

No. 23-5714

IN THE
Supreme Court of the United States

CUHUATEMOC HINRICKY PERAITA,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

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

REPLY BRIEF FOR PETITIONER

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I. THE ALABAMA COURT'S ERRONEOUS DECISION DEPENDED ON FEDERAL LAW.

In his petition for post-conviction relief, petitioner argued that his federal constitutional right to trial by an impartial jury was violated when the jury foreperson told the other jurors misleading and prejudicial information about petitioner's prior convictions. Petitioner pressed this claim during all stages of state appellate review, and the claim, from its outset, stated that "Mr. Peraita's rights to a fair trial and due process were violated by juror misconduct that occurred in this case." ECF No. 2-18 at XVIII 16, *Peraita v. Hamm*, No. 23-220 (S.D. Ala. June 13, 2023) (citing U.S. Const. Amends. V, VI, VIII, and XIV); *see also id.* at ECF No. 2-18 at XVIII 18–19 (stating that "the jury that ultimately found [petitioner] guilty was not fair and impartial," and "[a]s a result, [petitioner's] constitutional rights were violated"). In passing on that federal claim, the Alabama Court of Criminal Appeals erroneously decided that a state evidentiary rule barred consideration of juror testimony about the foreperson's misconduct. Now, the State hinges its opposition not on the merits of the certiorari petition but on an assertion that petitioner failed to raise a federal claim in state court and that, in any event, the Alabama court's decision rested on independent state law grounds. But the post-conviction filings and state court decisions make clear that petitioner presented a federal claim and that the Alabama Court of Criminal Appeals addressed that claim when it wrongly applied Alabama Rule of Evidence 606(b) to bar consideration of that claim.

In reviewing a state-court judgment, this Court will only consider the petitioner's federal claim if "it was either addressed by, or properly presented to, the state court that rendered the decision [this Court] ha[s] been

asked to review.” *Adams v. Robertson*, 520 U.S. 83, 86 (1997). Here, petitioner properly presented a federal question by bringing it “to the attention of the state court with fair precision and in due time.” *Id.* at 87 (citation omitted).

On January 7, 2008, petitioner filed his second amended Rule 32 petition for post-conviction relief in Alabama circuit court. *See* Pet. App. 173a–76a. The Rule 32 petition he filed was necessarily limited to claims under “[t]he constitution of the United States or of the State of Alabama.” Ala. R. Crim. Proc. 32.1(a), *see also* ECF No. 2-16 at XVI 178, *Peraita v. Hamm*, No. 23-220 (S.D. Ala. June 13, 2023) (State acknowledging that juror misconduct claim is a “constitutional claim that arises under Rule 32.1(a)”). Petitioner plainly pled that the foreperson’s misleading and prejudicial statements to the other jurors violated his “rights to a fair trial and due process” under the Sixth and Fourteenth Amendments to the U.S. Constitution and that “federal law require[d] that the verdict and sentence be based on only the evidence developed at trial.” *See id.* at ECF No. 2-18 at XVIII 16–19; *see also id.* at ECF No. 2-16 at XVI 108 (petitioner’s first amended petition stated that “juror misconduct during the trial deprived [petitioner] of his rights to a fair trial and due process”); *id.* at ECF No. 2-16 at XVI 110 (petitioner’s first amended petition stated that “the jury that ultimately found him guilty was not fair and impartial,” and, “[a]s a result, [petitioner’s] constitutional rights were violated”). Petitioner continued to raise this as a federal constitutional claim on appeal to the Alabama Court of Criminal Appeals, *see, e.g., id.* at ECF No. 2-25 at XXV 34–35 (citing to *Turner v. Louisiana*, 379 U.S. 466 (1965) in support of his claim that his rights to a fair trial and due process had been violated); *id.* at ECF No. 2-26 at XXVI 8–9 (“[Petitioner’s]

right to a ‘fair trial’ by an ‘impartial jury’ under United States and Alabama constitutions was violated . . .”). And the Alabama Supreme Court granted certiorari to hear exactly this claim. *See, e.g., id.* at ECF No. 2-28 at XXVIII 39–40 (arguing that appellate court’s “conclusion that [petitioner] is not entitled to relief on his juror misconduct claim is erroneous and conflicts with precedents of the U.S. Supreme Court”); *see also id.* at ECF No. 2-29 at XXIX 3–47 (citing to *Warger v. Shauers*, 574 U.S. 40 (2014), *Parker v. Gladden*, 385 U.S. 363 (1966), *Turner*, 379 U.S. 466 (1965), and *Mattox v. United States*, 146 U.S. 140 (1892) in support of his claim). The State’s argument that petitioner failed to raise this issue as a federal claim is therefore incorrect.

