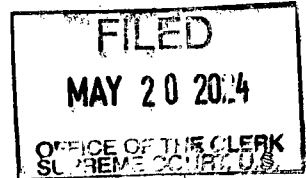


23-7766
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Charles Edward Lockett — PETITIONER
(Your Name)

vs.

Robert Neuschmid — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles Edward Lockett
(Your Name)

P.O. Box 96
(Address)

Chowchilla, CA 93610
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the Ninth Circuit misapplied this Court's precedents in ruling that Petitioner was not denied right to present a complete defense by the exclusion of evidence, Brady v. Maryland 373 U.S. 83? Whether the exclusion was a denial of Sixth Amendment right to trial by jury, by lighten the prosecution's burden of proof? Does exclusion of evidence and witness violate the Constitutional right to V, VI, VII, XIV Amendments?

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ISSUE PRESENTED FOR REVIEW

Lockett's brother, who had a history of committing robberies of Oakland businesses, was detained within minutes inside police perimeter, which the trial court did not allow the jury to learn. Did the trial court's exclusion of all evidence related to Lockett's brother's detention inside crime scene perimeter violate Lockett's Sixth and Fourteenth Amendment rights to present a complete defense at trial?

Whether the Ninth Circuit misapplied this Court's precedents in ruling that, the state court's decision was not contrary to, or an unreasonable application of clearly established United States Supreme Court precedent?

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PETITION FOR A WRIT OF CERTIORARI

I, Charles Edward Luckett, petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Judgment below

See Memorandum filed Mar 15 2024, "This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3."

JURISDICTION

Judgment, the date on which the United States Court of Appeals decided my case was Mar 15, 2024

Petitioner appeals from the denial of his writ of habeas corpus, which was filed pursuant to 28 U.S.C. § 2254. The district court had jurisdiction under 28 U.S.C. §§ 224(a) and 2254(a). On Nov. 23, 2020, the district court denied the petition and declined to issue a certificate of appealability. Petitioner timely appealed and the Ninth Circuit granted a certificate of appealability on March 31, 2022. The Ninth Circuit Court had jurisdiction under 28 U.S.C. §§ 1291 and 2253. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). U.S.C.S.

Constitutional and Statutory Provisions Involved

U.S. Constitution, Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right -- to trial by an impartial jury -- 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 defense."

U.S. Constitution, Amendment V

"No person -- shall be deprived of life, liberty, without due process of law."

U.S. Constitution, Amendment VII

"Trial by jury -- the right of trial by jury shall be preserved."

U.S. Constitution, Amendment XIV

"No state shall make or enforce any law which shall abridge the privileges -- 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 law".

Title 28 U.S.C. § 2254 (a)

"The Supreme Court, a Justice thereof, a Circuit Judge, or a district Court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

Title 28 U.S.C. § 2254 (d) (1)

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim -

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States, or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding."

STATEMENT OF THE CASE

This is a cold hit DNA case involving an attempted robbery of a Sizzler restaurant in Oakland, California in 1993. Petitioner was not charged until the Complaint was filed in June 2012. Petitioner pleaded not guilty and denied all allegations.

The Case turns on a "maybe" Courtroom identification from a waiter, over 20 years later, who had two or three contacts with table where the two suspects sat, plus a minute amount of mixed DNA on a cigarette butt of questionable origin, police lost or destroyed three other butts,

The Court excluded any mention that one Cris Lockett was detained and released in the immediate police perimeter, another person was detained and identified as the shooter, he was charged and later charges dropped. Cris was petitioner's brother from Oakland and a convicted robber, who police said looked like petitioner, Cris died in 2001, also excluded was officer that detained him and his report was ruled untrustworthy and multiple layers of hearsay. Multiple witnesses testified petitioner was in Los Angeles at the time. "So no mention of Cris Lockett".

