22-6681

No. ________ ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Shane Chambers — PETITIONER
(Your Name)

vs.

Warden, King, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shane Chambers
(Your Name)

(LRF) 2500 S. Sheridan Drive
(Address)

Muskegon Heights, MI 49444
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER PETITIONER WAS DEPRIVED OF HIS LIBERTY WITHOUT FIRST THE DUE PROCESS OF LAW WHERE THE TRIAL COURT ALLOWED PROSECUTION TO CREATE A FALSE MODUS OPERANDI REQUIRED TO ADMIT OTHER ACTS EVIDENCE, AND WHERE THAT EVIDENCE WAS USED TO ESTABLISH ACTUS REUS — THE CRIME ITSELF.

Petitioner answers, "yes".
The Michigan Court of Appeals answers, "no".
The U.S. Court of Appeals answers, "no".

LIST OF PARTIES

[✓] 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

[✓] 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,
[✓] is unpublished.

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

[ ] reported at ____________________; 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[✓] is unpublished.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 F 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[✓] is unpublished.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[ ] is unpublished.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 November 3, 2022.

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

[ ] A timely petition for rehearing 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. § 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).

U.S. Const, Art. vi Cl. 2

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

U.S. Const. Am. v

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 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 life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Am. 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 been previously ascertained by law, and to be informed of the nature and cause of the accusations, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and shall have the assistance of counsel for his defense.

U.S. Const. Am. XIV Sec. 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 any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case arose from an assault and home invasion that occurred in the early morning hours of September 19, 2013. After a jury trial held in the Kent County Circuit Court, Petitioner, Shane Chambers, was convicted, May 27, 2014, of first-degree home invasion, assault with intent to commit great bodily harm less than murder, and first-degree criminal sexual conduct after the initial allegations changed and prosecution was allowed to present other bad acts evidence to establish that such a crime had been committed. Subsequently, Petitioner was sentenced, July 2, 2014, to life with parole.

After exhausting his appellate and other post-conviction remedies, Petitioner filed for a Writ of Habeas in the Eastern District of Michigan, Southern Division. Once denied, he filed a motion for certificate of appealability, which was accepted for review in the United States Court of Appeals for the Sixth Circuit; where it was denied November 3, 2022. (See App. A.).

BACKGROUND

Petitioner was arrested on September 20, 2013, held 80 days, and finally arraigned on allegations that changed from the initial complaint in the interim. As demonstrated in the police report, the victim, Barbara Andre, had never mentioned any sexual assault until after Petitioner's arrest and detainment. Even then, Andre could never testify to such an assault, as her assailant rendered her immediately unconscious. (Trial, Vol. II, 5/22/14, p.46) (See Appendices B and C).

At the preliminary examination, over Defense objection, the prosecution circumvented the law by submitting the testimony of Petitioner's victim from a prior, 2003, case - Ms. Joan Schroeder. To enter Schroeder's testimony, prosecution stated that, due to her age, the testimony was for preservation purposes only. (Prelim, Vol. II, 1/9/14, p. 140). Once given, however, the district court relied on that testimony to bind the case over. Id. 149. Moreover, this testimony has since been used to establish the actus reus.

Importantly, though she could not identify her assailant, Andre did testify to the fact Petitioner was NOT the man who had approached her earlier the previous afternoon. (Prelim, Vol. I, 12/17/13, p. 12-13, 16-17; Trial, Vol. II, 5/22/14, p. 62-63). This testimony directly contradicts the state's modus operandi theory found in everything from the presentencing investigation report (PSIR) to the Court of Appeals unpublished opinion, and even the order of the United States Court of Appeals for the Sixth Circuit. (See Appendices D - F)

In the circuit court, the Defense filed motions to exclude presentation of other crimes, wrongs, or acts evidence and to quash the information. (Motions to Exclude and Quash, 3/27/14). Within the motion to exclude other acts evidence, Defense argued, in part, that this case and the prior, 2003, case are not similar enough to be admissible, nor can such evidence be used for propensity or actus reus. Id. These motions were denied by the trial court on April 11, 2014. (Motions Hearing, 4/11/14, p. 3-18). (See Appendices G - I).

At trial, Andre again testified to the fact Petitioner was NOT the man who had approached her the afternoon prior to her vicious assault, but she believes that she could identify that individual if she were to see him again. (Trial, Vol. II, 5/22/14, p. 62-63). Further demonstrating the fact that, rather than other acts, Schroeder's testimony was used to establish actus reus, where there was no other evidence linking Petitioner to such an assault.

On appeal, the Michigan Court of Appeals began its opinion affirming Petitioner's conviction and sentence by relying upon the state's purported modus operandi: stating that "the previous afternoon, a young man driving a light-colored car offered to help [Andre] carry some packages into her house. [Petitioner] drove a tan colored Lexis." People v. Chambers, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2015 (Docket No. 323024) pg. 1. (See, again, Appendix F).

