ORIGINAL

No: 21-8288

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM JACK PARKERSON-PETITIONER

VS.

STATE OF OREGON-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OREGON SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

WILLIAM JACK PARKERSON
(Your Name)
TWO RIVERS CORRECTIONAL INSTITUTION
82911 BEACH ACCESS RD.
(Address)
UMATILLA, OR., 97882
(City, State, Zip Code)

-No Available Phone Number-

QUESTION(S) PRESENTED

Question #1

Did the oregon court of appeals apply the correct federal harmless error standard violating Due Process, when viewing the evidence at trial when it determined that the failure to give accomplice instructions was harmless error?

LIST OF PARTIES

☐ All parties appear in the caption of the case of the cover page.

X 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:

APPELLANT
WILLIAM JACK PARKERSON

RESPONDENT
STATE OF OREGON
SOLICITOR GENERAL
Benjamin Gutman
ATTORNEY GENERAL
400 Justice Building
1162 COURT ST NE
SALEM OR 97301

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STATUTES AND RULES

OTHER
(ucrji1058(2)
(ucrji1057)
(urcji1056)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **state courts**:

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

X The oregon supreme court denied review and the order denying review appears at Appendix C to the petition (order denying review) or,

☐ has been designated for publication but is not yet reported; or

☐ is unpublished.

The opinion of the Oregon Court of Appeals appears at Appendix A to the petition and is:

X reported at: The opinion of the oregon court of appeals appears at appendix A to the petition and is reported at 310 or app 271 (2021) state v parkerson(Affirmed); or,

☐ has been designated for publication but is not yet reported; or

☐ is unpublished.

X The oregon court of appeals denied appellants petition for reconsideration and appears at appendix D

X The judgement entered in klamath co. case no:1401933cr on 11/02/2016 in state v william jack parkerson appears at appendix B to the petition.

X Appellants excerp of record from (trial transcript)appears at appendix E to the petition.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was_____.

☐ No petition for hearing was timely filed in my case.

☐ A timely petition for hearing was denied by the United States Court of Appeals 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 U.S.C. § 1245(1).

X For cases from **state courts**:

The date on which the highest state court decided my case was 3/24/2022. A copy of that decision appears at Appendix C.

☐ A timely petition for hearing was denied by the United States Court of Appeals 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).

PROCEDURAL HISTORY

On 3/31/2021 the Oregon Court of Appeals affirmed. On 3/24/2022 the Oregon Supreme court denied review. The jurisdiction of this court to review that order is invoked pursuant to 28 U.S.C. § 1257(a). This court has jurisdiction to issue the writ of certiorari by the Rooker – Feldman doctrine,since the state court has acted in a judicial capacity see District Of Columbia Court Of Appeals v. Feldman, 460 US 462, 476,103 S.Ct. 1303, 75 L.E.D.2D 206 (1983) and only the supreme court may review final decisions, and Rooker v. Fidelity Trust Co., 263 US 413, 415, 44, S.Ct. 149, 68 L.Ed. 362, (1923) only supreme court can review state supreme court judgment concerning constitutionality of state laws.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 5th amendment us constitution provides:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The 6th amendment US constitution provides:
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 been 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 defence.

The14th amendment US constitution provides:
Section 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 its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In short , defendant, Karey Pascoe, and Christopher Holngren were riding in Pascoes car when a deputy W, conducted a traffic stop .defendant exited the car and shot, in the face, and then again in the back as w, ran down a driveway. Defendant got back into the car and Pascoe drove away.

Defendant was convicted of attempted aggravated murder with a firearm and first degree assualt with a firearm. Pascoe was also charged with those offences, as well as two counts of criminal conspiracy. After spending 19 months in custody, the state dropped the charges against Pascoe, and she testified against defendant at trial, identifying him as the sole perpetrater of the offence. Defendants theory at trial was that Holngren was the shooter. On appeal, defendant argued, inter alia, that the trial court erred in failing to instruct the jury that Pascoe was an accomplice as a matter of law (ucrji1058(2), that her testimony should be viewed with distrust (ucrji1057), and that her testimony, alone, is not sufficient to support a conviction (urcji1056) app br at 12-22

The court of appeals found that the trial court erred in declining to provide the jury with with the accomplice instructions. Parkerson, 310 or app at 278. However, the court found that there was little likelyhood that the error affected the verdict. id. At 278-79

The court first noted that the purpose of the accomplice instruction " is to address the concern that criminals may falsely accuse others of their misdeeds in order to minimize their own culpability." id.(internal quotations and citations omitted).The court found that the "blame-shifting dynamic" in the present case was not a particularly strong , because it was not in dispuit that the shooter was male; thus, Pascoes testimony did not operate to shift the blame from her to him. id. At 278- 79.

