

In the
Supreme Court of the United States

PRESTON ALTON STRONG,
Petitioner,
v.

STATE OF ARIZONA,
Respondent.

*On Petition for Writ of Certiorari
to the Arizona Supreme Court*

BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTION PRESENTED FOR REVIEW**

Did the Arizona Supreme Court correctly determine that Juror 47 committed no misconduct?

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INTRODUCTION

Petitioner Preston Alton Strong was convicted in 2017 of the June 2005 murders of Luis Rios, Luis' girlfriend Adrienne Heredia, and Adrienne's four children, aged 6–13 years old. A jury found that the State proved three aggravating circumstances, that the mitigating evidence was insufficient to call for leniency, and it accordingly sentenced Strong to death. Strong appealed his convictions, alleging among other claims that Juror 47 committed misconduct by failing to disclose that she knew about Strong's prior conviction for the 2007 murder of Dr. Gill ("Gill murder"). After argument, the Arizona Supreme Court stayed the appeal and remanded the matter to the trial court for an evidentiary hearing on Strong's juror misconduct claim. On remand, the trial court held an evidentiary hearing and concluded that Juror 47 had no knowledge of the Gill murder during Strong's trial. The Arizona Supreme Court affirmed the trial court's finding that Juror 47 committed no misconduct, and it affirmed Strong's convictions and death sentences.

STATEMENT OF THE CASE

The Arizona Supreme Court set forth the underlying facts of Strong's June 2005 murders of Luis Rios, Adrienne Heredia, and Adrienne's four children:

Strong and victim Luis Rios were close friends. Strong had a history of financial troubles, and Luis loaned Strong money on a regular basis. Approximately one month before the murders, Luis's cousin, Hermes Soto Rios ("Soto"), heard what sounded like an argument between Luis and Strong. After the apparent argument, Luis told Soto that Strong "was kind of upset" because Luis had refused to loan Strong more money.

At the time of the murders, Luis and victim Adrienne Heredia lived together at East La Mesa Street in Yuma (the "East La Mesa residence") with Adrienne's four children, victims: A.C. (age thirteen), E.B. (age twelve), I.N. (age nine), and D.H. (age six). Adrienne was separated from D.H.'s father, Danny Heredia, but Danny typically took care of D.H. and I.N. every Thursday and Friday.

On Friday, June 24, 2005, Danny had arranged to call Adrienne before dropping off D.H. and I.N. with her at 6:00 p.m. After several unsuccessful attempts to reach Adrienne by phone, Danny became worried and decided to go to the East La Mesa residence.

Danny arrived at approximately 5:30 p.m. Adrienne's PT Cruiser was in the driveway, but she did not answer the door. After knocking several times and receiving no answer, Danny waited with D.H. and I.N. before getting in his truck to drive away. As he drove, he saw Luis driving down the street in his Dodge Durango. Danny turned around and followed Luis back to the East La Mesa residence.

Danny told Luis he had been unable to contact Adrienne, and Luis commented that he had also been unable to reach her. Danny left the children with Luis, who took them inside the house. When Adrienne did not come outside, Danny tried calling her again to let her know he had left the children with Luis. Adrienne did not answer her phone, and Danny left a message.

Danny drove back to his apartment. As he pulled into the parking lot, he received a call from Adrienne's telephone. When Danny answered, however, Luis was on the other end. Luis had never called him before. Luis told Danny that "Adrienne was tripping," which confused Danny. Danny thought Luis and Adrienne had been arguing,

and he told Luis to tell Adrienne to let him know if she needed help with the children.

Later that evening, Danny returned to the East La Mesa residence to drop off some clothing for the children. Although Adrienne and Luis's vehicles were in the driveway, no one answered when Danny knocked on the door. Danny left the clothes in a bag by the door, called Adrienne, and left a voicemail message. While Danny was still at the house, Luis called him again. Luis said that "everything was ok," but Danny saw "[n]o movement, no sound ... nothing" at the house. Danny left the house and drove to a nearby Circle K store, where a security camera captured his image at 7:53 p.m.

At approximately 8:15 p.m., a Schwann's delivery man approached the East La Mesa residence. He knocked on the door several times and heard "rustling" inside the house, but no one answered. As he was leaving the neighborhood, he heard a "bang" that sounded like a gunshot. He called the police to report the incident.

Adrienne and Luis's neighbors, Gabriel Resendez and Rocio Lopez, were in their backyard when they heard gunshots and someone yelling for help from the victims' backyard. While Lopez called 911, Resendez jumped over the wall separating their backyards. Once in the backyard, Resendez saw a man with a gun in his hand. The man "looked at [Resendez] and he looked at his gun, then he just casually walked back into the house." Resendez later identified this man as Strong. Resendez also noticed a trail of blood on the ground and Luis lying on his back with his hands behind him. Luis had been shot in the chest and head.

