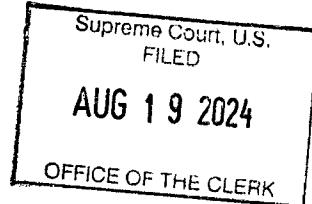


2 No. 379

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 2024



STEPHEN T. MITCHELL

Petitioner,

-against-

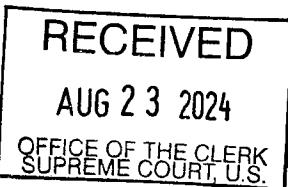
THE STATE OF NEW YORK

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Stephen T. Mitchell
461 Central Park West Apt. 6B
New York, N.Y. 10025
(917) 330-4596
stm7615@aol.com

Pro Se Counsel for the Petitioner



QUESTIONS PRESENTED FOR REVIEW

This case raises a federal constitutional question of substantial national importance critical to the right of the accused to be guaranteed a meaningful opportunity to be heard to defend against a criminal charge.

The question presented is:

Whether the United States Court of Appeals for the Second Circuit should have granted a Certificate of Appealability to the habeas petitioner because the exclusion of the habeas petitioner's proffered testimony purportedly upon hearsay grounds, contrary to New York State law, violated the federal constitution because the evidentiary ruling was unconstitutionally arbitrary and disproportionate, unconstitutionally denied the habeas petitioner his federal constitutional right to testify in his own behalf to be heard during the criminal trial process, and unconstitutionally denied the habeas petitioner his federal constitutional right to a meaningful opportunity to defend against a criminal charge?

THE PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings below are named in the caption.

TABLE OF CONTENTS

	Page(s)
Opinions Below	7-8

Jurisdiction	9
Constitutional and Statutory Provisions Involved	9-11
Statement of the Case	11-19
Reason for Granting the Petition	19-26
Conclusion	26

INDEX OF APPENDICES

Appendix "A" An order of the United States Court of Appeals for the Second Circuit denying en banc consideration dated May 20, 2024.

Appendix "B" An order of the United States Court of Appeals for the Second Circuit granting an extension of time to seek en banc reconsideration dated March 11, 2024.

Appendix "C" An order of the United States Court of Appeals for the Second Circuit denying a Certificate of Appealability dated March 1, 2024.

Appendix "D" A Judgment of the United States District Court of the Eastern District of New York denying issuance of a certificate of appealability dated July 31, 2023.

Appendix "E" The Opinion and Order of the United States District Court of the Eastern District of New York denying habeas relief and the issuance of a certificate of appealability dated July 28, 2023.

TABLE OF AUTHORITIES

TABLE OF CASES

	Page(s)
<u>Chambers v. Mississippi</u> , 410 U.S. 284 (1973)	19
<u>Crane v. Kentucky</u> , 476 U.S. 683 (1986)	17, 19, 21, 25
<u>Fieldman v. Brannon</u> , 969 F.3d 792 (7 th Cir. 2020)	19, 24, 25
<u>In re Estate of Leopold</u> , 259 N.Y. 274 (1932)	15
<u>In the Matter of Stanley</u> , 240 A.D.2d 268 (1 Dept. 1997)	15
<u>In the Matter of Rappaport</u> , 102 Misc. 2d 910 (Surrogate's Court, Nassau 1980)	15
<u>In re Oliver</u> , 333 U.S. 257 (1948)	17, 19, 21
<u>Miller-El v. Cockrell</u> , 537 U.S. 322 (2003)	
<u>Mitchell v. New York</u> , 2023 U.S. Dist. LEXIS 131125, 2023 WL 4850527 (E.D.N.Y. 2023)	17, 22
<u>People v. Bradley</u> , 99 A.D.3d 934 (2 Dept. 2012)	24
<u>People v. Boyd</u> , 256 A.D.2d 350 (2 Dept. 1998)	24
<u>People v. Chesler</u> , 50 N.Y.2d 203 (1980)	16
<u>People v. Davis</u> , 58 N.Y.2d 1102 (1983)	24
<u>People v. Gibian</u> , 76 A.D.3d 583 (2 Dept. 2010)	24
<u>People v. Kass</u> , 59 A.D.3d 77 (2 Dept. 2008)	24
<u>People v. Minor</u> , 69 N.Y.2d 779 (1987)	24
<u>People v. Mitchell</u> , 188 A.D.3d 1103 (2 Dept. 2020)	17, 22
<u>People v. Ricchiuti</u> , 93 A.D.2d 842 (2 Dept. 1983)	16, 23