Second, the court found that the instructions "would have no tendency, to affect the jurys finding that defendant was the shooter " for three reasons:

(1) The officer, W, identified defendant , in court, as the shooter.
(2) Holmgren implicated defendant in his deposition, and his account of the incident was generally consistent with that of Pascoe and W.
(3) Demartini testified that defendant had admitted that he was the shooter.

REASONS FOR GRANTING THE PETITION

First Question Presented

The court of appeals found that the trial court erred in failing to provide the jury with the requested accomplice instructions. Parkerson, 310 Or App at 275-78. But the appeals court found that the trial court's failure to give those instructions was harmless. Id. At 278-79. The court primarily focused on the fact that the shooter was male, finding that the "blame-shifting dynamic" was not particularly strong in this case because Pascoe's testimony did not "operate to shift blame from her to [defendant]."Id

But the courts application of the harmless error analysis is faulty. The court considered only one theory of culpability, that is , whether Pascoe sought to minimize her culpability as the principle (that is, as the shooter).But the court ignored the fact that Pascoe likewise may have shifted sole blame onto defendant in order to minimize her role as (an aider and abettor.)Thus, the court of appeals' decisions appears to be wrong because it considered only one theory of culpability.

The courts application of the harmless error standard is also faulty; The appeals court improperly applied State v. Payne, 366 Or. 588, 609, 468 P.3d 445 (2020). In making its harmless error analysis the Court of Appeals said,"To make that determination, 'the court considers the instructions as a whole and in the context of the evidence and record at trial, including the parties' theories of the case with respect to the various charges and defenses at issue.' " Id. (quoting State v. Ashkins , 357 Or. 642, 660, 357 P.3d 490 (2015)). The analysis using *Payne, supra,* ultimately rests on the Oregon Court's erroneous use of the *Chapman,* harmless error test, rather than the *Brecht* test. In fact, there is only two current precedents using the *Brecht* standard for harmless error analysis. The Oregon Supreme court affirmed the

reasoning of the Court of Appeals. Had the Oregon Court of Appeals used the appropriate standard for harmless error analysis, the result would have been different. Under the *Brecht* standard, the Petitioner was prejudiced by the trial court's failure to provide the requested instruction. The Petitioner will explain below: the Chapman v. California 386 us 18 harmless-error standard and cited State v. Ashkins , 357 Or. 642, 660, 357 P.3d 490 (2015) and State v. Payne, 366 Or. 588, 609, 468 P.3d 445 (2020) which are cases that both rely on Chapman v. California in their harmless-error analysis. Petitioner asserts that the court should have applied the Brecht standard similarly applying "actual prejudice"standard as whether the error had substantial and injurious influence in determining the jurys verdict. Brecht v. Abrahamson, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)

KOTTEAKOS STANDARD

In Kotteakos v. United States Regenboge v. Same, 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946), the test under *Kotteakos* is whether the error had substantial and injurious effect or influence in determining the jurys verdict see Kotteakos v. United States Regenboge v. Same, 328 U.S. 776, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946)

ERROR AFFECTED SUBSTANTIAL RIGHTS

1)oregon court of appeals application of the chapman harmless error standard violates due process

2)despite the oregon court of appeals applying the chapman harmless error standard the states failure to give defendants requested jury instruction is harmful and violates due process

3)failure to give the requested instruction accomplice as a matter of law ,corroboration and mistrust deprived appellant of substantial rights.

A)the right to present defendants theory of the case at trial

B)Relieved the state of its burden and undermined the verdict that every element of the charge must be proven beyond a reasonable doubt

C)deprived the jury of their role of fact finder 6th amendment right to jury trial

. In Kotteakos, we construed § 2111's statutory predecessor, 28 U.S.C. § 391. Section 391 provided: "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record

before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties." 28 U.S.C. § 391 (1925-1926 ed.). In formulating § 391's harmless-error standard, we focused on the phrase "affect the substantial rights of the parties," and held that the test was whether the error "had substantial and injurious effect or influence in determining the jury's verdict." 328 U.S., at 776, 66 S.Ct., at 1253. Although Congress tinkered with the language of § 391 when it enacted § 2111 in its place in 1949, Congress left untouched the phrase "affect the substantial rights of the parties." Thus, the enactment of § 2111 did not alter the basis for the harmless-error standard announced in Kotteakos. If anything, Congress' deletion of the word "technical," makes § 2111 more amenable to harmless-error review of constitutional violations. Cf. United States v. Hasting, 461 U.S. 499, 509-510, n. 7, 103 S.Ct. 1974, 1981, n. 7, 76 L.Ed.2d 96 (1983

Instead, the Court announces that the harmless-error standard of Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967), which requires the prosecution to prove constitutional error harmless beyond a reasonable doubt, no longer applies to any trial error asserted on habeas, whether it is a Doyle error or not. In Chapman's place, the Court substitutes the less rigorous standard of Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct. 1239 1253, 90 L.Ed. 1557 (1946). Ante, at ____.

no.