When first responders arrived at the East La Mesa residence, they immediately took Luis to the hospital, but he died en route. Police then entered the East La Mesa residence and found the bodies of I.N., A.C., E.B., D.H., and Adrienne (collectively, the "La Mesa Murders"). Autopsies showed that Luis and D.H. died from gunshot wounds while Adrienne, I.N., A.C., and E.B. died of asphyxiation.

...

Although law enforcement considered Strong a suspect in the La Mesa Murders, the State did not indict him until 2014, nine years after the killings. In the interval between the La Mesa Murders and Strong's indictment, he was convicted in 2012 for the murder of Dr. Satinder Gill (the "Gill Murder"). Strong was sentenced to natural life in prison for the Gill Murder, a conviction affirmed on appeal.

State v. Strong, 555 P.3d 537, 547–48, ¶¶ 2–11, 13 (Ariz. 2024). The jury convicted Strong on all charges and found three aggravating circumstances: (1) Strong had a prior conviction for a serious offense (A.R.S. § 13–751(F)(1)); (2) Strong committed multiple homicides (A.R.S. § 13–751(F)(8)); and (3) for the child victims, Strong murdered a person under the age of 15 years (A.R.S. § 13–751(F)(9)).¹ *Id.* at 548–48, ¶¶ 14, 16.

Strong appealed his convictions. Among other claims, Strong asserted that Juror 47 had committed misconduct by not disclosing her knowledge of his conviction for the Gill murder during voir dire. *Id.* at 549, ¶ 18. After oral argument, the Arizona Supreme Court “issued a Decision Order staying the appeal and remanding with instructions to the trial court to hold an evidentiary hearing to determine ‘the circumstances of Juror 47’s alleged misconduct and knowledge of the Gill Murder and prior conviction, and whether or not it was harmless.’” *Id.* (quoting App. A, at *3).

After the hearing on remand, the trial court concluded that “Juror 47 knew of the Gill case at the time of the murder and subsequent conviction, [but] she had forgotten that Strong was the person convicted of Gill’s murder.” *Id.* at ¶ 19 (quoting trial court ruling; alteration in original). As a result, the court found that Juror 47 had no “prejudicial information” during the trial and did not commit

¹ The State cites the statutory provisions in effect at the time of sentencing.

misconduct. *Id.* The supreme court “conclude[d] that the court did not abuse its discretion in finding no juror misconduct.” *Id.* at 560, ¶ 95.

REASONS FOR DENYING THE PETITION

This Court grants certiorari “only for compelling reasons,” Sup. Ct. R. 10, and Strong has presented no such reason. In particular, Strong has not established that the state court “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). Rather, Strong “assert[s] error consist[ing] of erroneous factual findings or the misapplication of a properly stated rule of law,” for which this Court “rarely grant[s]” certiorari review. Sup. Ct. R. 10.

Strong asserts that “[t]he nation’s lower courts require guidance on whether *Mattox* [v. *United States*, 146 U.S. 140 (1892),] and *Remmer* [v. *United States*, 347 U.S. 227 (1954),] remain good law and, if so, to what extent, and particularly whether courts may shift burdens of proof of harmlessness to criminal defendants.” PFR at 3. But this case does not present a vehicle to provide such “guidance” because no misconduct was found here, and as a result the state courts did not determine whether any misconduct was harmless. Accordingly, no burden was shifted and Strong presents no reason, compelling or otherwise, for this Court to grant review.

I. REMMER AND MATTOX DO NOT APPLY TO THE JUROR MISCONDUCT CLAIM HERE.

Remmer and *Mattox* established “a settled two-step framework” to address “allegations of improper contact between a juror and an outside party.” *Godoy v*

Spearman, 861 F.3d 956, 959 (9th Cir. 2017). Here, however, Strong did not allege that Juror 47 had “improper contact” with an “outside party” during trial. Instead, he alleged that “Juror 47’s knowledge of the Gill murder, *prior to serving as a juror in [this] case*, deprived him of his constitutional right to a fair trial.”² *Strong*, 555 P.3d at 558, ¶ 84 (emphasis added); *see id.* at ¶ 85 (“Strong’s attorney alleged that Juror 47 told him information that indicated she ‘intentionally or otherwise failed to inform court and counsel that she knew of the Gill Murder conviction before being impanelled [sic] in this matter.’”). Thus, the *Remmer* and *Mattox* procedure did not apply here, where Strong alleged that the juror came to the trial with knowledge of the Gill murder.