	Page(s)
<u>People v. Zona</u> , 14 N.Y.3d 488, 492-495 (2010)	16, 23, 24
<u>Rock v. Arkansas</u> , 483 U.S. 44 (1987)	17, 19, 20, 21, 24, 25
<u>United States v. Scheffer</u> , 523 U.S. 303 (1998)	17, 19, 20, 21, 24, 25
<u>Washington v. Texas</u> , 388 U.S. 14 (1967)	17, 18, 19, 21, 22, 24, 25
 New York Estates, Powers, and Trusts Law §11-1.1(b)(13)	15
 New York Estates, Powers, and Trusts Law §11-1.1(b)(22)	15
 New York Penal Law §155.15(1)	16, 23

**ALL PROCEEDINGS IN THE STATE AND FEDERAL TRIAL COURTS
DIRECTLY RELATED TO THIS CASE**

Mitchell v. New York

United States Court of Appeals for the Second Circuit

Docket:23-6970

*Motion for en banc reconsideration of an application for a Certificate of
Appealability from the United States Court of Appeals for the Second Circuit*

Result: Denied; May 20, 2024

Mitchell v. New York

United States Court of Appeals for the Second Circuit

Docket:23-6970

Motion for an extension of time to file for en banc reconsideration for a Certificate of Appealability from the United States Court of Appeals for the Second Circuit

Result: Granted; March 11, 2024

Mitchell v. New York

United States Court of Appeals for the Second Circuit

Docket:23-6970

Motion for an application for a Certificate of Appealability from the United States Court of Appeals for the Second Circuit

Result: Denied; March 1, 2024

Mitchell v. New York

United States District Court

Eastern District of New York

Docket: 19-cv-3980

Result: *Denial of habeas corpus petition*; Decided July 28, 2023

An unreported case reported at LEXIS at:

Mitchell v. New York.

2023 U.S. Dist. LEXIS 131135 (E.D.N.Y. July 28, 2023)

People v. Mitchell

Court of Appeals

State of New York

Result: *Leave to Appeal denied*; Decided March 31, 2021

Decision was unreported; case reported at LEXIS at:

People v. Mitchell

2021 N.Y. LEXIS 791 (N.Y. March 31, 2021)

People v. Mitchell

Supreme Court of the State of New York

Appellate Division: Second Department

Docket: 2015-02703

Result: *Intermediate state court appeal denied*; Decided: November 18, 2020

Decision reported at:

People v. Mitchell

188 A.D.3d 1103 (2 Dept. 2020)

People v. Mitchell

Supreme Court of the State of New York

County of Kings: Criminal Term, Part 16

Docket: 1521-2012

Result: Post-conviction motion pursuant to New York Criminal Procedure Law

§440.10 denied; Decided: March 26, 2018; entered April 9, 2018

People v. Mitchell, No. 1521-2012 (New York, Kings Supreme April 9, 2018)(unreported)

People v. Mitchell, Indictment 1521-2012, New York Kings County Supreme Court

**CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS
FOR THIS CASE**

Mitchell v. New York, No. 23-6970 (2d Cir. May 20, 2024)(unreported)

Mitchell v. New York, No. 23-6970 (2d Cir. March 11, 2024)(unreported)

Mitchell v. New York, No. 23-6970 (2d Cir. March 1, 2024)(unreported)

Mitchell v. New York, Docket 19-cv-3980 Judgment (E.D.N.Y. July 31, 2023)(unreported)

Mitchell v. New York,

2023 U.S. Dist. LEXIS 131135 (E.D.N.Y. July 28, 2023)(unreported)

Mitchell v. New York,

2023 U.S. Dist. LEXIS 131135 (E.D.N.Y. July 28, 2023)(unreported)

People v. Mitchell

36 N.Y.3d 1099 (2021)(Leave to Appeal Denied)

People v. Mitchell

188 A.D.3d 1103 (2 Dept. 2020)

Mitchell v. New York State Division of Parole, No. 19-cv-5978 (June 26, 2019,

S.D.N.Y.)(Habeas Corpus Petition)

Mitchell v. New York State Division of Parole, No. 19-cv-5978 (June 26, 2019,

S.D.N.Y.)(July 1, 2019, Transfer Order)

People v. Mitchell, No. 2018-05678 (New York, 2 Dept. June 27, 2018)(Leave to

Appeal Denied)(unreported)

People v. Mitchell, No. 1521-2012 (New York, Kings Supreme April 9, 2018)(Denial

of CPL §440.10 motion)(unreported)

People v. Mitchell, Indictment 1521-2012, New York Kings County Supreme Court

BASIS FOR THE JURISDICTION OF THIS COURT

The judgment of the United States Court of Appeals for the Second Circuit denying reconsideration en banc of the denial of the habeas petitioner's request for reconsideration of the decision denying his application to the circuit court for a Certificate of Appealability is dated May 20, 2024.