Post-Conviction.

Although Petitioner filed a motion for relief from judgment with the help of others, the bulk of the arguments presented relied mostly on matters of law rather than how the law was being applied to facts which Petitioner kept demanding were wrong. That motion was denied by the trial court, and a subsequent application for leave to appeal was filed in the Michigan Court of Appeals, where it was denied on January 9, 2018; COA No. 341487. A similar application was then timely filed in the Michigan Supreme Court, where it, too, was denied. March 6, 2018; MSC No. 157303.

A petition for writ of habeas was file in the Eastern District of Michigan, Southern Division, where it was denied on March 1, 2022; Case No. 19-cv-11396. In its opinion, the district court relied wholly upon the presumption of correctness of the state's false modus operandi in denying each issue raised within the said petition.

(See Appendix K).

Because of how the petition was denied by the district court, Petitioner was able to present the preliminary examination and trial testimony of Andre to rebut said presumption, along with evidence as to how and when the allegations changed, as well as evidence of Andre's sustained injuries — demonstrating the impossibility that Petitioner could have been the cause of those injuries. That is, despite the state's created modus operandi and its other acts evidence presented at trial, the lack of evidence defies reality.

With a motion for certificate of appealability, Petitioner's case was transferred to the United States Court of Appeals for the Sixth Circuit. (See Appendix L).

In denying said motion, the Sixth Circuit relied on the rebutted presumption, completely ignored the evidence submitted which granted the review, and, while stating Andre did not identify her assailant, omitted the fact she had positively indentified Petitioner as the man who had NOT approached her the previous afternoon. (See, again, Appendix A).

REASONS FOR GRANTING THE PETITION

I. PETITIONER WAS DEPRIVED OF HIS LIBERTY WITHOUT FIRST DUE PROCESS OF LAW WHERE THE TRIAL COURT ALLOWED PROSECUTION TO CREATE A FALSE MODUS OPERANDI REQUIRED TO ADMIT OTHER ACTS EVIDENCE, AND WHERE THAT EVIDENCE WAS USED TO ESTABLISH THE ACTUS REUS – THE CRIME ITSELF.

Relevant Caselaw

A fair trial in a fair court or tribunal is a basic requirement of due process. In re Murchison, 349 US 133, 136; 75 S. Ct 623; 99 L. Ed. 942 (1955). Another fundamental principle of our legal system is that the government's interest in any criminal prosecution is not simply to win a conviction, but rather to see that justice is done. Berger v. United States, 295 US 78; 55 S. Ct. 629, 79 L.Ed. 2d 1314 (1935). As a result, the Due Process Clause of the Constitution requires that prosecutor's act fairly, and prohibits them from certain conduct. See, eg, Napue v. Illinois, 360 US 264, 269 (1959);

U.S. Const. Ams. V, XIV. This Court has explained, "our system of administration of justice suffers when any accused is treated unfairly." Brady v. Maryland, 373 US 83; 83 S. Ct. 1194; 10 L. Ed. 2d 215 (1963).

Although the post civil war Fourteenth Amendment grants every United States citizen access to the Bill of Rights, it leaves the States free to adopt, by statute or decision, and enforce, such rules it elects, whether such rules comport with those applied in the federal or other state courts. "But the adoption of the rule of her choice cannot foreclose inquiry as to whether, in a given case, the application of that rule works as a deprivation of the prisoner's life or liberty without due process of law. The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false. . . . As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." Lisenba v. California, 314 US 219, 290; 62 S. Ct. 280; 289 L. Ed. 166 (1941); US. Const Ams. V, XIV.

Discussion

This is not a simple case of misapplication of law, but rather an "unreasonable determination of the facts in light of the facts presented at trial". 28 USC § 2254(d)(2); see also Torres v. Prunty, 223 F.3d 1103, 1108 (6th Cir. 2000). That is, rather than properly applying the rules of evidence, the prosecution and state courts changed the facts, as presented during the trial proceedings. in order to meet the requisite demands required for lawful admission of evidence. Specifically, other crimes, wrongs, or acts evidence, as defined under both state and federal Rules of Evidence 404(b). Petitioner submits that the altered facts underlying his conviction are now causing as much, if not more, prejudice post-conviction than the use of 404(b) evidence during the trial proceedings.

Where the United States Court of Appeals for the Sixth Circuit held that habeas relief could not be granted here because "[t]here is no clearly established Supreme Court precedent which holds that a state violated due process by permitting propensity evidence in the form of other bad acts evidence;" (Order, 11/3/22), Petitioner contends that such relief was permissible due to the "unreasonable determination of the fact," supported by evidence the Sixth Circuit Court refused to acknowledge.

