No. 24-7370

IN THE SUPREME COURT OF THE UNITED STATES

JONATHAN DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court was required to strike a member of the jury venire for cause who, 47 years before the trial, had been the victim of a crime similar to petitioner's.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 126 F.4th 610. The opinion and order of the district court is reported at 723 F. Supp. 3d 677.

JURISDICTION

The judgment of the court of appeals was entered on January 14, 2025. A petition for rehearing was denied on March 4, 2025. Pet. App. 15a. The petition for a writ of certiorari was filed on June 2, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Missouri, petitioner was convicted on one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and one count of brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii). Judgment 1. The district court sentenced petitioner to 125 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-14a.

1. In January 2021, petitioner, wearing a black Nike jumpsuit and a facemask, entered a Steak 'n Shake restaurant near closing time and headed straight to the back office where the store manager and another employee were preparing bank deposits. Pet. App. 2a. Petitioner held the store manager at gunpoint, demanded money from the safe, and left with the restaurant's money. Ibid.

The store manager recognized the robber as petitioner, a former Steak 'n Shake employee who had often worn an identical outfit to work. Pet. App. 2a. The police later encountered him wearing a black Nike jumpsuit and arrested him. Ibid. The police obtained a warrant for his phone, which contained messages, e-mails, and photographs showing that petitioner had engaged in or contemplated several large financial transactions in the days immediately following the robbery. Id. at 2a-3a.

2. A federal grand jury in the Eastern District of Missouri returned an indictment charging petitioner with one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and one count of brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii). Indictment 1-2. Petitioner went to trial. See, e.g., 21-cr-167 Docket Entry No. 103 (June 26, 2023).

During voir dire, Juror No. 40 disclosed that in 1976--47 years earlier--he had been the victim of an armed robbery while he was employed at a grocery store. Pet. App. 16a; see id. at 3a. When the district court asked whether that experience would prevent him from being impartial, Juror No. 40 responded, "Possibly, I don't know for sure. It depends on the situation." Id. at 17a; see id. at 3a. The court then asked whether the case's facts would prevent the juror from giving "both sides a fair trial," and Juror No. 40 responded, "No, not now. It's been 50 years so I am okay now." Ibid. The court also directly asked whether the juror might lean more toward the government's position, and Juror No. 40 responded, "No." Id. at 17a.

Petitioner moved to strike Juror No. 40 for cause. Pet. App. 3a. The district court denied the motion, and Juror No. 40 was seated as an alternate and later became an active juror when another juror became sick. Id. at 3a-4a. When petitioner again objected to Juror No. 40 being placed on the jury, see id. at 19a-

20a, the district court explained that it was "convinced without any reservation" that Juror No. 40 had credibly stated that he could set aside his experience and base his decision on the evidence, id. at 21a; see id. at 20a-21a. The court explained that observing Juror No. 40 during voir dire led it to conclude "that his credibility was sound and solid." Id. at 21a. And the court added that the "incident * * * occurred some approximately 50 years ago, which is a long, long, long time ago." Ibid.

The jury found petitioner guilty on both counts. Judgment 1. The district court sentenced petitioner to 125 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1a-14a. The court determined, inter alia, that the district court did not abuse its discretion by declining to strike Juror No. 40 based on an asserted "implied bias" from being the victim of a grocery store robbery nearly 50 years earlier. Id. at 9a; see id. at 9a-12a. The court of appeals explained that historically, it had generally rejected a per se theory of implied bias in favor of a requirement that actual prejudice be demonstrated. Id. at 9a-10a. But it noted that Justice O'Connor's concurrence in Smith v. Phillips, 455 U.S. 209 (1982)--in which "the majority opinion focused on a post-conviction hearing as a proper remedy for when a juror's bias is questioned"--had "favored retaining implied bias as a remedy

for certain 'extreme situations that would justify a finding of implied bias.'" Pet. App. 10a (quoting Phillips, 455 U.S. at 222 (O'Connor, J., concurring)). And the court observed that after Phillips, it had "permitted implied bias arguments, though none [had] succeeded." Ibid.; see id. at 10a-11a.

The court of appeals observed that in this case, none of the circumstances Justice O'Connor had characterized as "extreme" examples where bias might be implied--namely, a revelation that a juror was an employee of the prosecuting agency, a close relative to a party in the criminal trial or event, or a witness or otherwise involved in the crime--was present. Pet. App. 11a (citing Phillips, 455 U.S. at 222 (O'Connor, J., concurring)). The court acknowledged examples from other circuits that had "found implied bias involving people intimately familiar with the offense charged in the [criminal] trial." Ibid. But the court explained that the issue here was not "merely whether a crime victim can be impliedly biased," but instead whether a juror "who was a victim in a similar crime nearly 50 years ago" gave rise to an "'extreme situation[] where the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person could remain impartial in his deliberations under the circumstances.'" Id. at 12a (quoting Sanders v. Norris, 529 F.3d 787, 792 (8th Cir. 2008) (quoting Person v. Miller, 854 F.2d

656, 664 (4th Cir. 1988), cert. denied, 489 U.S. 1011 (1989)). The court found that not to be the case here. Ibid.