This imbalance of costs and benefits counsels in favor of application of the less onerous Kotteakos standard on collateral review, under which claimants are entitled to relief for trial error only if they can establish that "actual prejudice" resulted.

As the Court notes, ante, at ____, n. 7, the Kotteakos standard is grounded in the 1919 federal harmless-error statute. Congress had responded to the widespread concern that federal appellate courts had become "impregnable citadels of technicality," Kotteakos, 328 U.S., at 759, 66 S.Ct., at 1245, by issuing a general command to treat error as harmless unless it "is of such a character that its natural effect is to prejudice a litigant's substantial rights." Id., at 760-761, 66 S.Ct., at 1246. Kotteakos plainly stated that unless an error is merely "technical," the burden of sustaining

a verdict by demonstrating that the error was harmless rests on the prosecution.1 A constitutional violation, of course, would never fall in the "technical" category.

To apply the Kotteakos standard properly, the reviewing court must, therefore, make a de novo examination of the trial record.

Assuming that petitioner's conviction was in fact tainted by a constitutional violation that, while not harmless beyond a reasonable doubt, did not have "substantial and injurious effect or influence in determining the jury's verdict," Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct. 1239 1253, 90 L.Ed. 1557 (1946), it is undisputed that he would be entitled to reversal in the state courts on appeal or in this Court on certiorari review. If, however, the state courts erroneously concluded that no violation had occurred or (as is the case here) that it was harmless beyond a reasonable doubt, and supposing further that certiorari was either not sought or not granted, the majority would foreclose relief on federal habeas review. As a result of today's decision, in short, the fate of one in state custody turns on whether the state courts properly applied the federal Constitution as then interpreted by decisions of this Court, and on whether we choose to review his claim on certiorari. Because neither the federal habeas corpus statute nor our own precedents can support such illogically disparate treatment, I dissent.

See , 449, 106 S.Ct. 725, 732, 88 L.Ed.2d 814. Because the Kotteakos standard is grounded in the federal harmless-error rule (28 U.S.C. § 2111), federal courts may turn to an existing body of case law and, thus, are unlikely to be confused in applying it. Pp. ____. United States v. Lane, 474 U.S. 438

In Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967), we held that the standard for determining whether a conviction must be set aside because of federal constitutional error is whether the error "was harmless beyond a reasonable doubt." In this case we must decide whether the Chapman harmless-error standard applies in determining whether the trial courts refusal to give defendants requested accomplice instruction is harmful and requires reversal

Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct. 1239 1253, 90 L.Ed. 1557 (1946). The Kotteakos harmless-error standard is better tailored to the nature and purpose of collateral review

than the Chapman standard, and application of a less onerous harmless-error standard on habeas promotes the considerations underlying our habeas jurisprudence.

We granted certiorari to resolve a conflict between the Courts of Appeals on the question whether the Chapman harmless-error standard applies on collateral review of failure to give defendants jury instruction violations, 504 U.S. ----, 112 S.Ct. 2937, 119 L.Ed.2d 563 (1992),3 and now affirm.

concluded instead "that there may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless." Id., at 22, 87 S.Ct., at 827. After examining existing harmless-error rules, including the federal rule (28 U.S.C. § 2111), we held "that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Id., at 24, 87 S.Ct., at 828. The State bears the burden of proving that an error passes muster under this standard.

1. The Kotteakos harmless-error standard, rather than the Chapman standard, applies in determining whether habeas relief must be granted because of unconstitutional "trial error" such as the Doyle error at issue. Pp. ____. Cupp v. Naughten 8212 1148, 414 U.S. 141, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973)

In this circumstance, the constitutional error inhering in the instruction cannot properly be viewed as harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967). The reasonable-doubt standard reduces the risk that an error in factfinding could deprive an innocent man of his good name and freedom. See In re Winship, supra, 397 U.S., at 363—364, 90 S.Ct. at 1072—1073. It also impresses the jurors with their solemn responsibility to avoid being misled by suspicion, conjecture, or mere appearance, and to arrive at a state of certainty concerning the proper resolution of the relevant factual issues. Here, the truth-finding function of the jury was invaded and the State's burden of proving guilt beyond a reasonable doubt was diminished. When the reasonable-doubt standard has been thus compromised, it cannot be said beyond doubt that the error 'made no contribution to a criminal conviction.' Harrington v. California, 395 U.S. 250, 255, 89 S.Ct. 1726 1729, 23 L.Ed.2d 284

(1969) (dissenting opinion). Rather, such an error so conflicts with an accused's right to a fair trial that the 'infraction can never be treated as harmless error.' Chapman v. California, supra, 386 U.S., at 23, 87 S.Ct., at 827.