And while more is not required for this Court to exercise its jurisdiction, the Alabama Court of Criminal Appeals necessarily passed upon the federal issue when it determined that the juror’s testimony was barred by Alabama Rule of Evidence 606(b). The court acknowledged that the extraneous, prejudicial statements made by the foreperson “form[ed] the basis of the issue at [petitioner’s] Rule 32 hearing—*i.e.*, a juror misconduct claim.” Pet. App. 23a–24a. In response to that federal claim, however, it held that testimony regarding those statements was prohibited from consideration because of a state evidentiary rule. In other words, it was the court that injected state law into its consideration of the constitutional issue. As this Court has held, however, application of a state no-impeachment rule violates the U.S. Constitution when it bars testimony that jurors were exposed to outside information about a defendant’s prior convictions or bad acts. *See, e.g., Parker v. Gladden*, 385 U.S. 363, 364 (1966).

The State also argues that, in any event, the Alabama Court of Criminal Appeals' decision was based on adequate and independent state law grounds. Br. in Opp'n 12–14. But where a state court construes state law in a way that violates a defendant's federal constitutional rights, its decision does not rest on adequate and independent state law grounds. *See, e.g., Foster v. Chatman*, 578 U.S. 488, 497–98 (2016); *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). Here, the Alabama court's application of Rule 606(b) to bar petitioner's juror misconduct claim—including the court's analysis of what constitutes extraneous and prejudicial information—is necessarily interwoven with the issue of whether that state rule must give way to federal constitutional protections under the Sixth and Fourteenth Amendments.

State courts' interpretations of state evidence rules always must comport with federal constitutional guarantees, and this Court has exercised its jurisdiction to hear such matters. *See, e.g., Rock v. Arkansas*, 483 U.S. 44, 55–56 (1987). Indeed, just seven years ago, this Court granted certiorari in a state-court action regarding the interplay between Colorado's Rule 606(b) and the Sixth Amendment. *See Pena-Rodriguez v. Colorado*, 578 U.S. 905 (2016). In *Pena-Rodriguez*, the state court held that Colorado's no-impeachment rule (essentially identical to the one here) barred consideration of testimony that racist statements made by a juror violated defendant's federal constitutional rights. *See* 580 U.S. 206 (2017). This Court had no issue granting certiorari in that case and squarely addressing whether the state evidentiary rule was unconstitutional insofar as it barred testimony necessary to make out a Sixth Amendment juror misconduct claim. *Id.* at 214. The Court should do the same here.

II. SUMMARY REVERSAL IS WARRANTED.

The State focuses on its erroneous claim about state law and barely disputes the central argument in the petition: that the Alabama court's ruling conflicts with this Court's precedents and should therefore be summarily reversed. For the reasons given in the petition, summary reversal is warranted.

A. The State Cannot Defend The Decision Of The Alabama Court Of Criminal Appeals.

The petition showed that under this Court's decisions the no-impeachment rule cannot apply where jurors are exposed to outside information about a defendant's prior convictions or bad acts. That is exactly what happened at petitioner's trial. Rather than defend the Alabama Court of Criminal Appeals' contrary conclusion, the State picks here and there at the precedents on which petitioner relies. These efforts get the State nowhere. In passing, the State implies that *Mattox v. United States*, 146 U.S. 140 (1892), is no longer good law because *Mattox* relied on a version of the no-impeachment rule that was later rejected by this Court and Congress. Br. in Opp'n 9–10. But *Mattox* at most “suggested . . . that the admission of juror testimony might be governed by a more flexible rule, one permitting jury testimony even where it did not involve consultation of prejudicial extraneous information.” *Pena-Rodriguez*, 580 U.S. at 209. It did not adopt or apply such a rule. And the State makes no attempt to distinguish the no-impeachment rule applied in *Parker v. Gladden*, 385 U.S. 363 (1966). Here, as in *Mattox* and *Parker*, petitioner's jury heard information about the defendant that “was not subjected to confrontation, cross examination or other safeguards guaranteed to the petitioner” by the Sixth

Amendment. *Parker*, 385 U.S. at 364. Alabama’s no-impeachment rule cannot bar juror testimony about such a violation of petitioner’s rights.