REASONS FOR GRANTING THE WRIT

Suppression by prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good or bad faith of prosecution. U.S.C.A. Const. Amend. 14 Brady v. Maryland 373 U.S. 83. "As to Chris Luckett, my motion is to exclude any information about him being stopped at the scene",

Third-party culpability evidence is some of the most powerful evidence a criminal defendant can offer to the jury. If believed, reasonable doubt is almost a foregone conclusion, exclusion of such evidence is often a considerable blow to the defense. Bradford v. Paramo (9th Cir 2024) U.S. App. 10829

In a murder case, state appellate court's decision to exclude third-party culpability evidence was contrary to and an unreasonable application of clearly established Supreme Court law under 28 U.S.C. § 2254(d)(1) because the court identified no risk of undue prejudice that would have outweighed potential benefit to defense of admitting the evidence.

Under state law, it is always proper to defend against a criminal charge by showing that a third person, and not the defendant, committed the crime charged. People v. Hall (1986) 41 Cal. 3d 826, 832. A proper pinpoint instruction is clearly required on request as a matter of state law. People v. Earp (1999) 20 Cal. 4th 826, 887. Defense requested the trial court to instruct on third-party culpability, the court denied the request without much explanation on the record.

Amendment VI - Mode of Trial in Criminal Proceedings.

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 the compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Exclusion of evidence that lighten the prosecution's burden of proof violates the defendant's Sixth Amendment right to trial by jury.

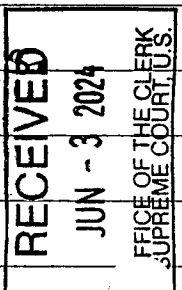
The Hall standard gives California impunity to falsely convict by excluding evidence, denying a jury trial, constitutional right to due process. Hall is a roadmap to false conviction, unless this Court act now.

The Constitutional right to present a complete defense is impermissibly abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve. The third-party culpability evidence, to be admissible, need not be sufficient to sustain a guilty verdict against the third-party. It need only have the potential, considered along with other evidence in the record, to raise a reasonable doubt as to the guilt of the defendant.

The evidence in this case was minimal, DNA from an improperly handled and stored cigarette butt, about which experts testified only about the probability someone "unrelated" to petitioner could be the donor, and an "maybe, nose look familiar". If the jury had been allowed to learn that petitioner's brother, who had a history of committing crime very similar to the one at issue in this case, had been detained within the police perimeter, it would have completely transformed the prosecution's DNA case and created a reasonable doubt in jurors mind.

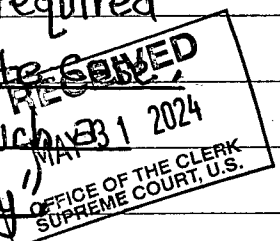
Scrima v. Lee (2d Cir 2019) 935 F.3d 103, 120.

The Supreme Court have emphasized that constitutional errors may not be harmless even where there is substantial evidence against the defendant.



Where (1) it is clear that only one person was involved in the commission of a particular crime and (2) there is strong evidence that the defendant was the perpetrator, it follows that evidence of third party guilt must be weak. But this logic depends on an accurate evaluation of the prosecution's proof, and the true strength of the prosecution's proof cannot be assessed without considering challenges to the reliability of the prosecution's evidence. Just because the prosecution's evidence, if credited, would provide strong support for a guilty verdict, it does not follow that evidence of third party guilt has only a weak logical connection to the central issue in the case. And where the credibility of the prosecution's witnesses or the reliability of its evidence is not conceded the strength of the prosecution's case cannot be assessed without making the sort of factual findings that have traditionally been reserved for the trier of fact and that the South Carolina courts did not purport to make in the case.

This principle was initially expressed in *People v. Hall* (1986) 41 Cal.3d 826, "We recognize that an inquiry into the admissibility of such evidence and the balancing required under section 352 will always turn on the facts of the case. Yet the courts must weigh those facts carefully. Such a determination is properly the province of the jury." The exclusion denied the jury the facts of the case.



