

23-5368

- No. _____

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY SCOTT REYNOLDS - PETITIONER,

VS.

BERT BOYD, - RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF THIS CASE)

PETITION FOR WRIT OF CERTIORARI

LARRY SCOTT REYNOLDS, # 266925

WTSP, SITE-2
P.O. BOX 1150
HENNING, TN 380041-1150

(Phone number is not available)

QUESTION(S) PRESENTED

(1) WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN DENYING PETITIONER A COA?

LIST OF PARTIES

[v] All parties ARE LISTED AS FOLLOWS:

Petitioner: Larry Reynolds, # 266925, WTSP, P.O. Box 1150, Henning, TN 38041-1150.

Respondent: Bert Boyd, the Warden.

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Larry Reynolds v. Brian Eller, # 22-5972, (6th Cir. 05/12/2023)

APPENDIX B: UNITED STATES DISTRICT COURT DECISION.

Larry Reynolds v. Bert Boyd, # 3:14-CV-01249, (M.D.Tenn. 10/05/2022)

APPENDIX C: TENNESSEE COURTS DECISION ON POST-CONVICTION.

Larry Reynolds v. State of Tennessee, M2012-01978-CCA-R3-PC, (5/1/2013)

APPENDIX D: TENNESSEE COURTS DECISION ON DIRECT APPEAL.

State of Tennessee v. Larry Reynolds, M2009-00185-CCA-R3-CD, (12/16/2010)

[v] For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was on 05/12/2023
Larry Reynolds v. Brian Eller, # 22-5972, (6th Cir. 05/12/2023). Appendix A.

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

The date on which the United States District Court decided my case was on 10/15/2022
Larry Reynolds v. Bert Boyd, # 3:14-CV-01249, (M.D.Tenn. 10/05/2022). Appendix B.

The jurisdiction of this Court in invoked under 28 U.S.C. Section 1254(1)

[v] For cases from State Courts:

The date on which the Tennessee Supreme Court decided my Post-Conviction Appeal was on 10/17/2013
Larry Reynolds v. State of Tennessee, M2012-01978-SC-R11-PC, (10/17/2013). Appendix C.

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

The date on which the Tennessee Court of Criminal Appeals decided my Post-Conviction Appeal was on 5/1/2013, Larry Reynolds v. State of Tennessee, M2012-01978-CCA-R3-PC, (5/1/2013). Appendix C.

The date on which the Tennessee Supreme Court decided my Direct Appeal was on 5/25/2011
State of Tennessee v. Larry Reynolds, M2009-00185-SC-R11-CD, (5/25/2011). Appendix D.

The date on which the Tennessee Supreme Court decided my Direct Appeal was on 12/16/2010
State of Tennessee v. Larry Reynolds, M2009-00185-CCA-R3-CD, (12/16/2010). Appendix D.

TABLE OF AUTHORITIES CITED

Buck v. Davis, 137 S.Ct. 759, 773 (2017)

Banks v. Dretke, 540 U.S. 668, 705 (2004)

Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)

Miller-El v. Cockrell, 537 U.S. 322, 336 (2003)

Miller v. Brunson, 599 F.3d 517, 527-528 (6th Cir. 2010)

United States v. West, No. 11-2080 (6th Cir. 2013)

Wynne v. Benico, 606 F.3d 867, (6th Cir. 2010)

Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987)

Holmes v. South Carolina, 547 U.S. 319, 324, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)

Rock v. Arkansas, 483 U.S. 44, 56 (1987)

United State v. Scheffer, 523 U.S. 303, 315, 118 S.Ct. 1261, 140 L.Ed.2d 4123 (1998)

**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.

OPINION BELOW

[v] For the Federal Courts:

The opinion of the United States Court of Appeals appears at Appendix A to the Petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the Petition and is unpublished.

[] For the State Courts: N/A.

JURISDICTION

[v] For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was on 05/12/2023
Larry Reynolds v. Brian Eller, # 22-5972, (6th Cir. 05/12/2023). Appendix A.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment to the United States Constitution

6th Amendment to the United States Constitution

14th Amendment to the United States Constitution

T.R.E. 401

F.R.E. 401

STATEMENT OF CASE

Your Plaintiff/Appellant/Petitioner, Larry Reynolds, # 266925, ("Plaintiff" and/or "Reynolds" hereafter), an indigent pro se Tennessee inmate, filed 2254 Federal Habeas Corpus Petition with the United States District Court at Nashville, Tennessee, ("U.S. District Court") by alleging that his conviction and sentence are in violation of the 28 U.S. Section 2254(d)(1) and (d)(2) regarding his Right to Present a Complete Defense.

