

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

NIGEL WRIGHT,

Petitioner,

v.

STEVEN RIVARD,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Benton C. Martin
Assistant Federal Public Defender

Counsel for Petitioner

Federal Community Defender
613 Abbott St., Suite 500
Detroit, Michigan 48226
Telephone No. (313) 967-5832
benton_martin@fd.org

QUESTIONS PRESENTED FOR REVIEW

To what extent is the test for analyzing whether cumulative evidentiary errors created a fundamentally unfair criminal trial coextensive with the test for harmless error?

PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those named in the caption of the case.

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Nigel Wright respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's unpublished opinion affirming the denial of Mr. Wright's 28 U.S.C. § 2254 petition is included in the Appendix at A-1. The District Court's opinion on remand denying Mr. Wright's § 2254 petition is included at A-2. The Sixth Circuit's decision reversing an initial grant of relief is included at A-3, and the initial grant from the District Court is at A-4. The state appellate court order affirming Mr. Wright's conviction on direct appeal is included at A-5.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of this Court's rules. The decision of the court of appeals denying Mr. Wright's petition for en banc rehearing was entered on July 14, 2021. The time to file this petition was extended to December 13, 2021, pursuant to this Court's Order of July 19, 2021, which automatically extended the deadline to petition for a writ of certiorari to 150 days from the date of the denial of a timely petition for rehearing issued before July 19, 2021. This petition is timely filed pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in pertinent part:

No person shall . . . be deprived of life, liberty, or property, without due process of law.

Section 2254(d) of Title 28 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) states, in pertinent part:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

An eyewitness of dubious credibility placed three men at the scene of Travis Goodwin’s murder—two shooters and a driver. The two alleged shooters were released after a state preliminary examination because testimony from the lone eyewitness was too weak. But the alleged driver, Nigel Wright, went to trial, where to bolster its flagging eyewitness, the State improperly introduced multiple statements from the murder victim: both to a police officer and to the victim’s mother.

Despite an initial grant of habeas relief by the district court, the Sixth Circuit ultimately denied relief, finding that the improper admission of the victim’s statements did not offend a fundamental principle of justice necessary for a due process violation because “other evidence justified the jury’s verdict of guilt beyond a reasonable doubt.” App. 1 at 9. In reaching this conclusion, the Sixth Circuit appeared to conflate a harmless error analysis with the requirements to show a due-process violation—an error invited by this Court’s ambiguous standard for showing a due process violation stemming from evidentiary errors in a criminal trial. This Court’s review is needed to clarify this body of law.

This case also presents a similar question as present in *Brown v. Davenport*, No. 20-826—which was argued in October 2021 and is pending a decision. If this Court reverses in that case, then this case should be remanded for further consideration in light of the Court’s decision in that case.

STATEMENT OF THE CASE

1. In 2008, Michigan prosecutors filed murder charges against two men who allegedly shot Travis Goodwin in the early morning hours of December 29, 2007. They also filed first-degree murder charges against the alleged driver, Nigel Wright. In doing so, prosecutors primarily relied on testimony from Dawayne Currie.

2. Dawayne Currie's testimony was weak. So weak, in fact, that the state trial court at a preliminary examination determined that the prosecution lacked probable cause to believe the two alleged shooters, Pickett and Dalton, committed the crime. Yet the court bound Wright's case over for trial because Currie claimed to recognize Wright's braids and his car.

3. At trial, a Detroit police officer, a friend of Goodwin's family, testified that he encountered Goodwin during routine patrol in the months before his death. During that interaction, Goodwin purportedly told the officer that Wright had threatened him. Prosecutors also introduced the testimony of Goodwin's mother, Theresa Smiley. She testified that her son believed that he would be blamed for the arson of a nearby drug house only "a couple of weeks" before he was shot, and that the house belonged to one of the alleged shooters. The prosecutor argued this was evidence of Wright's motive to murder Goodwin.

4. Wright's trial counsel objected on hearsay grounds to the admission of the out-of-court statements from Goodwin, but did not assert Wright's constitutional right to confront the witness. After the trial court admitted Goodwin's statements,

the prosecutor repeatedly emphasized them during closing statements, arguing that “[d]ying men speak the truth” and that Goodwin’s statements showed he “felt threatened” and thought somebody was “going to hurt [him].”

5. On direct appeal, Wright challenged the introduction of Goodwin’s statements from the grave on hearsay grounds and Confrontation Clause grounds and argued that his trial attorney was ineffective in failing to object on Confrontation Clause grounds. App. 5.