ARGUMENT

Petitioner renews (Pet. 16-23) his argument that the district court was required to strike Juror No. 40 for cause. He further contends (Pet. 20-22) that the court of appeals erred by evaluating his "implied bias" claim for abuse of discretion instead of applying de novo review. The court of appeals correctly rejected petitioner's implied-bias claim, and its decision does not conflict with any decision of this Court or another court of appeals.

1. a. The Sixth Amendment provides that "[i]n 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." U.S. Const. Amend. VI. In Smith v. Phillips, 455 U.S. 209 (1982), this Court explained that it has "long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias." Id. at 215. And this Court rejected the defendant's argument that the law should impute bias to a juror in the scenario presented in that case--a juror who had applied for a job in the prosecutor's office. Id. at 212-213, 215. Instead, this Court determined that a new trial would be

warranted only where actual bias is shown, and that the juror himself is competent to testify on that subject. Id. at 215-217.

Justice O'Connor concurred to express her view that the Court's opinion "does not foreclose the use of 'implied bias' in appropriate circumstances." Phillips, 455 U.S. at 221. In her view, some "extreme" situations may justify a finding of implied bias without a case-specific showing of actual bias, potentially including "a revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal transaction." Id. at 222 (O'Connor, J., concurring).

b. Here, after Juror No. 40 disclosed that he had been the victim of a robbery while working at a grocery store in 1976, the district court questioned him about whether that experience would prevent him from being impartial. See Pet. App. 17a. Through the course of the court's questioning, the juror assured the court that he could set that nearly 50-year-old experience aside and base his decision on the evidence presented, and the court was "convinced without any reservation" that the juror was credible and could be impartial. Id. at 21a; accord id. at 16a-17a; 20a-21a; see id. at 3a.

The court of appeals correctly recognized that the circumstances did not justify ordering a new trial based on implied

bias. As the court explained, Juror No. 40 did not fall into any of the "extreme" categories described by Justice O'Connor. Pet. App. 11a; see Phillips, 455 U.S. at 222 (O'Connor, J., concurring). And the court correctly recognized that being a victim of a similar crime almost 50 years earlier did not present a comparable "extreme" situation where an average person would be incapable of putting aside bias. Pet. App. 12a. The court of appeals' factbound determination does not warrant review by this Court. See Sup. Ct. R. 10 ; United States v. Johnston, 268 U.S. 220, 227 (1925) (This Court "do[es] not grant a certiorari to review evidence and discuss specific facts.").

c. Petitioner contends that the court of appeals inappropriately rejected his implied-bias claim based on a credibility finding instead of evaluating de novo whether "the average person in the juror's position could be impartial." Pet 3; see Pet. 20-23. But petitioner fails to meaningfully explain how his approach would be materially different from what the court of appeals did here.

The court of appeals defined an "extreme" situation that could potentially warrant a finding of implied bias as a situation "where the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person"--not just the specific juror--"could remain impartial." Pet. App. 12a (quotations omitted). And it determined that Juror

No. 40's nearly half-century old experience was not such a situation. See ibid. Thus, even the application of petitioner's proposed approach would have no effect on the outcome of this case. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

Even assuming that the court of appeals placed significant weight on the district court's credibility findings, that was commensurate with Phillips. The Court explained there that "it [would be] virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote," and emphasized the role of "a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen." Phillips, 455 U.S. at 217; see Rosales-Lopez v. United States, 451 U.S. 182, 189 (1981) (obligation to impanel an impartial jury lies with the trial judge and his or her perceptions of the jurors). Petitioner fails to show that the trial court's voir dire colloquy with Juror No. 40--analogous to the actual-bias hearing Phillips contemplated, see 455 U.S. at 216--was inadequate to determine the juror's ability to be impartial.

2. Petitioner provides no sound basis for further review.

a. Petitioner asserts (Pet. 16-17) that the courts of appeals are uncertain about whether implied-bias claims are viable after Phillips. But he identifies no court that has refused to recognize implied-bias claims, and the court of appeals here permitted petitioner to raise such a claim. See Pet. App. 10a.

Petitioner also asserts (Pet. 16-17) that the courts of appeals are in conflict on "whether implied bias is clearly established federal law." Although that question may be relevant to a state prisoner trying to obtain habeas corpus relief, see 28 U.S.C. 2254(d)(1) (habeas relief unwarranted unless state court's adjudication of a claim "was contrary to, or involved an unreasonable application of, clearly established Federal law"), it is not relevant to petitioner--a federal prisoner who raised an implied-bias claim before the district court and on direct appeal.

b. Petitioner further contends (Pet. 17-18) that although most courts of appeals review implied-bias claims for abuse of discretion, the Ninth and Tenth Circuits review such claims de novo. As noted above, however, the decision below--while stating that its overall standard of review was for "abuse of discretion" --appeared to find, without explicit deference to the district court, that Juror No. 40's experience was not one in which "it is highly unlikely that the average person could remain impartial." Pet. App. 12a. And to the extent there is a difference between how the court of appeals approached petitioner's case and how other

courts of appeals review implied-bias claims, petitioner cannot show that any such difference would be outcome-determinative here.