The petition also showed that the Alabama court departed from the settled precedents of this Court in concluding that “Peraita failed to prove that he was prejudiced by the [foreperson’s] comment.” *Peraita v. State*, No. CR-17-1025, 2021 WL 3464344, at *11 (Ala. Crim. App. Aug. 6, 2021). Not only is juror exposure to information about a defendant’s prior criminal charges or convictions inherently prejudicial, but the prejudice is particularly stark here. As petitioner explained and the State nowhere acknowledges, the trial judge granted petitioner’s motion to exclude the details of the Gadsden robbery, an acknowledgment that those details were so prejudicial to petitioner that the jury should not hear them. *See* Pet. App. 247a. As the trial judge recognized in excluding the evidence, the moment the details of the Gadsden robbery were revealed to the jury, petitioner’s argument to the jury—that he acted in self-defense that night to protect himself from further harassment or harm by Quincy Lewis—was undermined.¹

This is therefore not a case involving the routine “misapplication of a properly stated rule of law.” Sup. Ct. R. 10. It is a case in which summary reversal is warranted because the decision below disregards settled law. This Court routinely summarily reverses lower-court decisions that misapply settled precedent or established doctrines, including where those

¹ The State spends several pages of its opposition arguing that the prejudice question here is not one “consist[ing] of erroneous factual findings.” Sup. Ct. R. 10. But the petition does not argue that the Alabama courts made factual errors. It shows that the Alabama Court of Criminal Appeals misapplied a well settled legal rule to undisputed facts.

precedents or doctrines require courts to weigh the particular facts. *See, e.g., Christeson v. Roper*, 574 U.S. 373, 378 (2015) (summarily reversing application of the “interests of justice” standard); *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (granting summary reversal in fact-bound habeas case); *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 3 (2021) (same, but in case involving qualified immunity doctrine). The question presented here is an appropriate candidate for summary reversal: It involves the straightforward application of well-settled legal standards to undisputed facts.

B. The State Cannot Show That The Alabama Court’s Approach Is Consistent With Other Courts.

Although demonstrating inconsistency with other lower court decisions is not necessary to justify summary reversal, petitioner showed that the decision of the Alabama Court of Appeals is inconsistent with the decisions of other courts holding that a no-impeachment rule should not apply to cases like this one. These cases highlight that the Alabama Court of Criminal Appeals’ holding was not only a departure from this Court’s precedent but is inconsistent with lower courts’ understanding that a defendant’s constitutional rights may be violated where jurors are exposed to information not in evidence about a defendant’s prior convictions or bad acts. It is irrelevant whether the jurors learn that information through news articles, third parties, or another juror. *See* Pet. 16–17. The State’s attempt to distinguish these cases is unconvincing.

The State first tries to distinguish petitioner’s case on the ground that documents establishing the fact of his prior convictions were admitted into evidence. *See*

Br. in Opp'n 15–17. But that is neither here nor there. What matters is that the jury foreperson introduced additional details about those convictions that were *not* in the record; indeed, they had been expressly excluded from trial because they were more prejudicial than probative. That the jury knew the fact of petitioner's prior convictions does not defeat his right to confront witnesses who introduce additional facts about those convictions or his right to a jury free from bias. Just the same, in *United States v. Thomas*, the jurors' knowledge of the facts admitted into evidence about the defendant's alleged crimes did not defeat his claim that his rights were violated by the introduction of additional facts suggesting that he was "part of a much larger conspiracy than either the evidence at trial had specifically indicated or than the indictment had charged." 463 F.2d 1061, 1064 (7th Cir. 1972).

The State also tries unsuccessfully to distinguish cases based on procedure. For example, the State argues that *Bonner v. Holt*, 26 F.3d 1081 (11th Cir. 1994), is distinct because petitioner there preserved his claim for federal review, but petitioner here did as well, as discussed *supra*. And the procedural differences the State identifies in *Jeffries v. Blodgett* do not change the conclusion that the nature of the information allegedly communicated from one juror to the others regarding defendant's prior conviction was highly prejudicial and "would have had a 'substantial and injurious effect or influence' on the verdict." 5 F.3d 1180, 1191 (9th Cir. 1993)."

CONCLUSION

For the foregoing reasons, the Court should summarily reverse the decision of the Alabama Court of Criminal Appeals.

Respectfully submitted,

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