The U.S. Supreme Court has discussed in Cupp v. Naughten, 414 U.S. 141, 146-147, 94 S.Ct. 396, 400 (1973) that:

> "In determining the effect of this instruction on the validity of respondent's (state) conviction, we accept at the outset the well-established proposition that a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge. Boyd v. United States, 271 U.S. 104, 107, 46 S.Ct. 442, 443, 70 L.Ed. 857 (1926). While this does not mean that an instruction by itself may never rise to the level of constitutional error, see Cool v. United States, 409 U.S. 100, 93 S.Ct. 354, 34 L.Ed.2d 335 (1972), it does recognize that a judgment of conviction is commonly the culmination of a trial which includes testimony of witnesses, argument of counsel, receipt of exhibits in evidence, and instruction of the jury by the judge. Thus not only is the challenged instruction but one of many such instructions, but the process of instruction itself is but one of several components of the trial which may result in the judgment of conviction." Id. At 146-147.

The Petitioner believes this is pertinent because:

> "As we noted earlier, we have consistently stated that if a defendant's theory of the case is supported by law, and if there is some foundation for the theory in the evidence, the failure to give the defendant's proposed jury instruction concerning his theory is "reversible error." We recognize that the cases that originally established this rule were decided before the Supreme Court created the "harmless" constitutional error category. See Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967). [8] Although our decisions since Chapman have reiterated that failure to instruct the jury on the defendant's theory is reversible error, [9] we have never discussed the relationship between reversible error as used in those cases and the harmless error rule.Chapman recognized that "there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." 386 U.S. at 23, 87 S.Ct. at 827 (recognizing that the constitutional right to counsel, the right against admission in evidence of coerced confessions, and the right to an impartial judge require automatic reversal); see United States v. Hasting, 461 U.S. 499, 103 S.Ct. 1974, 1980 n. 6, 76 L.Ed.2d 96 (1983); Chapman, 386 U.S. at 42, 43-44, 87 S.Ct. at 836, 837-838 (Stewart, J., concurring in the result); United States v. Valle-Valdez, 554 F.2d 911, 915 n. 6 (9th Cir.1977) (citing Supreme Court cases holding that "certain kinds of constitutional error require automatic reversal"; citations omitted); see also Bagley v. Lumpkin, 719 F.2d 1462 (9th Cir.1983) (government's failure to provide information requested by defendant pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), so that he could effectively cross-examine two important government witnesses required automatic reversal). While "reversible error," from a strictly semantic standpoint, could

mean reversible "per se " or reversible only if error resulted, or could have resulted, in some prejudice to the defendant, our cases must be read as meaning that a failure to instruct the jury on the defendant's theory of the case is reversible per se. The right to have the jury instructed as to the defendant's theory of the case is one of those rights "so basic to a fair trial" that failure to instruct where there is evidence to support the instruction can never be considered harmless error. Jurors are required to apply the law as it is explained to them in the instructions they are given by the trial judge. They are not free to conjure up the law for themselves. Thus, a failure to instruct the jury regarding the defendant's theory of the case precludes the jury from considering the defendant's defense to the charges against him. Permitting a defendant to offer a defense is of little value if the jury is not informed that the defense, if it is believed or if it helps create a reasonable doubt in the jury's mind, will entitle the defendant to a judgment of acquittal. We conclude that our cases--both before and after Chapman--stating that the failure to instruct the jury on the defendant's theory of the case is "reversible error" mean that the error can never be treated as harmless. We are not free to modify that rule; only the court en banc could do so. We would not change the rule, however, even if we had the opportunity, because any substantial modification of the rule would be inconsistent with fundamental constitutional guarantees." See U.S. v. Escobar de Bright, 742 F.2d 1196 (9th Cir. 1984).

Thus, the refusal to give defendants requested instructions on accomplice precludes defendant from presenting his theory of the case to the jury on proper instructions and violates due process .

CONCLUSION

The error I address here in state v parkerson 310 or app 271 (2021) is not harmless, is on point with the above cited case and the judgement should be reversed and remanded to the trial court for furthure proceedings

petitioner william jack parkerson has been deprived of his due process rights guaranteed by the 5th , 6th ,and 14th amendments of the us constitution and seeks this courts intervention to restore those rights in the lower proceedings Based on the arguments and authorities presented herein petitioner prays this court will issue the writ of certiorari and reverse the judgement of the court of appeals and the oregon supreme courts affirmance of same in state v parkerson @310 or app 271(2021)

respectfully submitted this 21 st day of june 2022

_____

(Name)William Jack Parkerson

Sid #14279165