IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

NO. 24-5931

TERRELL WESLEY

Petitioner

-AGAINST-

TYRONE BAKER

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE 7th CIRCUIT

TERRELL WESLEY pro,se

P.O. BOX 1700

Galesburg, IL 61402

QUESTION PRESENTED

Whether a reversible **Herring error** occurs only when a trial Judge denies Closing arguments altogether or also when the Judge at a bench trial permits closing arguments only after announcing a verdict.

PARTIES

The petitioner is Terrell wesley, a prisoner at Henery Hill Correctional facility in Galesburg, Illinois. The respondent is Tyrone baker, the warden at Henery Hill correctional facility.

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DECISION BELOW

The decision of The United states Court of Appeal for The 7th Circuit is unreported. It is citied in the table at 1:20-CV-03189 (2024) and a copy is attached as **Appendix A**, to this Petition **(A1)** the Order of The United States District Court for the Northern District of Illinois , Eastern Division a copy is attached as **Appendix C** to this Petition **(A-8)**

JURISDICTION

The Judgment of The United State Court of Appeal for The 7th Circuit was entered on **August 7th,2024**. A Petition for Rehearing was not seeked . Jurisdiction is conferred **28 U.S.C sec 1254(1).**

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves Amendment VI and XIV to The United States Constitution which provides:

U.S Const VI Amendment:

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 confront 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 Const XIV Amendment:

Section 1.

All persons born or naturalized in The United States where in they reside. No state shall make or enforce any law which shall abridge the privileges or immunties 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 it jurisdiction the equal protection of the law.

Section 5.

The Congress shall have power to enforce, by appropriate legislation the provision of this article.

STATEMENT OF THE CASE

This is the appeal of the United States Court of Appeals for The 7th Circuit denial of terrell Wesley's Petition (A1). The 7th Circuit affirmed the District Court denial of Wesley's Petition For Writ of Habeas Corpus filed Pursuant to 28 U.S.C sec 2254.

Wesley was convicted of first degree murder in the Circuit Court of Cook County, Illinois after a bench trial, (A9). After the closing of evidence the trial Court made finding of facts and entered a finding of guilty "WITHOUT FIRST HEARING CLOSING ARGUMENTS". (A11-A12;A24) Defense Counsel objected, and the Court, without vacating its previous finding allowed the parties to argue the case (A25-A26). Immediately after arguments and without recess, the Court once again found Wesley guilty. (A28)

I. PROCEDURAL HISTORY

Wesley was charged by indictment in the Circuit Court of Cook County, Illinois with first degree murder (A9).

His case proceeded to a bench trial. (A9). Wesley was found guilty and subsequently sentenced to fifty year's imprisonment (A13) Wesley conviction was affirmed on appeal. (A13). Wesley then filed a Petition for Post-Conviction relief in State Court. (A14). That Petition was dismissed, and the dismissal was affirmed on appeal. (A14)

Wesley filed a pro-se Petition seeking a Writ of Habeas Corpus (A14) Through counsel, Wesley advanced one claim in the amended Petition: that he was denied his **Sixth Amendment right to present a closing argument (A-15)**. The District Court denied the Petition and declined to issue a Certificate of Appealability. (A20). Wesley subsequently Petitioned The 7th Circuit Court of Appeals for The United States, which the Court **granted.** (A1) The United States Courts of Appeals 7th Circuit affirmed the District Court denial. (A1-A5). Wesley is now Petitioning this Court for Writ of Certoirari. Jurisdiction is conferred by 28 U.S.C sec 1254(1).

II. EVIDENCE AT TRIAL

On **July 17,2008**, Everett Brown was shot and killed inside of a convience store in Maywood, Illinois (A9).

Terrell Wesley was charged with the murder after being identifed as the shooter (A9-A10). the evidence was as follows.

Convience store clerk Ata Alaraj was working the register at a corner store in Maywood, illinois when he heard gunshots. (A41) A customer who Alaraj had just served re-entered the store and asked Alaraj to call the police (A41) he then heard two more gunshots.

Alaraj called the police and relocated to the front of the store where he saw the customer lying on the ground surrounded by blood (A41)

Dwayne Ross and Larry gates were driving in a municiple truck near 9th and Madison street in Maywood when they heard gunshots and saw an African-American man wearing a white T-Shirt walking backwards while pointing a gun at the corner store. (A10). The man had "stringy-like hair". simialr to dreadlocks or braids. (A10). The man entered into the passenger side of a black vehicle. (A10).

