

****THIS IS A CAPITAL CASE****

No. 23-6912

**IN THE
SUPREME COURT OF THE UNITED STATES**

Samuel Fields, Petitioner,

v.

Laura Plappert,
Warden, Kentucky State Penitentiary, Respondent.

On Petition for Writ of Certiorari
to the Sixth Circuit Court of Appeals

**REPLY IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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ARGUMENT

The warden has not shown, and cannot show, the absence of a clear split of authority in the courts of appeals. It is uncontroverted that the First, Second, Fourth, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits each have concluded this Court has squarely established that a jury's verdict must be based upon the evidence developed at the trial. Accordingly, courts in these circuits have concluded that when considering a habeas claim based on a jury's improper consideration and reliance on extrinsic evidence, this Court's squarely established rule is the governing "clearly established" law for the first step of 28 U.S.C. § 2254(d)(1) review. The warden does not dispute that the Sixth Circuit has reached the opposite conclusion and found that this rule cannot satisfy the first step of § 2254(d)(1) review. As a result, a similarly situated petitioner in the Sixth Circuit—relying on the exact same legal principle and the same AEDPA provisions—now cannot obtain review under § 2254(d)(1).

This Court should grant review to settle this conflict. The same legal principles permitting § 2254(d)(1) review in some judicial circuits of a jury's consideration of extrinsic evidence should likewise permit review in all judicial circuits. Moreover, the Sixth Circuit's limitations on this review are contrary to this Court's precedent.

- A. The federal courts of appeals are divided on whether this Court's rule requiring a verdict to be based on the evidence presented at trial may provide a potential basis for federal habeas relief under § 2254(d)(1).**

The warden's argument contending there is not a circuit split for this Court to resolve is wholly unpersuasive. The warden does not dispute that the First,

Second, Fourth, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits have decided the question presented—whether in extrinsic evidence cases this Court’s rule requiring a jury verdict to be based upon the evidence developed at the trial qualifies as clearly established law under the first step of § 2254(d)(1) review—differently than the Sixth Circuit. Rather, the warden merely suggests that because these cases involved different facts and did not always entitle a petitioner to relief, “they do not set up a clear split of authority.” BIO at 17. But the split derives from the differing opinions on whether this Court’s rule requiring a verdict to be based upon the evidence developed at the trial is clearly established under the first step of § 2254(d)(1) review, not the ultimate application of that rule to specific facts as part of the subsequent steps of review. On the initial step of § 2254(d)(1) review, the courts of appeals have issued contrary opinions. The warden offers no argument suggesting otherwise.

Moreover, the warden’s recognition of the different facts in these decisions belies the warden’s contention that because this Court has not yet applied the rule to a situation in which the jury considered extrinsic evidence during a jury experiment, the rule cannot be clearly established. Although these cases did not involve the same facts as *Turner v. Louisiana*, 379 U.S. 466 (1965), and the other cases establishing the rule, the decisions of the courts of appeals recognized that § 2254(d)(1) permits a federal court to apply the same governing legal principle to different facts. *See, e.g., Owens v. Duncan*, 781 F.3d 360, 365 (7th Cir. 2015) (recognizing this Court had not decided a case with identical facts and concluding

that such identity was not required under § 2254(d)(1)); *Barnes v. Joyner*, 751 F.3d 229, 246 (4th Cir. 2014) (“There is no requirement under AEDPA that a habeas petitioner present facts identical to those previously considered by the Supreme Court to be entitled to relief.”) (citing *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007)); *see also Garcia v. Hepp*, 65 F.4th 945, 949 (7th Cir. 2023) (“Of course, clearly established law includes more than the four corners of a rule announced in a single case.”). Thus, because this Court has clearly announced the legal principle that a jury must base its verdict on the evidence developed at the trial, these courts of appeals uniformly have determined that when a claim asserts constitutional error due to a juror’s consideration of extrinsic evidence during deliberations, the relevant clearly established law under § 2254(d)(1) is this Court’s rule prohibiting the jury’s reliance on extrinsic evidence. Pet. at 19-22.