"U.S. District Court dismissed the Petition. *Larry Reynolds v. Bert Boyd*, # 3:14-CV-01249, (M.D.Tenn. 10/05/2022). Appendix B.

Reynolds timely appealed to the United States Court of Appeals, Sixth Circuit, ("U.S. Court of Appeals"), in the form of Application For Certificate Of Appealability ("COA"), which was denied on 05/12/2023. See *Larry Reynolds v. Brian Eller*, # 22-5972, (6th Cir. 05/12/2023). Appendix A.

Current Petition for Writ Of Certiorari is timely.

REASONS FOR GRANTING THE PETITION

(1) WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN DENYING PETITIONER A COA?

ARGUMENT

(1) WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN DENYING PETITIONER A COA?

The Certificate of Appealability Standard.

A habeas corpus petitioner is entitled to a COA if "the applicant has made a substantial showing of the denial of a constitutional right. *Buck v. Davis*, 137 S.Ct. 759, 773 (2017). To make that showing, a petitioner "must demonstrate that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Banks v. Dretke*, 540 U.S. 668, 705 (2004).

An appellant is entitled to a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." Section 2253(c)(2). An applicant meets the standard outlined in section 2253(c)(2) if "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000); see also *Welch v. United States*, 136 S.Ct. 1257, 1263-1264, 194 L.Ed.2d 387 (2016). To obtain a COA, a petitioner needs only make what is in essence a *prima facie* showing that he is entitled to relief and that the District Court's denial of relief is debatable. This "limited ... inquiry" *Buck*, 137 S.Ct. at 774 does not involve a full examination of the merits of the petitioner's claims. As Buck explains, "[t]his threshold showing should be decided without full consideration of the factual or legal bases adduced in support of the claims." Id. at 137 S.Ct. at 773, quoting *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Rather, "a 'court [] should limit its examination at the COA stage to a threshold inquiry into the underlying merit and ask only if the District Court's decision was debatable." *Buck*, 137 S.Ct. at 774, quoting

Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). The issuance of a certificate of appealability "does not require a showing that the appeal will succeed," and a district court or subsequent reviewing court "should not decline the application ... merely because it believes the application will not demonstrate an entitlement to relief" as the certificate merely acknowledges that reasonable legal minds could disagree about the point at issue. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

Petitioner is entitled to the Certificate of Appealability.

Your Petitioner/Appellant, Mr. Reynolds, meets the threshold for the grant of a COA on his claim that the trial court erred, and District Court erred in affirming, by preventing him from presenting a third party defense at trial relating to Ms. Karla Teutsch. Other panels of the 6th Circuit of the United States Court of Appeals have repeatedly, and recently, upheld the right of a criminal defendant to use a defense implicating another person without requiring enhanced proof that directly connects the third party with the offense. See Miller v. Brunson, 599 F.3d 517, 527-528 (6th Cir. 2010) (Dissent comments on the fundamental unfairness of the burdens placed on the defense to present a third party defense stating "I have seen no convincing constitutional justification for placing a higher threshold before a criminal defendant than that placed before the state."); see also United States v. West, No. 11-2080 (6th Cir. 2013) (Not recommended for publication; upheld the District Court's decision to permit third party culpability evidence without the defense even specifying a particular third party due to the decedent's many potential killers.); see also Wynne v. Benico, 606 F.3d 867, (6th Cir. 2010) (Barred third party evidence because it ran afoul of F.R.E. 404(b) implicating the third party's propensity, but affirmed the admissibility of evidence that a third party committed the offense.)

This issue is clearly one where reasonable jurists on the 6th Circuit have disagreed with the conclusion the District Court reached in Mr. Reynolds case and, consequently, Mr. Reynolds raises a debatable claim that merits granting a COA. Given the above cited opinions from the 6th Circuit Courts, particularly the well-reasoned dissent in Miller, it is clear that "the District Court's decision ... debatable" when it denied Mr. Reynolds relief on this issue. Buck, 137 S.Ct. at 774. The 6th Circuit should have granted Mr. Reynolds a COA as he has presented a debatable question for review that reasonable jurists may, and have, disagree on.