Jason Ervin, Maywood Village manager at the time of the shooting, testified that he was near the corner store when he heard gunshots and saw an individual coming out of the store with a gun in his hand.(A41) Ervin made an in-Court identification of Wesley as the person he saw coming out of the store, According to Ervin, Wesley walked backwards away from the store, got into a black Pontiac, and was driven away by a female driver (A10). Ervin wrote down the license plate number and called the police (A10) That sameday, Ervin went to the police station **tentatively identified some one other than Wesley as the person he saw with the gun**. It was not until a month later that Ervin viewed a second line up and identified Wesley as the shooter (Dist. ECF NO. 25-19,at 1409-10).

Ramon Mendez testified that on the date of the shooting he witnessed a woman driving a black vehicle in an erratic manner near the corner store (A-41) Mendez saw the woman stop the car at the store.(A-42). Mendez wrote down the license plate number and called 911. (A-42-A43). The license plate on the vehicle was later linked to Shara Cannon.

Shara cannon testified for the State. She denied that she was with Wesley on the day of the shooting(A-10). In testimony before the grand-jury, however **Cannon testified differently**. Cannon told the grandjury that she was driving with Wesley on the day of the Shooting.(A-10) Wesley was wearing a white T-Shirt and had a two -strand twist hair style (A10;A42). while Cannon was driving, Wesley asked Cannon to stop the vehicle, and Cannon drove around before returning to pick him up

(A-11). Cannon and Wesley then drove to her home where they were joined by other men, including Pierre Robinson (A-11). While at her home Cannon overheard Wesley say that he shot at someone at the corner store (A-11)

Pierre Robinson also testified in the State's case **in his in-Court testimony, he stated that He had no knowledge of the shooting (Dist ECF NO. 25-18 at 1328)**

Before the grandjury, however Robinson testified that he went to Cannon's house to meet up with Wesley on the day of the shooting. (A-11) He described Wesley's hairstyle as being short braids. (A43). While at Cannon's home, Robinson and Wesley learned that Everett Brown had died (A-42). Wesley then explained that he tried to shoot Brown, but his gun jammed. so Brown was able to run inside the store (A-42). Wesley then stated that brown came back outside and taunted Wesley (A-11) Wesley then shot Brown. (A-11)

Robinson testified at trial that he provided this testimony before the grandjury **because the police told him if he did not say Wesley told him he did it, then he would be charged with Brown's murder. (A-42)**

At the close of the State's case, **Defense moved for a direct verdict. (A-11)**. The Court denied the motion (A-11). After being informed that Wesley would not testify and the defense would not be presenting any witnesses, the trial was continue the next day (A-22)

The next day, the trial Judge began the proceedings by stating that it had reviewed the evidence and exhibits, and that it found the following.

[L]ooking at the evidence, you have a man pointing his gun outside of the store. he is running backwards. he has been identified by one witness, he had the gun in his hand, and he was trying to put back under his shirt. he was wearing a white T-Shirt. These facts have been corroborated. You have him getting into a vehicle, where there is some issues as to whether he got into the passenger's side or the driver's side.

The Court would find in manycases there are discepancies, however he got- he did get into a car that was identified.

With regards to the physical evidence, there were holes through the door. There were there was a bullet and fragments found in the body of the victim. There were two shells casing found by the door.

In addition, with regard to the grandjury testimony, the Court would accept the impeached part as the- the impeaching testimony as substantive evidence and it further ties up this case with regard to the testimony of Shara [Cannon] and also Robinson.

For all these reasons, the Court would make a finding of guilty in this case. **(A-24-A25).**

After the court found Wesley guilty, **Defense counsel immediately raised the issue that he had not "had the opportunity to argue the case in a closing argument".(A-25).** The court apologized and indicated it would let the parties argue.**(A-25)**

The State then asked the judge if that was her ruling for directed verdict. The Judge said yes.**(A-25).** Defense counsel immediately interjected to **inform the trial judge that she had already denied the Motion for direct verdict and that her guilty verdict was on the case in it entirely so that the record was clear.(A-25).** The parties then argued, and after argument the Court once again found Wesley guilty of first degree murder. **(A-25)**

The Court **"did not recess at any point between the initial finding" of guilty and the second finding of guilty. (A24-25)**

The trial Court also never vacated or otherwise withdrew its initial finding (SEE) **(A25-A30)**