The judgment of the United States Court of Appeals for the Second Circuit denying the habeas petitioner's application to the circuit court for a Certificate of Appealability is dated March 1, 2024.

This court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitutional Amendment V provides:

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 in time of War or public danger; nor shall any person be subject for the same offence to be twice put in

jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitutional Amendment VI provides:

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

U.S. Constitutional Amendment XIV provides, in relevant part:

Section 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 to any person within the jurisdiction the equal protection of the laws.

28 U.S.C. §2253(c)(2) provides, in relevant part:

§2253(c)

- (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from:
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by the State court;
- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Stephen T. Mitchell, a former attorney, was indicted on or about April 20, 2012 in the Kings County Supreme Court of the State of New York pursuant to Kings County Indictment Number 1521-2012 for Grand Larceny in the Second Degree (New York Penal Law §155.40(1)).¹ Mr. Mitchell was accused of stealing seventy-thousand dollars (\$70,000.00) from the Estate of Jacques Montrevil.² Mr. Mitchell served as attorney for the estate in a limited capacity and he also served as the attorney for the

¹ See 19-cv-3980, Dtk. 15-4 at 16-17 (EDNY).

² Id.

beneficiaries of the estate several years prior to the indictment.³ Upon arrest Mr. Mitchell denied guilt, pled not guilty, and proceeded to trial.

Mr. Mitchell was tried before a jury. The Honorable William Garnett, an acting New York State Supreme Court Justice, presided over the trial. The trial began on or about January 12, 2015 and was concluded by January 28, 2015.

The funds allegedly stolen by Mr. Mitchell were proceeds from the sale of real property owned by the Estate of Jacques Montrevil.⁴ The administration of the estate had stalled for more than six years prior to the involvement of Mr. Mitchell.⁵ Mr. Mitchell jolted the administration of the estate forward. He was retained by estate beneficiaries in the fall of 2006 to oust the estate's administrator, replace her with another of the estate's beneficiaries, and then sell the real property of the estate.⁶

Mr. Mitchell's met almost all his client's objectives within eighteen months of beginning his work. He was hired in the fall of 2006. The pre-requisites for the challenging estate administration legal work and sale of the real property of the estate were met, the property located at 3215 Church Avenue in Brooklyn, New York

³ See 19-cv-3980, Dkt. 20-1 at 719-720, 932; Dkt. 20-2 at 17, 18, 21-25 (EDNY).

⁴ See 19-cv-3980, Dtk. 15-4 at 16-17 (EDNY).

⁵ See 19-cv-3980, Dkt. 20-1 at 747, 808-811; Dkt. 20-2 at 9-11 (EDNY).

⁶ See 19-cv-3980, Dkt. 20-2 at 17-18, 21-25 (EDNY).

was sold, and the estate was funded in substantial measure by February 2008.⁷ In large part because of the efforts of Mr. Mitchell the administrator was dislodged by the fall of 2010.⁸ The only purported compensation Mr. Mitchell received for his success in handling the estate was the seventy-thousand dollars (\$70,000.00) at issue.

The administrator of the estate between the fall of 2006 when Mr. Mitchell was hired and at the time the estate acquired seven hundred thousand dollars (\$700,000.00) from the sale of the 3215 Church Avenue property in February 2008 was Marie Montrevil.⁹ Marie Montrevil was the young widow of Jacques Montrevil and the person Mr. Mitchell was retained to oust as administrator.¹⁰

In November 2006 Jean Montrevil and Nadia El Saieh were estate beneficiaries who sought to advance the sale of the 3215 Church Avenue property independent of Marie Montrevil by entering into a contract to sell the property to Steven Falcone for seven hundred thousand dollars (\$700,000.00).¹¹ Mr. Mitchell represented Jean Montrevil and Nadia El Saieh during the 2006 contract negotiations and served as the escrow holder for a seventy thousand dollar (\$70,000.00) down payment for the property.¹²

⁷ See 19-cv-3980, Dkt. 15-3 at 16-17; Dkt. 20-1 at 943; see also Dkt. 20-2 at 9, 28, 59, 60-63, 67 (EDNY).

⁸ See 19-cv-3980, Dkt. 20-1 at 322 (EDNY).

⁹ See 19-cv-3980, Dkt. 20-1 at 322; see also Dkt. 20-2 at 9-11; Dkt. 15-2 at 11 (EDNY).