In United States v. Kvashuk, 29 F.4th 1077 (9th Cir.), cert. denied, 143 S. Ct. 310 (2022), a case involving a Microsoft employee who stole $10 million in digital gift cards redeemable at Microsoft's Universal Store, a juror disclosed that he previously worked for the Universal Store before petitioner was hired. Id. at 1083, 1091-1092. Although the court of appeals stated that implied-bias claims are reviewed de novo, id. at 1092, it determined that "[m]erely working for the same large organization as the defendant is an insufficient basis for implied bias," and affirmed the district court's decision not to remove the juror, id. at 1093. That decision would not compel a finding of implied bias here.

In United States v. Powell, 226 F.3d 1181 (10th Cir. 2000), cert. denied, 531 U.S. 1166 (2001), a juror in a kidnapping case disclosed during voir dire that her daughter had been raped ten years earlier. Id. at 1186. The Tenth Circuit reviewed the defendant's implied-bias claim de novo, id. at 1188, but it determined that the defendant's crime and the juror's daughter's experience were not sufficiently similar to justify finding implied bias, see id. at 1189. Indeed, the court of appeals observed that in a previous case it had rejected--due to the passage of time--an implied-bias claim where a juror in a sexual

assault case had herself been the victim of a sexual assault 25 years earlier. Ibid. (citing Gonzales v. Thomas, 99 F.3d 978, 990 (10th Cir. 1996), cert. denied, 520 U.S. 1159 (1997)). If anything, that suggests that the Tenth Circuit would reach the same outcome as the decision below on the particular facts of this case.*

The cases cited by petitioner in a footnote (Pet. 18 n.4) likewise do not suggest that if these facts were to arise in another jurisdiction, the outcome would be different. The Supreme Court of Wyoming rejected the implied-bias claim of a defendant who did "not offer a cogent argument that [the juror] was impliedly biased * * * presumably because there is no evidence [the juror] had any personal connection[s] to the parties or circumstances of the trial or that there were similarities between [the juror's] personal experiences and the issues being litigated." Smith v. State, 190 P.3d 522, 533 (2008). Nothing indicates that court would have accepted petitioner's claim here. And the Fifth Circuit's nonprecedential decision in United States v. Abreu, No. 21-60861, 2023 WL 234766 (Jan. 18, 2023) (per curiam), emphasized

* Petitioner also claims that "[t]he Third Circuit employes a mixed standard." Pet. 18 (citing United States v. Mitchell, 690 F.3d 137, 148 (2012)). But petitioner does not argue the Third Circuit would have viewed his case differently. The case he cites took the view that being a close relative of a party can support an implied-bias claim, see Mitchell, 690 F.3d at 147, but made clear that being a co-worker "of police officers who testify as witnesses" does not, id. at 149.

that implied bias claims are reserved for "extreme situations"; cautioned that they "are only appropriate in a narrow set of circumstances"; and found that a juror's prior work "with the Government's case agent" did not qualify as "one of the 'extreme situations' justifying a finding of implied bias." Id. at *1-*2.

c. Petitioner also asserts that "[t]here is substantial disagreement over how to evaluate the merits of implied bias claims." But all he points to is a law review article claiming that "different courts have stated the test in different ways." Pet. 18. "This Court, however, reviews judgments, not statements in opinions." Black v. Cutter Labs., 351 U.S. 292, 297 (1956), and petitioner fails to show that the lower courts are meaningfully divided on how to evaluate implied bias claims.

While the two cases that, in his view, state the test "in different ways" did reach different conclusions as to whether there was implied bias, they did so on very different facts. Compare Tinsley v. Borg, 895 F.2d 520, 529 (9th Cir. 1990), cert. denied, 498 U.S. 1091 (1991) (declining to find implicit bias where a psychiatric social worker who was a juror during a rape trial had had another rape victim as a client and testified on her client's behalf), with Hunley v. Godinez, 975 F.2d 316, 320 (7th Cir. 1992) (per curiam) (finding implied bias based on "rare circumstances"--the burglary of jury members during sequestration that mirrored the prosecution's theory--that were "unlikely * * * [to] ever

recur"). Indeed, petitioner seems to acknowledge that lower courts typically apply Justice O'Connor's concurrence in Phillips and find implied bias only in extreme situations. See Pet. 19-20. The court of appeals' factbound determination that this case was not such a situation does not warrant this Court's intervention.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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