III. HABEAS PROCEEDINGS

Wesley pursued relief from his conviction in the form of a Petition for Writ of Habeas corpus. In his amended Petition, Wesley argued that he was denied his **Constitutional right to make a Closing argument, as recognized in Herring V. NewYork, 422 U.S. 853 (1975)** When the trial court found him guilty **"without first giving his Counsel an opportunity to argue the case. (Dist EFC NO. 36 at 9)**

The District Court denied Wesley's amended Petition on two interrelated grounds.**(A16-A20)**. First, the Court concluded that Wesley was not entitled to Habeas relief because the legal principle Wesley sought to apply to his case was not clearly established **(A-18)**. On that point, the Court found that applying the rule announced in **Herring** to Wesley's factual scenario required an extension of **Herring. (A-18)**.

The court also concluded that even if **Herring** did apply to Wesley's factual scenario. Wesley was not denied his right to make a closing argument because the trial Court ultimately allowed counsel for Wesley to argue the case **(A-18-A19)**. the court reasoned that, under those facts Wesley did not suffer "Complete denial" of his right to present a closing argument.**(A-14)**.

IV. COURT OF APPEAL

The 7th Circuit court of Appeal for The United States **Granted** Wesley Petition for a certificate of Appealability **(A1)**. After the District Court declined to issue a Certificate of Appealability **(A-19-A-20)**. Subsequently The 7th Circuit affirmed The District court denial. **(A-1-A-5)**. The 7th circuit reasoned that Courts disagree about the proper "interpretation" of **Herring** suggest that the decision was with in the bounds of reason and ultimately "held" that relief under **sec** 2254

is available only if the State Court erred beyond any possibility for reasonable debate. And that Wesley has not met that high bar because the State Appellate Court in rejecting the claim, reasoably, distinguished **Herring** under an interpretation of the holding that is at least fairly debatable.**(A1-A3)**. Therefore even if the State Appellate court erred, Wesley cannot demonstrate that he is entitled to relief under sec 2254(d)(2). (A-5).

BASIS FOR FEDERAL JURISDICTION

A Petition for a Habeas corpus under **28 U.S.C sec 2254(A)** in the Northern District of Illinois, Eastern Division.

The District Court had jurisdiction over the Habeas proceedings under **28 U.S.C sec 2241(A) and 28 U.S.C sec 1331.** On February 24,2022 The District court denied the Petition in a written memorandum Opinion and order and entered final judgment as to all claims and all parties on that same day **(A8)**

A notice of appeal was filed on March 15,2022, and subsequently petitioned the Court of Appeal for the 7th Circuit for a Certificate of appealability on April 15,2022. On October 11,2023 the 7th Circuit **Granted** a certificate of Appealability.

The U.S Court of Appeals for The 7th Circuit had jurisdiction conferred by **28 U.S.C sec 1291.** The 7th Circuit affirmed the appeal on August 7th,2024. **(A-1-A-5)**. This Court conferred jurisdiction **Art III U.S. Const and 28 U.S.C 1254(1)**

REASONS FOR GRANTING THE WRIT

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

In the case **Herring V. NewYork**, 422 U.S. 853 (1975). Courts can and do reasonably disagree about a reversible **(Herring error). In State V. McIntosh, 504 S.W.3d 418, 425-26 (MO. Ct App. 2018).**

United States V. Price, 795 F.2d 61, 64 (10th Cir. 1986) (These Courts and other courts are Interpreting **Herring** as only establishing the right to have a meaningful chance to argue, and so they find no reversible error in a Pre-judgment verdict, as long as the trial court remained open to and considered the defense argument).

Other courts interpret **Herring** that announcing the verdict before closing argument is **reversible error** even if the trial judge later permits and considers argument. (SEE) **e,g. Nickels V.State, 81. N.E.3d 1092 1095-96 (Ind. Ct. App.2017); Spence V. State, 463 A 2d, 808, 810-12 (Md. 1983) also (SEE) United States V. King 650 F2d 543 (4th Cir 1981) and, State V. Gilman 489 A.2d 1100 (Me 1985).**

B. IMPORTANCE OF THE "QUESTION" PRESENTED.

This case presents a fundamental Question of the interpretation of this Court's decision in **Herring V. NewYork 422. U.S. 853 (1975)**

The Question presented is of great public importance because it affects the function of trial lawyers in all "50 States" in the course of defending the accused At a critical stage in a criminal prosecution (SEE) **United States V. Cronic 466 U.S. 648 (1984).**

The right to present summation in a nonjury trial is fundamental in character and a basic element of the traditional advesarial fact-finding process See **(Herring).**

In view of this muddled landscape of split decisions in both **[State and Federal]** Courts as to the correct interpretation of when a reversible **Herring error** occurs is the cause of a to narrow reading and a disregard for the reasoning and rationale. This Court used in the **Herring** decision to reach its holding.