In addition to situations involving a juror’s consideration of extrinsic evidence as part of a jury experiment, these courts have applied this clearly established law when a jury allegedly considered extrinsic evidence of the defendant’s prior bad acts, a juror’s personal knowledge of a roadway at issue, news coverage, and the Bible. BIO at 17-19. At least one court found that the rule applied to a situation in which the jury may have considered in the jury room “a book by a legally educated author containing ‘commentary about defense attorneys lying and murderers disclaiming responsibility for stabbings they committed.’” BIO at 19 (quoting *Bebo v. Medeiros*, 906 F.3d 129, 136 (1st Cir. 2018)). Regardless of the different facts in each case, each case involved allegations of a juror’s consideration of extrinsic

evidence during deliberations, and the decisions all cite the same general rule as clearly established under § 2254(d)(1) review: that a jury’s verdict must be based upon the evidence developed at the trial. Pet. at 19-22.

Similarly, these cases show that unlike the recent Sixth Circuit decision, these courts all have concluded that the general nature of the rule does not disqualify it from being clearly established law under § 2254(d)(1). At least two reached that conclusion after this Court’s decisions in *Lopez v. Smith*, 574 U.S. 1 (2014), and *Nevada v. Jackson*, 569 U.S. 505 (2013). *See, e.g., Bebo*, 906 F.3d at 134 (“The Supreme Court has recognized that ‘even a general standard may be applied in an unreasonable manner.’”) (quoting *Panetti*, 551 U.S. at 953); *Owens*, 781 F.3d at 365 (holding that the rule “satisfies [§ 2254(d)(1)’s] exacting standard.”). In each of the habeas cases from the other circuits, the general nature of the rule did not prohibit it from qualifying as clearly established law under § 2254(d)(1). Pet. at 19-22.

This Court should give no weight to the warden’s contention that this Court’s decision to leave undisturbed the Seventh Circuit’s opinion in *Owens v. Duncan*, 781 F.3d 360, 365 (7th Cir. 2015), after granting certiorari but then dismissing it as improvidently granted, “has no bearing on the present case.” BIO at 20 n.4. When *Owens* was before this Court, Warden Duncan made the same argument the warden makes here: “[T]he general rule Respondent points to—that a defendant has a right to be convicted based on the evidence adduced at trial—is ‘far too abstract to clearly establish the specific rule [R]espondent needs[.]’” Reply Br. at

7, *Duncan v. Owens*, No. 14-1516 (quoting *Lopez*, 574 U.S. at 6).¹ This case therefore presents the identical question this Court did not resolve in *Owens*. The subsequent entrenched divide in the courts of appeals on this question—and the now divergent availability of § 2254(d)(1) review—demonstrates the pressing need for this Court to reconsider this question.

The cases from the First, Second, Fourth, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits recognize that although the rule is a general rule and this Court may not have applied in the same factual context, the rule nonetheless is clearly established under the first step of § 2254(d)(1) review. The warden acknowledges that the Sixth Circuit reached the opposite conclusion. BIO at 5. Thus, a circuit split exists on the question presented, and this Court should grant review and resolve this conflict.

B. The Sixth Circuit wrongly concluded this Court’s rule requiring a verdict to be based on the evidence at trial cannot satisfy § 2254(d)(1)’s “clearly established law” requirement.