Where 28 USC § 2254(d)(2) allows for habeas relief, Supreme Court Rule 10 allows for this Court's determination where, "a state court or United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court," as previously mentioned. Rule 10(c).

Cause

Because of the car he was driving, Petitioner was stopped by police hours after the victim in this case (Andre) was assaulted. Importantly, Petitioner, who had not showered, was donning camouflage colored cargo-shorts and a white tank-top was found with no other blood on his clothing than that of his own. (Trial, 5/27/14, p. 38-39). Prior to his incarceration, statements were collected by police and a discription of the alleged assailant and the assault were released to the media. (See, again, App. C).

Only after 80 days of incarceration was Petitioner arraigned on allegations that included sexual assault due to his past, not initially reported. See, eg: United States v. Marion. 404 US 307; 92 S. Ct. 455; 30 L. Ed. 2d 468 (1971). With the allegations changed, a nexus was created by the state required for the introduction of other acts evidence under Rule of Evidence 404(b); thus, a tactical advantage over Petitioner was taken. Cf Brady, supra; Napue, supra, as cited in Marion, supra.

Although no Constitutional right to a preliminary examination exists, both state and federal law requires such an examination to determine two basic factors before an individual can be in any way deprived of his or her life, liberty, or property, without first the due process of law. The factors are simple: First, there must be reason to believe a crime has been committed and, second, there is probable cause to believe the defendant committed that crime. See, eg. 11 MPL 2d Criminal Law & Procedure §170, Sufficiency. Petitioner submits that without the use of 404(b) evidence neither of these factors could have been fulfilled for the sexual assault.

At the preliminary examination, over Defense objection, the prosecution circumvented the law in order to present the testimony of Petitioner's victim from a 2003 case - Ms. Joan Schroeder. Testimony offered under the pretence of "preservation" only was ultimately used to bind the case over; thus, depriving Petitioner of his liberty. (Prelim, Vol. II, 1/9/14, p. 140, 149). What is more, this testimony offered at trial "den[ied] him a fair opportunity to defend against [the sexual assault, as charged]." Michelson v. United States, 335 US 469, 475-76; 69 S. Ct. 213; 93 L. Ed. 168 (1948).

Since motions to exclude the 404(b) evidence and to quash the bindover were filed, "[t]he principle issue is the scope of a trial court's discretion under Rule 403, which authorizes exclusion of relevant evidence when its 'probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury; or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Old Chief v. United States, 519 US 172, 180; 117 S. Ct. 644; 136 L. Ed. 2d 574 (1997) (internal citations omitted).

In Old Chief, this Court held that "[t]he term 'unfair prejudice', as to a criminal defendant, speaks to the capacity of some 'concededly' relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged. 'Unfair prejudice' within its context means undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Id.

Prejudice.

Similar to Old Chief, such improper grounds certainly include those that Petitioner points to here: creating a false modus operandi to use prior bad acts evidence for character or propensity evidence and "taking that as raising the odds that he did the later bad act now charged (or, worse, as calling for preventive conviction even if he should be innocent momentarily).... Although 'propensity evidence' is relevant, the risk that a jury will convict for crimes other than those charged - or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment - creates a prejudicial effect that outweighs ordinary evidence." *Id.* 180-81. (internal citations and punctuations omitted).

The case presented here has three distinct differences to that of Old Chief in that: (1) Petitioner has never conceded to the proffered testimony of Schroeder as relevant; (2) the 404(b) evidence was not required to fulfill a separate, prior conviction element to the charged offense; and (3) prejudice can be established where, rather than corroborative or otherwise supportive, the other acts evidence introduced here was used to establish the actus reus - the crime itself. Moreover, the other acts evidence was only admissible through a false modus operandi.

Within the presentencing investigation report (PSIR), pictures of the brutal assault sustained by Andre can be found. (See, again, Appendix E). Petitioner contends that, not only such an assault cannot be found in his criminal history, it is highly improbable that such an assault could be committed without the exchange of bodily fluids. Once the allegations of sexual assault combined with the physical assault, Petitioner submits that the lack of bodily fluid exchange advances to that of defying reality.

On appeal, the prosecution relied upon its false modus operandi, and the appellate court affirmed Petitioner's conviction and sentence based on these "facts"; stating in relevant part. "Andre, who was asleep on her sofa when the attack began, could not see her assailant, but testified that, 'the previous afternoon, a young man driving a light-colored car offered to help carry some packages into her house.' [Petitioner] drove a tan colored Lexis." People v. Chambers, unpublished per curiam opinion of the Court of Appeals, issued December 10, 2015 (Docket No. 323024) p. 1.