¹⁰ See 19-cv-3980, Dkt. 20-1 at 717, 718, 756; Dkt. 20-2 at 10, 18 (EDNY).

¹¹ See 19-cv-3980, Dkt. 20-2 at 21-25, 106, 131; see also Dkt. 15-2 at 14-15; Dkt. 15-3 at 1-7 (EDNY).

¹² Id.

Marie Montrevil was not a contract signatory for the November 2006 contract for the sale of the property.¹³ Through counsel, she contested the sale and the enforcement of the November 2006 contract. Time consuming and contentious litigation ensued.¹⁴

On March 29, 2007 a settlement among all parties to the estate was forged.¹⁵ The November 2006 contract was terminated as a part of the settlement and was superseded by a new contract with Marie Montrevil as a signatory in accord with the March 29, 2007 stipulation. The new contract to purchase the 3215 Church Avenue property was executed by Marie Montrevil, as the administrator of the estate, and Mr. Falcone soon after the March 29, 2007 settlement.¹⁶

Mr. Mitchell remained designated as an escrow holder of the seventy thousand dollar (\$70,000.00) down payment for the 2007 contract.¹⁷ The Kings County Surrogate's Court required all contracts for the sale of the estate's property to be approved by that court and the contract executed by Marie Montrevil and Mr. Falcone in 2007 was approved by the Kings County Surrogate in October 2007.¹⁸ The property was sold four months later.¹⁹ Marie Montrevil signed the deed to the 3215 Church

¹³ See 19-cv-3980, Dkt. 20-2 at 22, 23 (EDNY).

¹⁴ See 19-cv-3980, Dkt. 20-2 at 21-24, 67 (EDNY).

¹⁵ See 19-cv-3980, Dkt. 15-3 at 13-14 (EDNY).

¹⁶ See 19-cv-3980, Dkt. 15-3 at 16-17; Dkt. 15-4 at 1-12 (EDNY).

¹⁷ See 19-cv-3980, Dkt. 15-3 at 16-17; Dkt. 15-4 at 1-12 (EDNY).

¹⁸ See 19-cv-3980, Dkt. 15-2 at 11; Dkt. 15-4 at 13 (EDNY).

¹⁹ See 19-cv-3980, Dkt. 20-2 at 28 (EDNY).

Avenue real property in her capacity as the estate's administrator to Steven Falcone during the February 22, 2008 closing.²⁰

Pursuant to New York law Marie Montrevil had authority to grant permission and allow Mr. Mitchell to acquire and keep a part of the estate's proceeds from the February 2008 sale of its real property as his fees.²¹ Marie Montrevil also had lawful authority to forgive any indebtedness or financial obligation Mr. Mitchell had to the estate in her own discretion.²² The People did not call Marie Montrevil or her attorney to testify during the trial.²³

Marie Montrevil and her attorney refused demands made by George Bischof, Jean Montrevil's replacement attorney for Mr. Mitchell, to compel Mr. Mitchell to return the funds. Mr. Bischof testified at trial that he made nearly a dozen requests over two years for Marie Montrevil and her attorney to seek to recover the seventy-thousand dollars (\$70,000.00) from Mr. Mitchell and the requests were ignored.²⁴ Mr. Bischof also failed to alert the Kings County Surrogate's Court of the alleged

²⁰ See 19-cv-3980, Dkt. 20-1 at 919-920, 943; Dkt. 20-2 at 28 (EDNY).

²¹ New York Estates, Powers, and Trusts Law (EPTL) §11-1.1(b)(13); see also New York EPTL 11-1.1(b)(22); see also In Re Leopold's Estate, 259 N.Y. 274, 276-278 (1932); Gaentner v. Benkovich, 18 A.D. 3d 424, 426-427 (2 Dept. 2005); see also In the Matter of Stanley, 240 A.D. 2d 268, 269-270 (1 Dept. 1997); In the Matter of Rappaport, 102 Misc. 910 at 911 (Surrogate's Court, Nassau County 1980).

²² See Leopold at 276-278; Scully v. Scully, 201 N.Y. 61, 64 (1911); see also 19-cv-3980, Dkt. 20-1 at 447, 771 (EDNY).

²³ See 19-cv-3980, Dkt. 20-2 at 133-134 (EDNY).