The warden cannot offer a logical defense of the Sixth Circuit’s opinion. The parties agree that the Sixth Circuit’s holding was limited to the first step of § 2254(d)(1) review: whether the rule requiring a verdict to be based on the evidence at trial qualified as clearly established federal law under § 2254(d)(1). Pet. at 14-15; BIO at 5. However, the warden concedes “it is clearly established that jurors must decide a case based on the evidence at trial[,]” Warden’s CA6 Br. at 21, and “lower

¹ In this case, the warden argues that this same principle of law is too “abstract” to “establish clearly the specific rule [a prisoner] needs.” BIO at 7 (quoting *Lopez*, 574 U.S. at 6).

courts need not wait for a ‘nearly identical factual pattern’ before granting AEDPA relief.” Warden’s BIO at 10 (quoting *Panetti*, 551 U.S. at 953). These concessions recognize it is not necessary for this Court to have applied the rule in the context of a jury experiment before the rule can qualify as “clearly established” under § 2254(d)(1). Moreover, because this Court’s decisions establish that lower court decisions cannot supply clearly established law under § 2254(d)(1), the Sixth Circuit’s reliance on lower court decisions to find an absence of clearly established law was contrary to this Court’s precedent.

Section 2254(d)(1) “permits a federal court to grant habeas relief based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced[,]” *Lockyer v. Andrade*, 538 U.S. 63, 76 (2003), and “even a general standard may be applied in an unreasonable manner.” *Panetti*, 551 U.S. at 953. If the general rule is clearly established, which the warden agrees that it is, and a lower court need not wait for a nearly identical factual pattern as a prerequisite for AEDPA relief, then no impediment prevents the rule from qualifying as clearly established law under the first step of § 2254(d)(1) review. Likewise, if lower courts need not wait for this Court to have applied the rule to the same fact pattern, then there is no support for the Sixth Circuit’s conclusion that the rule cannot be considered clearly established under the first step of § 2254(d)(1) review because this Court has not applied the rule in a jury experiment context. Such a conclusion is based on an incorrect understanding of § 2254(d)(1). *Marshall v. Rodgers*, 569 U.S. 58, 62 (2013) (explaining that, particularly when the legal

principle is a “general standard,” the lack of a Supreme Court decision on similar facts does not mean no clearly established federal law exists).

This Court already has clearly established that jurors must decide a case based on the evidence at trial, and Fields does not need to rely on any other decision of this Court to establish the constitutional rights at issue in his case. No new decision from this Court involving the factual context of a jury experiment is necessary before Fields potentially can obtain relief.

The warden’s concession that it is clearly established that jurors must decide a case based on the evidence at trial further establishes that the warden’s—and the Sixth Circuit’s—reliance on *Lopez* is misplaced. In *Lopez*, because the lower court could not identify a Supreme Court decision squarely establishing the rule at issue, that rule could not be considered clearly established federal law. *Lopez*, 574 U.S. at 5-6. But unlike *Lopez*, the specific legal rule here has been squarely established by this Court. Here, “it is clearly established that jurors must decide a case based on the evidence at trial.” Warden’s CA6 Br. at 21. The First, Second, Fourth, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits agree. Pet. at 19-22. And although the majority in the court below concluded that the rule did not qualify as “clearly established law” under § 2254(d)(1), every federal judge who has considered this habeas case, including the entire Sixth Circuit en banc panel, has recognized that a jury’s verdict must rest on the evidence developed at the trial. App. 19a, 40a., 60a-62a, 70a, 92a. This legal principle is all Fields needs to satisfy the first step of § 2254(d)(1) review.

The warden’s (and the Sixth Circuit’s) reliance on *Carey v. Musladin*, 549 U.S. 70 (2006), also is misplaced. The warden posits that, under *Carey*, a divergence among lower courts shows “the lack of a clearly established rule[.]” BIO at 16. However, the warden includes no citation to *Carey* showing this Court drew such a conclusion. Although disparate applications of a federal law might relate to whether a state court’s decision was objectively unreasonable, that determination is made during the *second* step of habeas review,² and the warden acknowledges that the Sixth Circuit did not reach this step in its 2254 analysis. BIO at 5. Instead, the Sixth Circuit merely concluded that the rule could not qualify as clearly established federal law under the *first* step of 2254(d)(1) review. App. 13a.

