

In The
Supreme Court of the United States

WESTLEY DEVONE HARRIS,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

*On Petition for a Writ of Certiorari to the
Alabama Court of Criminal Appeals*

**REPLY TO RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

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The Sixth and Fourteenth Amendment

violations that Petitioner Westley Devone Harris (“Mr. Harris”) asserts are obvious: two jurors failed to provide full, accurate answers in their voir dire, thereby concealing from the parties and the court critical information bearing on their knowledge of the victims and the State’s proof, leaving Mr. Harris with a biased and partial jury. The disclosure of this information during voir dire would have raised clear issues of bias and served as a basis for the striking of the jurors. Indeed, this case presents a unique factual circumstance ideal for the granting of certiorari, in which two jurors who concealed—or, at best, failed to disclose—their connections to the case were empaneled to serve on a jury tasked with determining not only Mr. Harris’ innocence or guilt in a capital case, but also the punishment: life without parole or death.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI BECAUSE MR. HARRIS' CLAIM THAT JURORS IMPROPERLY FAILED TO DISCLOSE INFORMATION DURING VOIR DIRE DOES CONFLICT WITH THIS COURT'S PRECEDENTS.

Jurors Reginald Greene (“Juror Greene”) and Retha Johnson (“Juror Johnson”) failed to disclose critical and material information in response to the questions asked of them during voir dire. Respondent seeks to simplify the record and the line of questioning at issue in voir dire by incorrectly arguing that the jurors accurately responded to the questions asked of them. However, the questions asked by Trial Counsel and in the jury questionnaire could not have been clearer. Pet. at 11-12, 16-17.

Respondent fails to acknowledge that the indispensable details that Jurors Greene and Johnson omitted during voir dire expose juror biases, thereby depriving Mr. Harris of his right to a fair and impartial

jury. The juror's omissions were critical: Mr. Harris would later learn that one of the jurors was a pallbearer at a victim's funeral, and the other had undisclosed, first-hand knowledge of facts relevant to the State's theory of Mr. Harris' guilt. Plainly, those omissions cast grave doubt as to whether Mr. Harris received a fair and impartial jury. Indeed, "[b]ias may be shown either by express admission or by proof of specific facts showing such a close connection to the circumstances at hand that bias must be presumed," as is the case here. *See United States v. Carpa*, 271 F.3d 962, 967 (11th Cir. 2001).

In holding that there was no juror misconduct, the Court of Criminal Appeals disregarded United States Supreme Court precedent. The Court of Criminal Appeals decision conflicts with *McDonough Power Equip. v. Greenwood*, 464 U.S. 548 (1984), by reducing the jurors failure to disclose material

information to the jurors failure to *volunteer* information. In *McDonough*, this Court enunciated the applicable standard for determining when a juror's response during voir dire warrants a new trial: (1) “a party must first demonstrate that a juror failed to answer honestly a material question on voir dire,” and (2) a party must “further show that a correct response would have provided a valid basis for a challenge for cause.” *Id.* at 556. The Court of Criminal Appeals ignored that Juror Greene’s answers—including that he knew “[n]o details” regarding the case and that he had made a “mistake” when he indicated in his juror questionnaire that he had personal knowledge—actively concealed material information about his connection with the case, particularly his involvement as a pallbearer for the victims’ funerals. Similarly, Juror Johnson was asked if she had any personal knowledge of the case or of Mr. Harris. Pet. at 16. She

responded that her son was an acquaintance of Mr. Harris, but failed to disclose the material fact that she *did* have personal knowledge of the case: she had seen Mr. Harris the morning after the murders, making her an eyewitness to Mr. Harris' whereabouts. Further, in finding that Alabama does not impose a duty to volunteer information during voir dire, the Court of Criminal Appeals ignored that Juror Johnson provided an incomplete and therefore inaccurate response to a directed question. This is not a matter of volunteering information, but rather, of jurors failing to provide accurate and honest answers.

If a juror is asked a specific question which encompasses two answers, a juror “fail[s] to answer honestly a material question on voir dire” if he only mentions one of them. *Conaway v. Polk*, 453 F.3d 567, 585 (4th Cir. 2006). Here, Respondent would put the burden on Trial Counsel to keep asking questions until

the juror gives a complete answer without knowing whether the answer is indeed complete. In this case, Trial Counsel did not have the chance to engage in a full analysis of either Juror Greene or Juror Johnson's voir dire responses because of their lack of disclosure. Indeed, Trial Counsel "is entitled to expect that when venire panel members take an oath to answer truthfully all questions put to them in voir dire, they will indeed tell the whole truth." *Porter v. Zook*, 898 F.3d 408, 427 (4th Cir. 2018).

Additionally, facts giving rise to a reasonable presumption of bias were concealed in the instant case. Bias may also be inferred in extreme situations, such as where the juror works for the prosecuting authority, is a close relative of a participant in a criminal trial, or "was a witness or somehow involved in the criminal transaction." *Smith v. Phillips*, 455 U.S. 209, 222 (O'Connor, J., concurring). Juror Johnson's failure to

disclose that she had outside knowledge critical to the State's case, namely, Mr. Harris' whereabouts the morning after the murders similarly rendered her biased and unfit. Juror Greene's omission of the critical fact that he had such a close relationship with a victim of the murders as to have served as a pallbearer at his funeral rendered Juror Greene biased and unfit to be empaneled. These facts fall into the similarly related extreme situations described above. Accordingly, bias on the part of Juror Johnson and Greene can be inferred from the extreme situations the jurors had been involved in.