II. BECAUSE THE COURT FOUND NO JUROR MISCONDUCT, NEITHER PARTY HAD THE BURDEN TO SHOW HARMLESSNESS.

Despite the fact that the *Remmer/Mattox* procedure did not apply to the juror misconduct claim here, the Arizona Supreme Court relied on that two-step procedure in reviewing Strong’s claim that Juror 47 committed misconduct. The *Godoy* court explained this procedure:

... At step one, the court asks whether the contact was “possibly prejudicial,” meaning it had a “tendency” to be “injurious to the defendant.” If so, the contact is “deemed presumptively prejudicial” and the court proceeds to step two, where the “burden rests heavily

² Strong asserts, as he did in the state courts, that “Juror 47 was informed by multiple media sources, including reading the local newspaper regularly, that Mr. Strong was convicted of the Gill Murder, she knew it during the trial, and she gave that information to others.” Pet. at 5. The record, however, does not support his conclusion that Juror 47 knew, during trial, that Strong had been convicted of the Gill murder or that the juror told others about the conviction. Strong makes no effort to support his claim, and the State will not further address it here. The State’s silence on the issue, however, should not be interpreted as agreement.

upon the [state] to establish” the contact was, in fact, “harmless.” If the state does not show harmlessness, the court must grant the defendant a new trial.

861 F.3d at 959 (citations omitted; quoting *Mattox*, 146 U.S. at 150, and *Remmer*, 347 U.S. at 229). Here, the Arizona Supreme Court concluded in step one that “Strong established the presumption of prejudice.” App. A, at *3. But because it was “unclear from the existing record whether he, in fact, suffered prejudice,” the court remanded “to the trial court to hold an evidentiary hearing to determine the circumstances of Juror 47’s alleged misconduct and knowledge of the Gill Murder and prior conviction, and whether or not it was harmless.” *Id.*

Strong asserts that *Remmer* and *Mattox* prohibit a court from remanding a juror misconduct claim for a hearing after finding a presumption of prejudice.³ See Pet. at 6 (“*Mattox* and *Remmer* allow remand for [an] evidentiary hearing where the defendant has not had a sufficient opportunity to present evidence to establish the prejudice presumption.”). He claims that *Godoy* supports this proposition, but the opposite is true—the court in *Godoy* remanded for an evidentiary hearing *after* finding a presumption of prejudice. *Id.* at 5–6 (asserting that “this case, **unlike** *Godoy*, involved evidence which unquestionably met the low bar for presumed prejudice” (emphasis added)); see *Godoy*, 861 F.3d at 964 (finding that “*Godoy* established a presumption of prejudice” before remanding to the district court for a

³ Strong apparently believes that, by remanding, the Arizona Supreme Court shifted the burden to him to prove any misconduct was harmless. See Pet. at 6. He does not explain why he believes this is so. Because the state courts found no misconduct, however, there is no need to address this argument.

hearing on harmlessness). The *Godoy* court explained that “[w]hen the presumption [of prejudice] arises *but the prejudicial effect of the contact is unclear*, the trial court *must* hold a ‘hearing’ to ‘determine the circumstances of the contact, the impact thereof upon the juror, and whether or not it was prejudicial.’” *Godoy*, 861 F.3d at 962 (quoting *Remmer*, 347 U.S. at 229–30) (internal alteration omitted; emphasis added). Thus, a hearing is appropriate (and even required) to determine harmlessness *after* a presumption of prejudice has been found.

Consistent with *Godoy*, the Arizona Supreme Court presumed prejudice and remanded for the trial court “to hold an evidentiary hearing to determine the circumstances of Juror 47’s alleged misconduct and knowledge of the Gill Murder and prior conviction.” *Strong*, 555 P.3d at 559, ¶ 88 (quotation marks omitted). Contrary to Strong’s claim, in doing so the supreme court did not “distort” the principles in *Remmer* and *Mattox*, but faithfully applied them. Pet. at 5. After the remand, the court explained that, when it made its finding of presumed prejudice, it “assumed—based on the investigator’s notes attached to Strong’s motion for a new trial—that Juror 47 remembered that Strong was the perpetrator of the Gill Murder while she served as a juror on [this] trial.” *Strong*, 555 P.3d at 560, ¶ 95. After the record was developed, however, it was clear Juror 47 had no knowledge of the Gill murder conviction during trial:

... But faced with a fully developed record on remand, the trial court determined, as an initial matter, that Juror 47 did not remember Strong’s conviction for the Gill Murder at the time of jury selection or during the guilt phase of the trial. The court further found that Juror 47 did not realize that Strong had been convicted of the Gill Murder until the State presented evidence of this fact at the aggravation phase of the trial.

Id. (emphasis added).

While Strong understandably wishes that the court had not remanded, and the record had never been developed to establish that no misconduct occurred, he has not shown that the state court violated any constitutional principles by remanding to the trial court to determine the extent of any juror misconduct.⁴ Because the state courts found no juror misconduct, the burden to show harmlessness never arose, and it certainly was not shifted to Strong. Accordingly, there is no constitutional question before this Court.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted this 14th day of May, 2025,

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⁴ Even had the juror remembered that Strong had been convicted of the Gill murder, she would have committed no misconduct by failing to disclose that knowledge, because jurors were not asked if they knew of the conviction.