Omitted is the fact that at both the preliminary examination and jury trial, Andre testified to the fact Petitioner was NOT the person who approached her the previous afternoon. (Prelim, Vol. I, 12/17/13, p. 12-13, 16-17; Trial, Vol. II, 5/22/14, p. 62-63). But, Andre continued, she believes that she could identify that individual if she were to ever see him again. Id. 62.

The prejudice of the state's false modus operandi was exasperated by the presumption of correctness in the federal district court under 28 USC § 2254(e)(1). Indeed, the district court relied wholly upon the presumption of correctness when denying each claim raised in Petitioner's Writ of Habeas and the Certificate of Appealability to the Sixth Circuit Court of Appeals. (See, again, Appendix K).

With his writ denied, Petitioner filed a motion for certificate of appealability in the district court, where the Sixth Circuit Court swiftly accepted the motion for review. Soon after, the district court construed said motion as a motion for reconsideration and, though it maintained its opposition, transferred the motion for certificate of appealability up to the Sixth Circuit Court, "in the interest of justice." (Order Transferring Petitioner's Motion for Certificate of Appealability to the United States Court of Appeals for the Sixth Circuit, 3/28/22, p. 2). (See Appendix L).

In the Sixth Circuit, the evidence submitted by Petitioner in support of the motion for certificate of appealability was omitted and, instead, the state appellate court's analysis was upheld — though it, too, relied on said modus operandi; stating that, "[Petitioner] failed to show that any error on the part of the state trial court in applying Michigan evidentiary rules was sufficiently egregious to amount to a denial of due process." (Order, 11/3/22 p. 2-3). (internal citations omitted).

Further, the Sixth Circuit Court held that "[t]he prosecutor did not misstate Andre's testimony concerning when she experienced vaginal pain and her description of the color of the vehicle that she saw hours before she was assaulted." Id. 10.

Petitioner, however, does not refute what happened to Andre; rather, his defense rests on the fact that Andre never alleged a sexual assault until after his arrest, and after her initial police interview. Moreover, the color of Petitioner's car is irrelevant where Andre testified multiple times that it was not he nor his car she saw the previous afternoon. Rather, these facts were manufactured by the state contrary to record evidence in order to rely on other acts evidence.

Further, Petitioner contends that the prejudice suffered throughout his post-conviction proceedings stems from the perception of guilt in light of the presumption that the demands of due process were fulfilled during the trial stage. Indeed, "[t]he presumption of innocence, although not articulated in the Constitution, is the basic component of a fair trial under our criminal justice system." Estelle v. Williams, 425 US 501, 503; 96 S.Ct. 1691; 48 L.Ed.2d 126 (1976). That presumption, however, only operates at the guilt phase of a trial to remind the jury that the State has the burden of establishing every element of the charged offense beyond a reasonable doubt. See, eg, Taylor v. Kentucky, 426 US 478, 484, n 12; 98 S.Ct. 1930; 56 L.Ed.2d 468 (1978). Once a defendant has been convicted "fairly" in the guilty phase of the trial, the presumption of innocence disappears. See Herrera v. Collins, 506 US 390, 399; 113 S. Ct. 853; 122 L.Ed.2d. 203 (1993)(emphasis added)).

One of the essential due process safeguards that attends the accused at trial is the benefit of the presumption of innocence — "that bedrock 'axiomatic and elementary' principle whose enforcement lies at the foundation of the administration of our criminal law." In re Winship, 397 US 358, 363 (1970), quoting Coffin v. United States, 156 US 432, 453; 15 S. Ct. 394; 39 L.Ed. 481 (1895); Deutch v. United States, 367 US 456, 471 (1961); Sinclair v. United States, 279 US 263, 296-97 (1929). That presumption is the "prime instrument for reducing the risk of conviction resting on factual error." Estelle, 425 US at 518.

Likewise, this Court once held that "[a] fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system has 'endeavored to prevent even the probability of unfairness.' To this end no man can be a judge in his own case and no man is permitted to try cases where he has interest in the outcome. 'That interest cannot be defined with precision.' Circumstances and relationships must be considered." This Court has also held, however, that "every procedure which would offer the possible temptation of the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." Tumey v. Ohio, 273 US 510, 532; 47 S. Ct. 437; 71 L. Ed. 749 (1927).

Here, Petitioner submits that cases involving sexual assaults have such a stigma about them that courts are too easily tempted or otherwise swayed to focus more on the probability of such an assault rather than the facts surrounding them. This temptation is further exasperated where the accused has a prior conviction. But when the safeguards of due process fail, our system no longer endeavors to prevent even the probability of unfairness. This is where Petitioner requests a de novo review of the facts so that the truth may prevail.

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In final analysis to this Honorable Court, let us not forget the words of Doctor Martin Luther King Junior — "an injustice anywhere is a threat to justice everywhere."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shu S. Cho

Date: 1/23/2023