²⁴ See 19-cv-3980, Dkt. 20-1 at 449-461 (EDNY).

misappropriation of estate funds and Marie Montrevil's refusal to try to collect them.²⁵

At trial Jean Montrevil testified that Mr. Mitchell refused his demands to give him the seventy-thousand (\$70,000.00) dollar escrow deposit. He claimed that Mr. Mitchell made excuses not to return the moneys.²⁶ Jean Montrevil never served as an administrator of the estate and had no lawful authority to receive estate funds or settle accounts for the estate.²⁷

The People declined to subpoena Marie Montrevil or her attorney as trial witnesses and never established that they were unavailable to testify.²⁸

Mr. Mitchell sought to testify in his own behalf during the trial to assert that he had the permission of the lawful administrator of the estate, Marie Montrevil, her lawyer, and Jean Montrevil to acquire and keep the funds at issue.²⁹ Mr. Mitchell offered his own testimony as his lawful defense to the charge to assert that he had the permission of the aforementioned individuals as evidence of his state of mind to contest the People's claim of criminal intent.³⁰ He also sought to rebut the testimony

²⁵ See 19-cv-3980, Dkt. 20-1 at 453-461 (EDNY).

²⁶ See 19-cv-3980, Dkt. 20-2 at 31-38 (EDNY).

²⁷ See 19-cv-3980, Dkt. 20-1 at 447-449 (EDNY); 19-cv-3980, Dkt. 20-2 at 131 (EDNY).

²⁸ See 19-cv-3980, Dkt. 20-2 at 133-134 (EDNY).

²⁹ See No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY).

³⁰ New York Penal Law §155.15; People v. Zona, 14 N.Y.3d 488, 492-495 (2010); People v. Chesler, 50 N.Y.2d 203, 208-210 (1980); see also People v. Ricchiuti, 93 A.D.2d 842, 843-844 (2 Dept. 1983).

of Jean Montrevil who served as the People's primary witness.³¹ Mr. Mitchell's testimony would have explained his behavior and the reasons why he did not return the monies to the estate.³²

The trial court denied Mr. Mitchell's proffer to testify in his own behalf as to his state of mind regarding the acquisition of the funds in question.³³ The trial court also denied Mr. Mitchell the opportunity to testify as to his communications with and personal observations of the conduct of the administrator and her lawyer at the time of his acquisition of the funds and the opportunity to testify in rebuttal to the testimony of the People's primary witness, Jean Montrevil.³⁴

The trial court rejected Mr. Mitchell's argument and his supporting case law (cited verbally and in writing) that his testimony would provide the jury the reasons for his state of mind and that his right to assert he believed he had permission from the administrator and her lawyer was a fundamental right he was entitled to convey to the jury pursuant to the federal constitution.³⁵ The court also rejected Mr.

³¹ See No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY); Dkt. 20-2 at 128-129, 140-141; see also No. 19-cv-3980, Dkt. 15-4 at 18 (EDNY); see also No. 19-cv-3980, Dkt. 15-5 at 1-5" (EDNY).

³² Id.

³³ See No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY); Dkt. 20-2 at 128-129, 140-141.

³⁴ Id.

³⁵ See No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY); Dkt. 20-2 at 128-129, 140-141; see also No. 19-cv-3980, Dkt. 15-4 at 18; No. 19-cv-3980, Dkt. 15-5 at 1-5 (EDNY); see Washington v. Texas, 388 U.S. 14, 19-23 (1967); Crane v. Kentucky, 476 U.S. 683, 690-691 (1986); Rock v. Arkansas, 483 U.S. 44, 49, 52-56 (1987); United States v. Scheffer, 523 U.S. 303, 315-316 (1998).

Mitchell's argument that he had a fundamental federal constitutional right to rebut the testimony of Jean Montrevil.³⁶

The Supreme Court Appellate Division: Second Department and the federal district court seized upon the erroneous premise that Mr. Mitchell sought to rely upon inadmissible hearsay as opposed to admissible "state of mind" evidence.³⁷ Both courts ignored Mr. Mitchell's argument that the statements of permission made to him by Marie Montrevil and her counsel regarding acquiring and keeping the funds owned by the estate impacted his state of mind, guided his behavior, and constituted evidence the jury should have heard.³⁸

The United States Court of Appeals was wrong to deny this habeas petitioner a Certificate of Appealability. Mr. Mitchell's proffer was admissible "state of mind" evidence that should have been heard by the jury. The federal district court and the New York State Courts egregiously denied Mr. Mitchell the most fundamental of his federal constitutional rights, the right to be heard; the right to testify on one's own behalf to construct a meaningful defense to a criminal charge. Mr. Mitchell was entitled to a Certificate of Appealability to try to correct the district court's error. He asks this court to remand this case back to the United States Court of Appeals for the Second Circuit and order that court to grant a Certificate of Appealability so Mr.