Excluded from jury

The Court issued a blanket ruling excluding any mention of Cris at trial, solely on the grounds "it doesn't raise to the level of the Hall standard, so no mention of Chris Lockett".

Procedural Matters, Rulings on Evidence

Where the government's case is weak, a defendant is more likely to be prejudiced by the trial court error, and especially by the exclusion of evidence of a different, plausible suspect.

Motion in Limine - People v. Charles Lockett

- CT611 "Exclude the prosecutorial proceeding against Harvey Brumfield for the murder of Anthony Vaughn".
- CT613 "Exclude the fact that Roderick Mitchell was a suspect in the murder of Anthony Vaughn".
- CT614 "Exclude the fact that Steven Day was a suspect in the murder of Anthony Vaughn".
- CT627 Motion to Exclude Evidence of Third Party Culpability.

The Constitution guarantees every criminal defendant the fundamental right to "a meaningful opportunity to present a complete defense," few rights are more fundamental. In a case like this the blanket exclusion of the detention of Cris alone is prejudicial under any standard.
Chapman v. California (1967) 386 U.S. 18.

The evidence was both relevant and probative, and so in no way marginal to the defense, as the other suspect was in the police perimeter minutes after the murder. Petitioner was prejudiced by the Court's exclusion of third party culpability evidence because the prosecution's evidence was weak, as the core of the case was that Petitioner could not be excluded from the minute mixed DNA from a questionable cigarette butt that the prosecution's expert testified her analysis was subjective, based on her interpretation of colors, which was based on unrelated persons in the general population of Caucasians, African-American, or Southwest Hispanics, to petitioner contributed to the mixture. The State argues that "petitioner can only speculate about the statistical possibility that the DNA was Cris's," that does not mean that the statistical evidence the jury did hear would have been unaffected. If the trial court had not improperly excluded evidence that Cris was stopped, the jury would have known that the number was no longer valid.

We cannot have it both ways, we cannot interpret the theory of justice hypothetically when the appropriate occasions of consent cannot be found to explain individuals' duties and obligations, and then insist upon real situations of risk-bearing to throw out principles of justice that we do not want.

The State's expert testified her analysis was "subjective", She didn't know how to "perform the different calculations for persons in the same family", She acknowledged "she and other analysts make subjective interpretive changes".

Fox News - Oct. 3, 2023 - Michael Rizzo - Bind, Torture, Kill Strangler, "DNA from family man's daughter exposes him as strangler. In Nov, 2021, Rizzo's biological daughter obliged detectives request to provide a cheek swab. That DNA was a "match" to biological material preserved from the crime scene 30 years prior".

Fox News Jan 15, 2024 - Idaho prosecutors will have to turn over some genetic genealogy evidence used in the Bryan Kohberger investigation. In a public filing, Judge John Judge wrote that after reviewing the disputed evidence a "portion" should be shared with Kohberger's defense team. "The specific material to be provided is set forth in a sealed order to protect the privacy of the IGG (Investigative genetic genealogy) information, including individuals on the same family tree."

Prosecutors used DNA from Kohberger's father to implicate him.

No difference should apply here, my DNA match my brother's. The Circuit Judges argues "petitioner can only speculate about the statistical possibility that the DNA was Cris's". This case is a road map to false conviction.

WRONGFUL CONVICTIONS HAUNT LEGAL SYSTEMS ACROSS THE U.S.

As of 2023, The National Registry of Exonerations has recorded over 3,000 cases of Wrongful Convictions in the United States.

A scientific study concludes that "many scientific conclusions results in wrongful convictions"

The National Institute of Justice, reports that "real forensic analysts make errors aplenty".

The National Institute of Justice hired John Morgan, Ph.D. to look at the faults of the science that led to exonerations.

Of 732 cases that Dr. Morgan examined, 635, or 87%, contained errors related to forensic evidence.

Of 1,391 forensic investigations reviewed by Dr. Morgan, 891, or 64%, contained an error related to forensic evidence.