The rationale of this Court's decision had to first do with the history of summations where the wide spread recognition of the right of the defense to make a closing,

Summary of the evidence to the trier of the facts, whether Judge or jury finds solid support in history. In the 16th and 17th centuries, when motion of compulsory process, confrontation, and Counsel were in their infancy, the essence of the English criminal trial was argument between the defendant and counsel for the crown. What ever other procedural protections may have been lacking, there was no absence of debate on the factual and legal issues raised in a criminal case. As the right to compulsory process, to confrontation and to counsel developed, the adversary system's commitment procedure had the effect of shifting the primary function of argument to summation of the evidence at the close of trial in contrast to the "fragmented" factual argument that had been typical of the earlier common law. **422 U.S at 860-861.**

Once this Court found solid support in history the court moved further into exactly what, is the purpose of closing arguments and the Court found sound reasoning in **In re Winship, 397 U.S. 358** that it can hardly be Questioned that closing arguments serves to sharpen and clairify the issue for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that Counsel for parties are in a position to present their respective version of the case as a whole. Only then can they argue the inference to be drawn from all the testimony and point out the weaknesses of their adversaries position and for the Defense, **closing arguments is the last clear chance to persuade the trier of fact that there maybe reasonable doubt of the defendant's guilt** (SEE) **In re Winship, 397 U.S. 358.**

This reasoning and rationale led this Court to clairify and conclude that: In a criminal trial, which is in the end basically a fact finding process, no aspect of such advocacy could be more important than the opportunity finally to marshall the evidence for each side before submission of the case to judgment. **(see: Herring)**

This is why guidance on the Question is also of great importance to the adversary system of Criminal Justice because the very premise is that partisan advocacy on both side of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free **(Herring).**

Imagine courts disregarding this courts reasoning and rationale. You would have trial Judges weighing evidence, concluding on the law and rendering verdicts before the accused even had a chance to present a closing argument and then under this kind of abuse of discretion the trial Judge, not having the power to deny altogether closing arguments would then allow the accused to present a summation, but the problem of a belated argument is that the accused has already been totally denied the opportunity to participate fully and fairly in the adversary fact finding process (SEE). **State V. McIntosh, 504 S.W.3d 418, 425-26 (Mo. Ct App 2018); United States V. Price 795 F.2d 61, 64 (10th Cir 1986).**

Consider the accuse was tried by a jury: The jury deliberates, renders a verdict of guilty and then defense counsel is allowed to argue the case. If such a procedure occured, there would be no doubt that the accused was totally deprived of his right to make a closing argument. An exception to the rule can not be carved out simply because the accused elected to have a Judge, rather than a jury act as the trier of facts (SEE). **Id at 858, 863, n. 15 (holding the right to make a closing argument applies to both jury trials and bench trials**, and noting that the right **"MAY BE EVEN MORE IMPORTANT" IN BENCH TRIALS)**

This comports with the notion that trial Judges factual determinations are given no more deferance than a jury's when they act as trier of fact (SEE). **United States V. Palladinett, 16 F.4th 545, 549 (7th Cir 2021)** ("we use the same standard for a sufficiency-of-the-evidenee-challenge to a conviction stemming from a bench trial as we do for one resulting from a jury trial').

There is no difference between a fact-finder who hears closing arguments before deciding the case and a fact-finder who has already decided the case and then hears arguments with an "open mind" is not sound. The later scenario does not present a meaningful opportunity to persuade. Both common sense and social science tell us that attempting to change a mind already made is significantly different than persuading an open-minded listener in the first instance.