On that question, the Sixth Circuit’s reliance on *Carey* and a divergence of lower court opinions unquestionably was erroneous. As the warden correctly acknowledges, lower court decisions “cannot supply clearly established law[.]” BIO at 17. Only this Court sets the governing legal principle or principles constituting clearly established federal law under § 2254(d)(1). *Lockyer*, 538 U.S. at 71-72. Thus, circuit court decisions, divergent or not, cannot supply the clearly established law for the first step of § 2254(d)(1) review.

But the Sixth’s Circuit own words establish its erroneous reliance lower court decisions. At the beginning of the Sixth Circuit’s discussion of this claim, the court

² The Sixth Circuit explained that the first step is the identification of “a ‘clearly established’ principle of ‘Federal law’ that the ‘Supreme Court’ has pronounced. App. 12a (quoting 28 U.S.C. § 2254(d)(1)). The second step is a determination of whether “a state court’s denial of relief was ‘contrary to’ or an ‘unreasonable application’ of this holding.” App. 13a (quoting 28 U.S.C. § 2254(d)(1)).

laid out the law guiding its decision and stated, “[D]isagreement in the lower courts on how the [Supreme] Court’s general principles apply in the relevant area will show the absence of clearly established law.” App. 12a (citing *Carey*, 549 U.S. at 76–77). Later, after discussing different opinions in lower courts, the Sixth Circuit found, “[T]he lower-court decisions] confirm the tension in the caselaw on this topic—tension that shows the absence of clearly established law. *See Carey*, 549 U.S. at 76–77. That fact forecloses relief for Fields under AEDPA.” App. 21a. Thus, if one takes the court at its word, the court’s interpretation of *Carey* and the differing opinions in the lower courts drove the Sixth Circuit’s determination that Fields “failed to get past AEDPA’s first step[.]” App. 13a.

The Sixth Circuit wrongly concluded this Court’s rule requiring a verdict to be based on the evidence at trial cannot satisfy § 2254(d)(1)’s “clearly established law” requirement because (1) the rule is too general and (2) this Court has not applied the rule to a fact pattern involving a jury experiment. This Court should grant review.

C. The jury’s consideration during deliberation of physical evidence not presented at trial prejudiced Fields.

The warden wrongly contends this Court should not grant review because Fields cannot show the prejudice necessary to obtain habeas relief. Because the majority opinion below did not assess whether Fields suffered prejudice, such a finding is not before this Court. Rather, the only matter for review is the Sixth Circuit’s determination—in contrast to decisions of other courts of appeals—that this Court’s rule requiring a verdict to be based on the evidence at trial cannot

satisfy § 2254(d)(1)’s “clearly established law” requirement. Should this Court grant review and reverse the Sixth Circuit’s ruling, Fields expects this Court to follow its usual practice and remand to the Sixth Circuit to consider all the remaining steps of habeas review, including the prejudice inquiry.

Upon remand, Fields can show—and has shown—that the jury’s consideration of extrinsic evidence during their deliberations prejudiced him. Although the majority opinion did not assess prejudice, the dissenting opinion did. All five of the judges who conducted the prejudice inquiry concluded that Fields suffered prejudice: “[B]ecause the jury experiment was highly prejudicial to Fields and concerned the central issue at trial, and because the other evidence of Fields’s guilt was sparse, the jury’s consideration of extrinsic evidence had a substantial and injurious effect or influence in determining the jury’s verdict.” App. 51a (internal quotations omitted).³

The record shows that whether Fields removed the screws was integral to the Commonwealth’s case asserting that Fields was the only one who could have committed the offense. App. 47a. As the warden acknowledges, at least two of the prosecution’s three themes of guilt focused on Fields’s use of the broken-tipped knife as a screwdriver as evidence of his guilt. The first theme hinged on the timing of the

³ The majority opinion in the initial panel decision also concluded that the jury’s consideration of the extrinsic evidence prejudiced Fields. App. 64a-68a. The author of this opinion, Judge Donald, was not a member of the en banc panel. App. 3a-4a, 55a.

offense and an assertion that no one else could have done this. BIO at 4.⁴ The second theme contended that Fields's blood was found at the scene and that the broken-tipped knife had white paint on its end, as did the screws attached to the storm windows. BIO at 4.