"Most commonly, labs used early DNA methods that lacked the ability to apply the testing or interpretation in a reliable way. DNA mixture samples were the most common source of evidence interpretation error," wrote Dr. Morgan.

The article said wrongful convictions amount to "one of the greatest travesties of the Criminal Justice System".

According to an article by Christine Carrega in Criminal Justice, "We don't know how many wrongful convictions there really are, we only know the ones that we know that have turned into exonerations"

There is no doubt the Exclusion of Evidence, Hall, standard is a contributor. It's Unreasonable, Wrong, Contrary to law.

"Various individual actors also produce wrongful convictions, there's that prosecutor who doesn't turn over evidence," said Ngozi Ndulue, a special adviser on race and wrongful conviction for the Innocence Project.

The article cites six factors that contribute to wrongful convictions. Five of them have to do with police, official misconduct, perjury or false confession, mistaken identification, false or misleading forensic evidence, and misleading DNA evidence. The sixth factor relates to inadequate legal defense.

"Better that 10 guilty persons escape than that one innocent suffer," wrote Sir William Blackstone in 1765. The phrase remains one of the best-known and most often cited precepts of modern law—but it does not reflect reality.

Due process requires the disclosure to the defendant/jury of "evidence favorable to an accused" that is "material either to guilt or to punishment". *Brady v. Maryland* (1963) 373 U.S. 83, 87, *U.S. v. Bagley* (1985) 473 U.S. 667, 676. A defendant is entitled to a jury determination of every element of the offense and any other "facts" or "factors" that increase the maximum punishment for the charged offense. *U.S. Const. VI, XIV, Apprendi v. New Jersey* 530 U.S. 466. The Hall standard give California impunity to exclude evidence, denying due process and jury trials.

Under AEDPA - Contrary and unreasonable standard. -

For purpose of 28 USC § 2254(d)(1) clearly established law refers to the governing legal principle set forth by the Supreme Court at the time the state rendered its decision. A state court's decision is contrary to clearly established federal law if the state court applies a rule that contradicts the governing law set forth in Supreme Court cases or if the state court confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. A state court's decision is an unreasonable application of clearly established federal law if the state court identifies the correct governing legal principle from the Supreme Court's decision but unreasonably applies that principle to the facts of the prisoner's case.

The Constitution prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the end that they are asserted to promote. At the same time, it is recognized that well established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or the potential to mislead the jury. Trial judge abused his discretion. Exclusion of evidence mislead the jury.

The rule of law implies the precept that similar cases be treated similarly. Men could not regulate their actions by means of rules if this precept were not followed. For we must suppose that the criteria of similarity are given by the legal rules themselves and the principles used to interpret them. Nevertheless, the precept that like decisions be given in like cases significantly limits the discretion of judges and others in authority. This precept demands that laws be known and expressly promulgated, that their meaning be clearly defined.

As the United States Supreme Court stated, "in spite of state law, a criminal defendant has a constitutional right to present all relevant evidence of significant probative value in his favor." *Washington v. Texas* (1967) 388 U.S. 14, 19, *Taylor v. Illinois* (1988) 484 U.S. 400, 407-409.

A practice cannot be reconciled with "common and fundamental ideas of fairness and right", which subjects innocent men to increased dangers of conviction merely because the judge allowed the prosecutor to exclude facts and evidence. This eliminates the jury from making an informed decision, therefore not a trial by jury.

CONCLUSION

All issues presented in this petition, are valid and the trial record attest to the errors of the State Court, and miscarriage of Justice.

The Hall standard give California impunity to falsely Convict. This standard has falsely Convicted Californians for years. The petition for a writ of Certiorari Should be granted.

This case provides an appropriate vehicle for this Court to clarify that California's Hall standard of excluding evidence violate the Constitution's requirement, protection, to present a defense and due process to a Jury trial.

Respectfully Submitted,
Charles Edward Luckett AX3774

Date: May 20, 2024