³⁶ In re Oliver, 333 U.S. 257, 273 (194); see also Washington at 17-23.

³⁷ Mitchell v. New York, 2023 U.S. Dist. LEXIS 131125 at *35 (S.D.N.Y. 2023); see also People v. Mitchell, 188 A.D.3d 1103, 1104 (2 Dept. 2020).

³⁸ See No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY).

Mitchell can appeal the district court's unconstitutional denial of his habeas corpus petition.

REASONS FOR GRANTING THE PETITION

The district court's holding that Mr. Mitchell should not be allowed to testify on his own behalf as to his state of mind to establish he lacked the criminal intent necessary to commit larceny is a severe outlier. The opinion is in direct conflict with several holdings of the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.³⁹

This case is of national significance because it uniquely denies a criminal defendant his right to a meaningful defense by prohibiting him from testifying as to his own version of the facts and circumstances of the case concerning his intent. The trial court's refusal to allow Mr. Mitchell to testify as to his version of the facts and circumstances of the case also prevented him from rebutting the testimony of Jean Montrevil, the People's primary witness.⁴⁰ The district court improvidently rejected the notion that Mr. Mitchell's right to testify as to his own version of the facts concerning his intent was a fundamental federal constitutional right and a right

³⁹See Washington v. Texas, 388 U.S. 14, 17-23 (1967); Crane v. Kentucky, 476 U.S. 683, 690-691 (1986); Rock v. Arkansas, 483 U.S. 44, 49, 52-56 (1987); Chambers v. Mississippi, 410 U.S. 284, 294, 302-303 (1973); United States v. Scheffer, 523 U.S. 303, 308, 315-316 (1998); In re Oliver, 333 U.S. 257, 273 (1948); see also Fieldman v. Brannon, 969 F.3d 792, 800-810 (7th Cir. 2020).

⁴⁰ See No. 19-cv-3980, Dkt. 15-4 at 18; No. 19-cv-3980, Dkt. 15-5 at 1-5 (EDNY).

essential to the fulfillment of his right to a meaningful defense against the criminal charge.⁴¹

In Rock the accused, on trial for the murder of her husband, was allowed to overcome a prohibiting state statute and refresh her memory as to the facts and circumstances of the case in a hypnotic state so that she could offer testimony in her own defense.⁴² The United States Supreme Court ruled that the law prohibiting her testimony infringed upon her fundamental right to provide her version of the facts and circumstances of her case as observed by her in her own words. The United States Supreme Court deemed the Rock defendant's right to testify in her own words to be of particular significance and important enough to overcome the state prohibitions.⁴³

The Rock court noted that the most important witness in a criminal case may be the defendant himself and there is no justification today for a rule that denies the accused the opportunity to offer his own testimony.⁴⁴ The United States Supreme Court in Scheffer noted that because the defendant was the target of the criminal prosecution, the accused ought to be able to present his version of the events in his own words.⁴⁵

⁴¹ See Rock at 52; see also Scheffer at 315-316; Crane at 690-691.

⁴² Rock at 49, 52-56.

⁴³ Rock at 52.

⁴⁴ *Id.*

⁴⁵ See Scheffer at 315-316.

Further, the right of the defendant to testify as to his state of mind and intent was important for the jury's consideration. Mr. Mitchell's case is one in which there was first hand evidence independent of other witnesses. His interaction with the estate's administrator and her lawyer were on occasions unique to him alone. The denial of Mr. Mitchell the opportunity to testify as to communications and interactions with the administrator and her lawyer apart from other witnesses regarding his permission to keep the funds at issue "deprived the jury of the testimony of the only witness who was at the scene and had firsthand knowledge of the facts."⁴⁶ Mr. Mitchell was denied a meaningful defense because he was unable to provide the jurors with a full account of the circumstances.

Mr. Mitchell also had a fundamental right to rebut the testimony of the People's witnesses including their main witness, Jean Montrevil. The federal constitution afforded Mr. Mitchell the fundamental right to confront witnesses against him with his own testimony and offer his own version of the facts so the jury could determine the truth by comparing the evidence and testimony.⁴⁷

The crux of Jean Montrevil's testimony was that Mr. Mitchell did not have permission from him to acquire and keep the moneys at issue as his fees.⁴⁸ The trial

⁴⁶ Rock at 57; Scheffer at 315; see also Crane v. Kentucky, 476 U.S. 683, 690-691 (1986).

⁴⁷ See Washington at 19; see also No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY); see also No. 19-cv-3980, Dkt. 15-4 at 18; No. 19-cv-3980, Dkt. 15-5 at 1-5 (EDNY).

