- I. THE TRIAL COURT INTERFERED WITH PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR JURY TRIAL WHEN SHE REFUSED TO HOLD AN EVIDENTIARY HEARING PURSUANT THIS COURT'S RULING IN ENNER V. UNITED STATES, 347 U.S. 227 (1954), WHERE THERE WAS EXTRANEous CONTACT WITH A DELIBERATING JUROR, AND WHERE THE COURT, BASED UPON AN INADEQUATE RECORD, ERRONEOUSLY DETERMINED THE CIRCUMSTANCES OF THE CONTACT, THE IMPACT OF THE EXTRANEous CONTACT UPON THE JUROR, THE PREJUDICIAL EFFECT OF THE CONTACT UPON THE DEFENDANT, AND ALL INTERESTED PARTIES WERE NOT PERMITTED TO PARTICIPATE?

The State's argument regarding petitioner's entitlement to a Penner hearing departed from the underlying facts and governing law.

First, the State argued that petitioner conceded there was no external influence on the jury that could justify a

Renner hearing. On the contrary, petitioner's trial attorney explicitly argued that the information regarding potential punishments came from outside jury room. Indeed, petitioner's counsel conceded that she would not have asked for a Renner hearing if she believed that the jury's discussions regarding potential punishments were generated by internal speculation.

Second, the State argued that the jury's consideration of potential punishment is not an external influence that could justify a Renner hearing. This argument ignores well-established Supreme Court and Sixth Circuit precedent indicating that a Renner hearing is required if the defendant alleges a juror considered information obtained from a source outside of the trial. Contrary to the State's contention, petitioner made clear during oral argument that his request for a Renner hearing was premised on an understanding that the potential punishment information came from outside the jury room:

The case law is if it was internal consideration, we wouldn't even be here. It has to be something that is external to the jury, and their deliberation. It is not that they talked about something inside, [it's] that they had something from outside that was introduced.

(trial Transcript, at Page 612, (emphasis added)). Indeed, as this excerpt of the argument shows, the only concession petitioner made in state court was that he would not have requested a Renner hearing if he believed that the jury's discussion about potential punishments was a product of the jury's internal speculation, as opposed from information

obtained from outside of the jury room.

Petitioner hereby asserts that the State Court and the subsequent courts on review, applied and acquiesced to the application of an improper standard.

The Sixth Circuit Court of Appeals' finding in the instant case conflicts with earlier recent decision out of that court. For example, Ewing v. Horton, 914 F.3d 1022 (6th Cir. 2019), (a habeas case) the court held that a petitioner merely needs to show "that extraneous information may have tainted the jury" to be entitled to a remand for a Renner hearing. (Emphasis added in original). In United States v. Harris, 881 F.3d 945 (6th Cir. 2018), the court found that "[a]lthough Harris did not establish that Juror 12 was exposed to an unauthorized communication, Harris did present a colorable claim of extraneous influence, which necessitated investigation." This conclusion was easy to reach because this Court's standard for entitlement to a Renner hearing leaves little discretion for the trial court. "Where a colorable claim of extraneous influence has been raised, the court must hold a Renner hearing to afford the defendant an opportunity to establish actual bias." United States v. Lanier, 870 F.3d 546, 549 (6th Cir. 2017) (emphasis added); see also Ewing, 914 F.3d at 1030-1031 (remanding for Renner hearing because "without a hearing, there is too much that is unknown about the deliberation..."); Harris, 881 F.3d at 953 & n.4 (remanding for a Renner hearing even though the defendant's claim

relied on multiple layers of pure speculation.

Under this standard, once petitioner claimed that a juror had introduced outside information regarding potential punishments, clearly established federal law triggered the trial court's "duty to investigate and determine whether there may have been a violation." Harris, 881 F.3d at 953. To hold otherwise, would undo the purpose of a Fenner hearing, which is to provide the defendant with the opportunity to "determine the circumstances, the impact on the juror(s), and whether the information was prejudicial." Land v. Bobby, 889 F.3d 803 (6th Cir. 2018).

In the instant case, a preliminary hearing was held, but no record was made as to the jurors being questioned as to what was the source of the information.

From the trial court to present, no court considered the fact that "[u]nder clearly established Supreme Court case law, an influence is not an internal one if it (1) is extraneous prejudicial information; i.e., information that was not admitted into evidence but nevertheless bears on a fact at issue in the case..." Robinson v. Polk, 438 F.3d 350, 363 (4th Cir. 2006). There is no requirement that a party outside the jury bring the extraneous information to the attention of the jury. Instead, a juror's outside research is sufficient, as illustrated by the textbook example of a juror conducting "an out of court experiment." United States v. Owens, 426 F.3d 806, 808 (6th Cir. 2005)(citing Mason v. Mitchell, 320 F.3d 604, 638 (6th

Cir. 2003). In *Tanner v. United States*, this Court explained that information obtained by a juror from a newspaper is extraneous influence. 483 U.S. 107, 118 (1987).

Where obtaining information by the juror(s) could have been from any number of inappropriate sources, it was necessary that the trial court inquire into what the source actually was to protect the petitioner's right to a fair trial in accordance with the Sixth Amendment to the United States Constitution. Having not done, the subsequent judicial events were based upon an incomplete and speculative record.

RELIEF SOUGHT

WHEREFORE, for the reasons stated, petitioner prays that this Honorable Court will grant his petition.

Respectfully submitted,



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Dated: August 13, 2020

CERTIFICATE OF SERVICE

I, Keith Smith, certify that I served a copy of the foregoing petition for writ of certiorari upon counsel for the Respondent, John S. Pallas, Assistant Attorney General, Criminal Appellate Division, P.O. Box 30217, Lansing, Michigan, 48909, by first class mail on the 13th day of August, 2020.



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