"[A]t a minimum" a defendant on criminal trial has "the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987); see also *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006). The Rules of Evidence permit restrictions on this right, however, those Rules may not be "arbitrary or disproportionate to the purposes they are designed to serve." *Rock v. Arkansas*, 483 U.S. 44, 56 (1987); see also *Holmes v. South Carolina*, 547 U.S. at 326. The exclusion of evidence violates the constitutional right to a defense when it "significantly undermine[s] fundamental elements of the accused's defense." *United State v. Scheffler*, 523 U.S. 303, 315, 118 S.Ct. 1261, 140 L.Ed.2d 4123 (1998). The *Holmes* Court, citing *Rock*, instructed that evidentiary Rules designed to exclude evidence in an arbitrary and/or disproportionate manner are Unconstitutional because those Rules violate a defendant's right to Due Process under the 5th and 14th Amendments. *Holmes*, 547 U.S. at 326 ("the Constitution thus prohibits the exclusion of defense evidence under Rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote").

Many jurisdictions permits exclusion of evidence of third party culpability unless the defense can prove a clear nexus between the third party and the charged offenses. This is the erroneous methodology known as the "Direct Connection Doctrine", however, there is no legitimate basis for this conclusion. There is no basis in F.R.E. 401 and 403, or the state equivalents, for determining that, in order for evidence of third-party guilt to be admissible, there must be some direct connection between the crime and the potential third-party perpetrator. The Doctrine of Direct Connection between the third-party and the offense erroneously equates the sufficiency of such evidence to prove guilt of the third party with relevancy of the evidence at the trial of the defendant for the offensive conduct. Put another way, Direct Connection Doctrine requires that, in order for the evidence to be admissible based on either T.R.E. 401 or F.R.E. 401, the basic Rule of Relevancy, the defendant must demonstrate that he/she would be found not guilty of the charged offenses for which he/she is on trial, a completely erroneous interpretation of relevancy.

Respectively, the T.R.E. 401 provides "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" and F.R.E. 401 provides "Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable that it would be without the evidence; and
- (b) the fact is of consequence in determining the action."

This erroneous presumption creates error on multiple levels which is contrary to and an unreasonable application of federal law in relation to the 5th and 6th Amendments to the United States Constitution as well as the Federal Rules of Evidence. As is well acknowledged, relevancy and sufficiency are not the same thing and require wholly different standards. See *David S. Schwartz & Chelsey Metcalf, Disfavored Treatment of Third-Party Guilt Evidence, 2016 Wisc. L. Rev. 337, 352 & 381, 2016*. By applying this Direct Connection Doctrine, Courts have put "a defendant's third-party guilt evidence" into a "special category of evidence" and then applied improperly "restrictive tests to its admission" that are not required for other evidence pursuant to F.R.E. 401, 402, or 403. *Id. at 339*. This is done by putting a "higher barrier of admission of this third-party guilt evidence than is placed on other relevant evidence." *Id. at 337*. This application of the Direct Connect Doctrine asks "what the evidence proves" when Courts should "instead be asking merely the two basic relevancy questions: whether the evidence (a) is believable in itself and (b) slightly increases the marginal probability that a third-party committed the crime." *Id. at 384*. The use of the Direct Connection Doctrine is an arbitrary or disproportionate application of the Rules of Evidence and ask a closer look at F.R.E. 401, 402, and 403 working in conjunction with each other shows that how this is an unreasonable application of *Holmes* warranting relief for Mr. Reynolds.

CONCLUSION

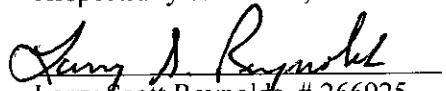
THEREFORE, by showing the Rule 10 of the Rules Of The Supreme Court Of The United States, your Petitioner/Appellant, Mr. Reynolds, avers that , THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN DENYING PETITIONER A COA.

RELIEF SOUGHT

Petitioner/Plaintiff/Appellant Reynolds prays for the issuance of writ of certiorari and/or any other relief deemed proper, just, and equitable with an appointment of counsel.

Plaintiff Reynolds affirms under the penalty of perjury that foregoing is true and correct according to his knowledge at Henning, Tennessee, on this the 4th day of August, 2023.

Respectfully submitted,



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LSR/lh