However, the Commonwealth's own evidence refuted its theory that only Fields could have murdered Horton. The Commonwealth's medical examiner testified it was probable the person who severed Horton's carotid artery would have gotten blood on him or herself, App. 49a, but none of Horton's blood was on Fields's clothing or body. App. 8a, 9a, 49a, 296a. Similarly, although Fields had been bleeding before entering Horton's home, none of his blood was on Horton or the murder weapon(s). App. 6a, 9a, 49a, 296a; Trial 2 Tr., R. 30-16 6442-44, R. 30-17 6507-08. In fact, the Commonwealth's DNA testing *excluded* Fields as a possible contributor to the DNA on the murder weapon(s). Trial 2 Tr., R. 30-17 6497-98, 6507-08.

Fields's fingerprints were not on the storm window. Trial 2 Tr., R. 30-23 7460. The Commonwealth's chemical analysis showed that the white paint on the end of the broken-tipped knife was not the same as the paint on the screws. Trial 2

⁴ Officers found Fields in Horton's home around 2:30 a.m., App. 9a, and the Commonwealth theorized that Horton's murder only could have occurred after Fields was last seen around 1:57 a.m., after Fields took at least five minutes to walk to Horton's home and circle it at least once, and after Fields then took at least 17 minutes to use the broken-tipped knife to unscrew the 17 Phillips screws from the storm window. Trial 2 Tr., R. 30-23 7478-79. Furthermore, because law enforcement officers began investigating the area shortly after receiving the dispatch call at 1:57 a.m., this theory required Fields to have completed all of this without alerting the nearby officers. App. 6a, 197a, 233a; Trial 2 Tr., R. 30-13 5975, 5978-84.

Tr., R. 30-16 6387-88. Moreover, if Fields had been at the window for at least 17 minutes using the broken-tipped knife as a screwdriver, as the Commonwealth contended, blood should have pooled on the porch underneath the window. But the porch did not have such a pool of Fields's blood. Trial 2 Tr., R. 30-14 6044-45, 6063-64; Com. Exs. 16, 17.

If someone else removed the storm window before Fields even entered Horton's home, as Fields maintained, then there would have been an opportunity for someone other than Fields to have committed the murder. App. 235a. It was thus important to the prosecution to establish that no one else could have committed this crime, as "demonstrated by the prosecution's repeated focus on the timeline of events throughout Fields's trial." App.47a.⁵ The prosecution even encouraged the jury to disregard its own evidence: despite its own chemical analysis establishing different paint on end of the broken-tipped knife versus the screws, the Commonwealth nonetheless argued to the jury that that because both paints were white, the paint on the broken-tipped knife evidenced Fields's guilt of intentional murder. App. 8a, 80a; Trial 2 Tr., R. 30-23 7479.

Whether there was opportunity for anyone other than Fields to have done this weighed heavily on the jurors' minds throughout the trial. App. 47a. During trial, a juror submitted this question for the judge to pose to a defense witness: "How long does it usually take to install a large storm window?" Juror Questions,

⁵ The prosecution's repeated focus on the timeline of events rebuts the warden's contention that "whether Fields could have removed the screws from the storm window was largely academic[.]" BIO at 27, or "not critical." BIO at 27 n.7.

Sealed R. 57-10, p. 31. One juror explained during the postconviction proceedings that the experiment's purpose was to test the Commonwealth's theory and "see if it was possible to be done." App. 48a. Another explained that she "wanted to be sure of everything" and the experiment "satisfied [her] mind" that it was possible that Fields "could have done that." App. 48a.⁶ This same juror stated in an affidavit that the "experiment helped prove that Mr. Fields could have committed the crime." App. 48a. The jury deliberated for eight hours, and the jurors did not reach a verdict until after conducting this experiment. App. 31a, 200a-201a.