Moreover, a juror is not impartial if his experiences, opinions, predispositions, biases, prejudices, interests, or relationships "would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" *See Wainwright v. Witt*, 469 U.S. 412, 421

(1985). In addition to her bias, Juror Johnson lacked the indifference and impartiality that is constitutionally required of jurors. *See Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (“The right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors.”). By seeing Mr. Harris and drawing conclusions about his involvement in the murders, Juror Johnson undoubtedly thwarted her ability to rely solely on the evidence presented to her. Accordingly, this Court should grant review of Mr. Harris’ claims that his Sixth Amendment right to a fair and impartial jury was violated by Juror Johnson and Juror Greene’s juror misconduct.

(a) Mr. Harris’ Petition Presents Compelling Violations of Federal Law

Mr. Harris’ Petition for Writ of Certiorari is properly suited for this Court’s review, as his claims for juror misconduct are directly related to his Sixth

and Fourteenth Amendment rights to an impartial jury. Specifically, Mr. Harris’ claims arise from the Alabama Court of Criminal Appeals’ decision, which conflicts with this Court’s precedent. The Supreme Court Considerations Regarding Review on Certiorari specifically states that nothing listed in the Rule is “controlling nor fully measuring the Court’s discretion.” Sup. Ct. R. 10. A circuit split is *not* required to warrant Supreme Court review, and so, Respondent’s argument is unavailing.

Respondent argues that the writ should not be granted because “the federal habeas court can resolve those issues.” Opp. at 11. In support of its argument, Respondent cites a pre-AEDPA case, which is not applicable to Mr. Harris’ current post-AEDPA habeas petition. *See id.* (citing *Kyles v. Whitley*, 498 U. S. 931, 932 (1990)). This Court has changed its approach towards review of state court denials of post-conviction

relief, post-AEDPA, and so, Mr. Harris' case is properly suited for writ. *See Foster v. Chatman*, 578 U.S. 488, 524(2016) ("Recently, this Court has evidenced a predilection for granting review of state-court decisions denying postconviction relief"); *Wearry v. Cain*, 577 U.S. 385, 395-96 (2016) ("Reviewing the Louisiana courts' denial of postconviction relief is thus hardly the bold departure the dissent paints it to be."); *Lawrence v. FL*, 549 U.S. 327, 343 n.7 (2007) (Ginsburg, J., dissenting) ("Since AEDPA, however, our consideration of state habeas petitions has become more pressing."). Since the enactment of AEDPA, this Court has been willing to review certiorari petitions even if a federal habeas court may also be in a position to grant relief. The reason for that approach is sound: as this Court has noted, "[t]he alternative to granting review, after all, is forcing [defendant] to endure yet more time on [...] death row in service of a conviction

that is constitutionally flawed.” *Wearry*, 577 U.S. at 396.

This Court should grant review to address the particularly compelling violations of federal law present in Mr. Harris’ case.

II. MR. HARRIS’ RIGHT TO A FAIR AND IMPARTIAL JURY WAS VIOLATED BECAUSE A JUROR IMPROPERLY CONSIDERED EXTRANEous EVIDENCE.

(a) Mr. Harris’ Petition Presents a Federal Question

Respondent wrongly argues that no federal question is implicated by Mr. Harris’ claim that a juror wrongly considered extraneous evidence. Mr. Harris’ claim does not rest on an independent and adequate state procedural rule because the determination of Mr. Harris’ rights under the Sixth Amendment right to a fair and impartial jury would alter the judgment below. Specifically, Mr. Harris’ claim rests, as discussed above *supra* Point I.A., on Juror Johnson’s

failure to disclose that she had an eyewitness account of Mr. Harris the morning after the murders had been committed. This firsthand account was extraneous evidence, which impacted Juror Johnson's ability to serve as a fair and impartial juror. As a result, the determination of Mr. Harris' rights under the Sixth Amendment presents a substantial federal question.

Respondent incorrectly argues that the independent and adequate state ground doctrine applies here. In addressing the independent and adequate state ground doctrine, this Court has held that where “resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court’s holding is not independent of federal law, and our jurisdiction is not precluded. . . . In such a case, the federal-law holding is integral to the state court's disposition of the matter, and our ruling on the issue is in no respect advisory.”

Int'l Longshoremen's Asso. v. Davis, 476 U.S. 380, 387-88 (1986) (holding that “[i]f the Alabama procedural ruling under state law implicates an underlying question of federal law...the state law is not an independent and adequate state ground supporting the judgment”) (citing *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)); *see also Michigan v. Long*, 463 U.S. 1032, 1038 n.4 (1983) (“[W]here the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, [the Court's] jurisdiction is plain.”).

Here, Mr. Harris' claim presents an important federal question. Mr. Harris argues that Juror Johnson's incomplete answers which omitted material facts were not sufficient under voir dire and thereby violated his right to an impartial jury under the Sixth

Amendment of the United States Constitution.

Accordingly, this Court should grant review.

(b) Mr. Harris' Petition Presents Compelling Violations Of Federal Law

As described above, *supra* Point I.B., Mr. Harris' Petition for Writ of Certiorari is properly suited for this Court's review, as his claims for juror misconduct are directly related to his Sixth and Fourteenth Amendment right to an impartial jury. As a result, this Court should grant review to address the particularly compelling violations of federal law present in Mr. Harris' case.

CONCLUSION

For the foregoing reasons, Mr. Harris' petition for certiorari should be granted.

Respectfully submitted,

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