6. As to the hearsay arguments, the Michigan Court of Appeals concluded that the trial court abused its discretion in admitting the statements but that the errors were harmless. The court decided that Currie’s identification of Wright at trial was enough to carry the day, despite significant reliability and consistency problems. The court also observed that cartridge casings on the scene could have been consistent with Currie’s account of two shooters.

7. As to the Confrontation Clause claim, the Michigan Court of Appeals observed that, unlike the hearsay argument, the issue was unpreserved because of trial counsel’s failure to object on Confrontation Clause grounds to the admission of Goodwin’s statements. Reviewing for plain error, the court decided that the error had not “affected the outcome of the lower court proceedings.” *Id.* at 73.

8. After exhausting his state remedies, Wright petitioned for habeas relief in federal court, arguing, among other things, that his trial counsel rendered

ineffective assistance, and that the admission of Goodwin’s statements violated the Confrontation Clause and his fundamental right to due process.

9. The district court agreed with Wright on both claims and entered a conditional grant of relief requiring the State to retry Wright. App. 4. The court determined that the state court’s conclusion “that Wright was not prejudiced by the admission of Goodwin’s out-of-court statements was an unreasonable application of *Strickland* [v. Washington, 466 U.S. 668 (1984)].” *Id.* at 61. The court explained that, the “evidence implicating Wright was far from overwhelming and rested almost exclusively on the testimony of Currie.” *Id.* And “Currie’s testimony suffered from numerous credibility problems.” *Id.* The court added that “the ‘other evidence’ identified by the Michigan Court of Appeals as supporting a finding that Wright was not prejudiced by this testimony is almost entirely evidence derived from Currie’s own testimony.” *Id.* at 63.

10. The court also granted relief on Wright’s stand-alone Confrontation Clause claim. It reasoned that he demonstrated cause to excuse the default of that claim by showing counsel rendered ineffective assistance of counsel.

11. The State appealed, and the Sixth Circuit reversed. App. 3. In rejecting the stand-alone Confrontation Clause claim, the Sixth Circuit deferred to the state court’s plain-error review of Wright’s claim as an adjudication of the merits for purposes of § 2254(d). The Sixth Circuit observed that the state court only addressed one part of the plain-error analysis—whether the error affected Wright’s substantial

rights. This portion of the plain-error analysis, the Sixth Circuit reasoned, “was analogous to a harmless-error analysis because its conclusion that the error did not affect the outcome of the case is another way of saying that the error was not harmful.” *Id.* at 42. And because harmless-error analysis is an adjudication of the merits, the court decided, so too was the plain-error analysis here.

12. On remand, the district court, “being bound by the Sixth Circuit’s prior determination as to the strength of the evidence against Wright and the impact of Thomas’s hearsay testimony,” concluded “that the Due Process Claim fails on the merits.” App. 2 at 17. The court also held that Smiley’s testimony, “to an extent, reiterated testimony already properly before the jury” because “[t]he acrimonious nature of Goodwin’s relationship with Wright was introduced through Smiley’s properly admitted testimony that Goodwin and Wright were ‘enemies or not so good friends.’” *Id.* at 21. The court also found that “Currie’s properly admitted testimony that Goodwin would be blamed for the arson fire was more extensive and incriminating than Smiley’s improperly admitted testimony.” *Id.* at 22.

13. The Sixth Circuit affirmed. Relying on *Dowling v. United States*, 493 U.S. 342, 352 (1990), the court held that admission of the testimony from Goodwin’s mother and Officer Thomas did not offend a “fundamental conceptions of justice” because admission of the testimony was harmless in light of other evidence of Wright’s guilt. App. 1 at 9–10. In particular, the court pointed to the dubious testimony of Dawayne Currie as justifying the jury’s verdict.

REASONS FOR GRANTING THE WRIT

I. This Court’s review is necessary to establish the proper standard for analyzing cumulative trial errors and whether the test subsumes a harmless-error analysis.

The Sixth Circuit held that Wright’s claim failed because he could not establish that his conviction violated “fundamental conceptions of justice.” *Dowling v. United States*, 493 U.S. 342, 352 (1990). But this Court has never set clear guidelines for applying *Dowling*. In fact, the Sixth Circuit has called this rule “one of the most general in all of criminal law.” *Bass v. Burt*, 850 F. App’x 962, 965 (6th Cir. 2021). And the Second Circuit has emphasized that the “broad in nature” principle from *Dowling* provides “very limited guidance as to which evidentiary errors” violate due process. *Evans v. Fischer*, 712 F.3d 125, 134–35 (2d Cir. 2013).