For example, social science is clear that the widely accepted cognitive deficiency of confirmation bias prevents people from viewing information objectively once an opinion has been formed. **Raymond Nickerson**, confirmation Bias: A **Ubiquitous Phenomenon in many Guises, 2 Review of General Psychology, 175 175-76 (1998),https://WWW.researchgate.net/publication/280685490.** Confirmation bias is the cognitive process of seeking or interpreting evidence in way that confirm existing beliefs. **Id at 175.** Importantly confirmation bias kicks in once an opinion has been formed even if the person treated the information evenhandedly before making a decision . **Id. at 177.**

The exsitence of confirmation bias means that changing people's initial beliefs by confronting them with contradicting evidence is an uphill battle. **Enide Maegherman, et al., Law and Order effects: On cognitive Dissonance and Belief Perserverance 29 PSYCHIATRY, PSYCHOLOGY AND LAW 33,34 (2002) http://WWW.ncbi.nlm.nih.gov/pmc/articles/PMC9186347/pdf/TPPL_29_1855268.pdf.**

At least one study has shown that criminal trial Judges are susceptible to confirmation bias in evaluating a case (SEE). **Eric Rassin, Context Effect and Confirmation Bias in Criminal fact finding, 25 LEGAL AND CRIMINAL PSYCHOLOGY 80, 86-87 (2000) http://bpspsychub,onlinelibrary.Wiley.com/doi/epdf/101111/crp.12172.**

A related cognitive Phenomenon called belief perseverance also appears to affect trial Judges (SEE) **Maegherman.Supra,at 34. belief** perseverance is the "basic human tendency" to adhere to existing belief even when faced with discrediting information. Id. A close relative of confirmation bias, studies have shown that Judges- like everyone else-suffer from this cognitive bias. Id. for example, one study showed that Judges who had been given more incriminating information before the trial were more likely to convict than Judges who were given the same case file, but less incriminating information before the start of trial. Id.

The identification of these bias by Social Science simply confirms what **Herring** addressed through common sense: for the right to give argument to be effective, and for it to serve the important purpose outlined in **Herring**, the argument must occur before the case is turned over to the fact-finder for a decision.

Just as this court would not indulge the fantasy that allowing **Defense counsel to argue to a jury after it has already considered the evidence and returned a verdict complies with. Herring**, it should not indulge the fantasy that the very same **procedure is constitutionally sound just because a Judge is deciding the case.**

Other Courts State and Federal have also **"interpreted" Herring** that announcing a verdict before allowing the accuse the opportunity to present summation **"amounts to a total denial of the right to counsel under Herring even if the accused is ultimately permitted to make a closing argument.**

(SEE) Spence V. State 463 A.2d 808, 811-12 (Md. Ct. App 1983) United States V. Gilman 489 A.2d 1100 (Me 1985), Nickels V. State 81. N.E.3d 1092, 1095-96 (Ind. Ct App 2017)

Thus the Courts below both State and federal have seriously "Misinterpreted" **Herring** by disregarding this court reasoning and rationale only to conclude that **Herring** only applies to a total denial as long as the Judge is willing to be persuaded by belated closing arguments, but that reasoning places the burden of proof on the accused.

The Constitutional right of the accused to be heard through Counsel necessarily **includes his right to have counsel make a proper argument on the evidence and applicable law in his favor** however simple, clear, unimpeached, and conclusive the evidence may seem, **unless he has waived his right to such argument or unless the argument is not within the issue in the case, and the trial Court has no discretion to deny the accused such right (SEE). Yopps V. State 288 Md,204, 178 A.2d. 879 (1962).**

Under this Court reasoning and rationale what position would arguments after the Court has rendered a verdict place the accused in if he is to sharpen and clairify the issues for resolution by the trier of fact after the Judge has resolved the issue what position would the accused be in if he is to present his respective version of the case as a whole if his version of the case **has already been rejected** before he has had the opportunity to speak. And **how can the accused argue the inferences to be drawn from all the testimony's if the Judge has already decided what those inference are.** How can the accused point ot **"Weaknesses"-of their adversaries position if the Judge has already concluded in favor of his adversary,**

And of course for the accused to have a meaningful **"Last Chance" to persuade the trier of fact that there maybe reasonable doubt of his guilt,** it would have to take place before the trier of fact has already found him guilty beyond a reasonable doubt.

This Court should correct and clairify the **"true interpretation" of Herring** so that trial Judges in nonjury trials would have instructions as to when closing arguments must occur in order to allow the accuse his Constitutional right to Counsel, and Due process of the Law. under **Herring. VI and XIV of the U.S Const.**

CONCLUSION

For the foregoing reasons, Certiorari should be granted

DATE: October 14th, 2024

Respectfully Submitted

Terrell Wesley
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OFFICIAL SEAL
KASSIDY L TIMMONS
Notary Public, State of Illinois
Commission No. 826643
My Commission Expires
July 18, 2028

10-9-24