However, when the jury attempted to resolve the central issue in the case, they did so in a way that fell far short of replicating the actual conditions because they involved and relied on evidence not admitted at trial. Although the broken-tipped knife was in evidence, the screws the jurors unscrewed were not part of the case, nor were the cabinet door, cabinet, or hinges. The cabinet screws, which were universal screws, were different than the Phillips screws in the storm window. App. 44a. This physical characteristic eased the use of the broken-tipped knife as a screwdriver in a way that the painted-over Phillips screws would not have. App. 63a; Fields's CA6 Br. at 23-24. Furthermore, no evidence established that the screws in the jury room were installed with the same tension and force as the screws in the storm window, that the cabinet door was fastened to the cabinet as

⁶ The warden argues that the juror's testimony "that [the experiment] wasn't what . . . said that he was guilty or not guilty" undermines a prejudice finding. BIO at 26-27. However, if this juror was certain from the record evidence that Fields was guilty, there would have been no reason to further "satisfy [her] mind."

the storm window was fastened to the window frame, or that the cabinet screws were painted over. App. 44a. Due to these differences, the experiment unfairly bolstered the Commonwealth's case while undercutting the defense. App. 48a.

Nevertheless, the warden insists, the jury's consideration of the extrinsic evidence had no effect because the "evidence of Fields's guilt was substantial." BIO at 27. But both the state trial court and the Kentucky Supreme Court disagree. On direct appeal following Fields's first trial, the Kentucky Supreme Court found that "evidence of [Fields]'s guilt of murder was not overwhelming[.]" App. 300a. After the culpability phase of Fields's second trial, the trial court commented: "It would not have totally surprised me if the result had come out different" Ex Parte Tr., R. 54-1 11221.

The warden overstates the reliability of Fields's alleged "confessions." During the afternoon and evening before his arrest, Fields was drinking heavily, smoking marijuana, and ingesting horse tranquilizers. App. 5a, 196a, 234a. At the time of Fields's arrest, he exhibited a "strong odor of alcohol." Trial 2 Tr., R. 30-14 6048. Approximately three hours later, medical staff measured his blood alcohol content at 0.14, App. 44a, 50a, which is nearly twice the legal limit for operating a motor vehicle.⁷ Once sober, Fields unquestionably denied killing Horton. App. 38a, 50a, 230a, 234a.

⁷ Additional evidence further suggests that this "confession" evidence was unreliable. After the first trial, the officer who reported that Fields made these confessions to him was charged with misdemeanor counts of official misconduct, unlawful transaction with a minor, and harassment, which "resulted in a pre-trial diversion agreement and the loss of his job." App. 250a.

The Commonwealth’s own evidence demonstrates that at least one of these “confessions” was untrue. About a year after the offense, an EMT reported for the first time that when Fields was taken to the hospital after his arrest, Fields admitted to having Horton’s blood on him. Trial 2 Tr., R. 30-15 6172. However, the forensic evidence showed this was untrue; Fields did not have the victim’s blood on him. App. 8a. Fields also reportedly said that he killed his brother, which again was untrue. App. 23a.

Unlike Fields, Minnie Burton—Horton’s ex-employee and former tenant—had both the motive and opportunity to have committed the murder. App. 38a, 50a. Unlike Fields, Burton’s whereabouts were unknown for a period of about an hour and 45 minutes prior to Fields entering Horton’s residence. Trial 2 Tr., R. 30-23 7455-56, 7459, 7469-71.⁸ And two witnesses testified that Burton confessed to killing Horton. App. 50a, 254a.

The evidence against Fields was not strong. The weakness of the Commonwealth’s case made the effect of the improper consideration of extrinsic evidence relating to the central issue even more influential to the jury’s decision. The jury’s consideration of extrinsic evidence had a substantial and injurious effect or influence in determining the jury’s verdict.

CONCLUSION

This Court should grant the petition for writ of certiorari.

⁸ Because Burton was unaccounted for during this time, the warden’s argument that “Burton had an alibi for much of the evening in question[,]” BIO at 28, carries no weight.

Respectfully submitted,



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