Without clear guidance on how to apply the “fundamental conceptions” rule, circuit courts have resorted to applying some form of harmless error analysis. Some circuit courts—like the Third, Ninth, and Tenth Circuits—have clear precedent applying the standard under *Brech v. Abrahamson*, 507 U.S. 619, 623 (1993). The Ninth Circuit, for example, holds that a due-process violation occurs where the combined effect of trial errors—even errors that alone would not amount to constitutional violations—had a ‘substantial and injurious effect or influence on the jury’s verdict.’” *Parle v. Runnels*, 505 F.3d 922, 927 (9th Cir. 2007) (quoting *Brech*, 507 U.S. at 637); *accord Harmon v. Sharp*, 936 F.3d 1044, 1083 (10th Cir. 2019), *cert. denied*, 141 S. Ct. 294 (2020); *Fahy v. Horn*, 516 F.3d 169, 205 (3d Cir. 2008).

In contrast, other courts, like the Sixth Circuit in this case, and the Second Circuit, apply a less-clear standard for harmful error that appears unmoored from traditional formulations of harmless-error analysis. *See, e.g., United States v. Al-Moayad*, 545 F.3d 139, 178 (2d Cir. 2008) (“The Supreme Court has repeatedly recognized that the cumulative effect of a trial court’s errors, even if they are harmless when considered singly, may amount to a violation of due process requiring reversal of a conviction.”). The problem with this latter approach is that it lacks any clear guidance on how to apply this Court’s well-established rules about the *Brecht* harmless-error analysis.

This case presents an ideal vehicle for examining this question. Under this Court’s precedent, the harmless-error “inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error.” *O’Neal v. McAninch*, 513 U.S. 432, 438 (1995) (quotation omitted). “It is rather, even so, whether the error itself had substantial influence.” *Id.* If so, *or if one is left in grave doubt*, the conviction cannot stand.” *Id.* But the Sixth Circuit, while clearly conducting a harmless-error analysis in this case, never analyzed whether it was left with grave doubt about the conviction without the improperly admitted evidence. In fact, the evidence cited as justifying the jury’s verdict—Dawayne Currie’s testimony—is highly suspect. By simply examining whether there was sufficient evidence to support the jury’s verdict, the court thus failed to fairly assess whether the improperly admitted evidence in this case had an “substantial influence” on the

jury. Given the credibility problems with Currie’s testimony, the improperly admitted evidence could have convinced the jury to convict Wright of second-degree, rather than first-degree, murder. The improperly admitted evidence went to motive and bolstered otherwise untrustworthy testimony from Dawayne Currie.

Because this Court has not clearly defined “fundamental conceptions of justice,” the Sixth Circuit was left without guiding principles to analyze the errors in this case. Without such principles, it applied some form of harmless-error analysis, but did not apply the traditional principles of harmless-error analysis set forth in this Court’s precedent. This Court’s review is critical to ensure clarity in this area of the law across the circuits.

II. This Court’s decision in *Brown v. Davenport* may affect this case.

In *Brown v. Davenport*, No. 20-826, argued on October 5, 2021, this Court is considering whether a federal habeas court may grant relief based solely on its conclusion that the test from *Brech v. Abrahamson* is satisfied, or whether the court must also find that the state court’s application of *Chapman v. California* was unreasonable. The oral argument in that case focused heavily on how *Brech* interacts with the § 2254. *See, e.g., Brown v. Davenport*, No. 20-826, Oral Argument Tr., Oct. 5, 2021, at 4–5 (Thoma, J.: “If you were writing on a clean slate, how would you coordinate *Brech* and AEDPA?”), *id.* at 7 (Roberts, C.J.: “[I]t would seem to me odd that they would leave it implicit that AEDPA and *Brech* would coexist.”), *id.* at 19

(Michigan Solicitor General: “[I]t would offer the bar and bench guidance if this Court were to go and articulate the difference between the two standards.”).

Accordingly, this Court’s ruling in *Davenport* will likely clarify the application of the harmless-error standard in the context of § 2254 cases. If so, this Court should vacate the judgment of the Sixth Circuit in this case and remand for further consideration in light of its ruling in *Davenport*.

CONCLUSION

For the foregoing reasons, Petitioner Nigel Wright that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER

By: /s/ Benton C. Martin
Benton C. Martin
Deputy Defender
Counsel for Petitioner Nigel Wright

Detroit, Michigan
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