⁴⁸ No. 19-cv-3980, Dkt 20-2 at 31, 32-34, 37, 57-58 (EDNY).

court unconstitutionally denied Mr. Mitchell the opportunity to rebut any of Jean Montrevil's testimony, including whether he had permission from Jean Montrevil to acquire and keep the funds.⁴⁹ The district court only considered Jean Montrevil's unrebutted testimony in its determination to deny Mr. Mitchell habeas relief.⁵⁰

The New York State Courts and the Federal District Court erroneously concluded that Mr. Mitchell's proffer to testify that he was given permission to acquire and keep the funds at issue from the estate's administrator, her lawyer, and Jean Montrevil was impermissible hearsay.⁵¹ These courts were wrong in their assessment of the evidence. Both courts ignored Mr. Mitchell's argument that the permission he sought to attest to guided his actions and demonstrated that he lacked criminal intent because he was authorized by the administrator and her lawyer to acquire and keep the funds at issue.⁵² The trial courts ruling denying Mr. Mitchell's application to testify he had the permission of the administrator and her lawyer was directed to the application made before the conclusion of the case. The court's

⁴⁹ See No. 19-cv-3980, Dkt. 20-1 at 602-607; Dkt. 20-2 at 128-129, 140-141(EDNY); see also No. 19-cv-3980, Dkt. 15-4 at 18; No. 19-cv-3980, Dkt. 15-5 at 1-5 (EDNY); see also Washington at 19; In re Oliver at 273.

⁵⁰ For example, the district court concluded that there was no written agreement memorializing the terms of Mr. Mitchell's engagement and compensation based upon Jean Montrevil's testimony. See Mitchell at 2023 U.S. Dist. LEXIS 131135 at *5 (E.D.N.Y. July 28, 2023); see also No. 19-cv-3980, Dkt 20-2 at 57 (EDNY). The trial court denied evidence from a private investigator that would have established Mr. Mitchell was working on a contingency basis. See No. 19-cv-3980, Dkt. 20-1 at 874-877, 1027-1037 (EDNY). Mr. Mitchell could have testified as to this issue and also explained why he issued no bill for his services.

⁵¹ See People v. Mitchell, 188 A.D.3d 1103, 1104 (2 Dept. 2020); see also Mitchell v. New York, 2023 U.S. Dist. LEXIS 131125 at *35.

⁵² See No. 19-cv-3980, Dkt. 20-1 at 602-607 (EDNY).

research concerned the “state of mind” issue discussed at earlier juncture of the case.⁵³ Mr. Mitchell never abandoned the “state of mind” argument for good reason.

New York Penal law §155.15(1) provides the standard for a defense to a larceny charge. New York case law interpreting this statute acknowledges that evidence of the accused “state of mind” can and should serve as evidence to demonstrate a lack of criminal intent. In People v. Zona a police officer was accused of stealing state owned property. The New York State Court of Appeals endorsed the officer’s defense that he was told by his superiors that he could acquire and keep the property at issue. Officer Zona would assert that he was told by supervisors he believed had authority over the property that he had their permission to acquire and keep state property.⁵⁴ The highest court in the State of New York noted the defendant asserted a claim of right defense to the larceny charge by stating he had permission from his superiors to acquire and keep state property.⁵⁵ Mr. Mitchell properly informed the court during the trial he planned to make use of a claim of right defense by asserting he had the permission of the administrator and her lawyer to acquire and keep the funds at issue.⁵⁶

⁵³ *Id.*; see also 19-cv-3980, Dkt. 20-2 at 128-129.

⁵⁴ People v. Zona, 14 N.Y.3d 488, 492-495 (2010).

⁵⁵ *Id.*

⁵⁶ See No. 19-cv-3980, Dkt. 20-1 at 41, 42, 90, 602-607 (EDNY); see also No. 19-cv-3980, Dkt. 15-4 at 18; No. 19-cv-3980, Dkt. 15-5 at 1-5 (EDNY).

Mr. Mitchell cited the case of People v. Ricchiuti in support of his effort to alert the trial court of the legal support for his “state of mind” defense. The Ricchiuti case is an intermediate appeals court case in New York. In this case the appellate court endorses Ricchiuti’s proffer to testify he had the permission of his supervisors to acquire and keep company goods as his defense to a larceny charge.⁵⁷ In New York testimony from the defendant asserting that he had permission from an owner or a person who spoke for the owner is admissible evidence in support of a claim of right defense.⁵⁸ New York, in general, allows for the admissibility of “state of mind” evidence as a means to explain the conduct of the listener or the hearer. In New York “state of mind” evidence is admissible to negate criminal intent.⁵⁹ The trial court’s erroneous ruling eliminated a lawful defense Mr. Mitchell was entitled to.

In the district court’s opinion, the court suggests Mr. Mitchell could have subpoenaed Marie Montrevil to testify. The federal constitution entitled Mr. Mitchell to give his own version of the facts and circumstances pertinent to his case; he was not required to call the administrator or any other witness to attest to his own state of mind.⁶⁰

⁵⁷ People v. Ricchiuti, 93 A.D.2d 842, 843-845 (2 Dept. 1983).

⁵⁸ See Zona at 492-495; see also Ricchiuti at 843-845.

⁵⁹ People v. Davis, 58 N.Y.2d 1102, 1103 (1983); People v. Minor, 69 N.Y.2d 779, 780 (1987); People v. Gibian, 76 A.D.3d 583, 584-585 (2 Dept. 2010); People v. Bradley, 99 A.D.3d 934, 936-938 (2 Dept. 2012); People v. Boyd, 256 A.D.2d 350-351 (2 Dept. 1998); People v. Kass, 59 A.D.3d 77, 86-87 (2 Dept. 2008).

⁶⁰ Washington at 19; see also Rock at 52-56; Scheffler at 315-316.

The district court's opinion conflicts with the opinion of the United States Court of Appeals for the Seventh Circuit in a case called Fieldman v. Brannon.⁶¹ Fieldman addresses a circumstance where a state court evidentiary ruling denied the accused the opportunity to provide his own testimony concerning his state of mind.

The federal constitution gives wide latitude to state courts to enforce their own evidentiary rules. The defendant's right to present relevant evidence may be limited; it often must bow to accommodate other legitimate interests of a criminal trial court.⁶² However, state court rulings must yield when those rulings implicate a federal constitutional question, such as whether the application of a state evidentiary rule violated a defendant's right to present a defense.⁶³

Fieldman is similar to this case in that an evidentiary rule was used by the lower court to deny the defendant his right to testify and provide his own version of the facts. The Fieldman court found it dispositive that the evidentiary ruling was incorrectly applied and resulted in the disproportionate prejudice to the accused.⁶⁴ The court citing all of the United States Supreme court cases cited above found that the defendant's right to provide his version of the facts and circumstances of the case was a fundamental right far too⁶⁵ significant to deny.

⁶¹ Fieldman v. Brannon, 969 F.3d 792 (7th Cir. 2020).

⁶² Scheffer at 308.

⁶³ Scheffer at 315-316; Crane at 690-691; Washington at 17-23; Rock at 49, 52-56. Fieldman at 800.

⁶⁴ See Fieldman at 806-807.

⁶⁵ See Fieldman at 800-810.

The Fieldman court concluded by stating, “when an accused's testimony is essential to the jury's determination of guilt or innocence, the right to present that testimony is part of the defendant's right to testify in his own defense.” The district court in the Mitchell case does not agree with the Fieldman court and the United States Supreme Court decisions that support the finding of the Fieldman court. In Mr. Mitchell's case the district court has grievously erred and the United States Court of Appeals for the Second Circuit, in contrast to the United States Court of Appeals for the Seventh Circuit, has endorsed this grievous error by refusing to grant Mr. Mitchell a Certificate of Appealability. Real harm has come to Mr. Mitchell because he was denied the opportunity to put forth material and favorable evidence in support of his defense.⁶⁶

Mr. Mitchell is entitled to a Certificate of Appealability because his right to testify in his own words was fundamental and reasonable jurists could have disagreed with the decision to deny his right to testify. Mr. Mitchell asks this court for a Writ of Certiorari so that he has the chance to appeal and clear his name.

CONCLUSION

My name is Stephen T. Mitchell and I filed this writ on August 19, 2024.

⁶⁶ See United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982).

August 19, 2024

STM

Stephen T. Mitchell
Pro Se
461 Central Park West #6B
New York, NY 10025
stm7615@aol.com
917 330-4596

No.

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 2024

STEPHEN T. MITCHELL

Petitioner,

-against-

THE STATE OF NEW YORK

Respondent.

**Appendix
for a**

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Stephen T. Mitchell
461 Central Park West Apt. 6B
New York, N.Y. 10025
(917) 330-4596
stm7615@aol.com

Pro Se Counsel for the Petitioner

APPENDIX "A"
Mitchell v. New York, et al.
Order
United States Court of Appeals
For the Second Circuit
Dated: May 20, 2024
Docket: 23-6970
Denial of en banc reconsideration