

25-6854
No. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

LONNY SLADE GLOVER, PETITIONER

Vs.

STATE OF MINNESOTA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO
MINNESOTA COURT OF APPEALS

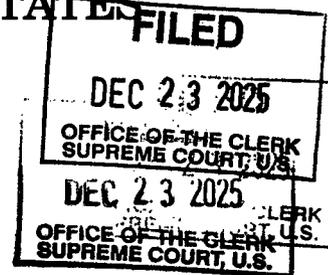
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an unrecorded ex-parte communication between a trial judge and a deadlocked jury where the physical note of the communication was subsequently lost violates a defendant's Sixth and Fourteenth Amendments right to be present at every critical stage of trial and constitutes structural error requiring automatic reversal, an issue on which the federal circuits are deeply divided?
2. When a trial court restricts a pro se defendant's access to the sole piece of evidence necessary to prepare a defense, does the Sixth Amendment require a searching inquiry into whether the restriction renders the right of self-representation illusory, as some circuits hold, or does a deferential, prejudice-based review suffice, as other circuits maintain?

LIST OF PARTIES

(X) All parties appear in the caption of the case on the cover page.

RELATED CASES

Minnesota Supreme Court: State v. Glover, No. A23-1144 (Final Judgment September 29, 2025). Unpublished/Not Recorded.

Minnesota Supreme Court: State v. Glover, No. A23-1144 (Order Denying Review, September 24, 2025), Unpublished/Not Recorded.

Minnesota Court of Appeals: State v. Glover, No. A23-1144 (Opinion, July 14, 2025) Unpublished/Not Recorded.

Koochiching County District Court: State v. Glover, File No. 36-CR-22-348 (Post Conviction Evidentiary Hearing, November 1, 2024, and subsequent denial of relief).

Koochiching County District Court: State v. Glover, File No. 36-CR-22-348 (Original Trial and Conviction, January 12, 2023).

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RULE 10 STATEMENT

This case presents clear grounds for certiorari under Supreme Court Rule 10(a) and (c). The decision below conflicts with this court's holdings in *Remmer v. United States*, 347 U.S. 227 (1954), and *Unites States v. U.S. Gypsum Co.*, 438 U.S. 422 (1978), by applying harmless-error review to an unrecorded, ex-parte communication between a trial judge and a deadlocked jury. In doing so, it deepens an entrenched conflict among the federal circuits regarding whether such communications constitute structural error. The case also raises a recurring and exceptionally important question concerning the scope of a pro se defendant's Sixth Amendment right to access the evidence necessary to present a defense, especially when a state legislature has provided a clear statutory path for such access.

OPINIONS BELOW

The order of the Supreme Court of Minnesota denying Defendant's petition for further review is not reported. The opinion of the Minnesota Court of Appeals is not reported. The order of the Koochiching County District Court denying Defendant's petition for post-conviction relief is not reported.

JURISDICTION

The Supreme Court of Minnesota denied timely review and entered final judgement on September 24, 2025. This court has jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

U.S. Constitution, Amendment VI: In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him... and to have the assistance of counsel for his defense.

U.S. Constitution, Amendment XIV: 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 its jurisdiction the equal protection of the laws.

Minnesota Statute 634.35: If a recorded interview of a child victim of physical or sexual abuse is disclosed by a prosecuting attorney to a defendant or the defendant's attorney, [certain conditions apply, including that] no more than two copies of the recording... may be made... [and the recording] may be viewed only by the defendant, the defendant's attorney, and the attorney's employees, investigators, and experts.

STATEMENT OF THE CASE

This case arises from a Minnesota conviction for criminal sexual conduct based entirely on a videotaped forensic interview. The conviction was secured after the trial court communicated ex-parte with a deadlocked jury and after it had denied the pro se defendant any meaningful opportunity to review the state's evidence.

A. Pre Trial Proceedings and Denial of Forensic Evidence

Prior to trial, the court found defendant competent to represent himself after the equivalent of a Faretta hearing. The court failed to warn defendant that his pro se status would be a basis to deny him access to discovery materials essential for his defense.

The state's entire case rested on a videotaped forensic interview of the minor complainant. This video was the sole piece of inculpatory evidence. The state provided a viewing to the defendant at the prosecutor's office during business hours but refused to provide a copy of the video itself, designating it "sensitive". The defendant, recognizing he lacked the expertise to analyze the video, wanted an expert to review said video for suggestibility and improper techniques, repeatedly requested a copy of the video so that he could retain an expert to review it. (Multiple Preliminary Hearings).

The trial court denied the request. It ruled that because defendant was representing himself, and due to the sensitive nature of the video, he could not receive a copy of the video. The court's only accommodation was to permit defendant to view the video in the prosecutor's office, a wholly inadequate substitute that made independent review impossible. The denial foreclosed defendant's only means of challenging the reliability of the state's evidence and presenting a complete defense. (Multiple Preliminary Hearings prior to trial).

This ruling disregarded Minnesota Statute 634.35's protective disclosure mechanism—designed to allow access by the defense and its experts under strict confidentiality by imposing a categorical prohibition based on defendant's pro se status that made expert review impossible. The trial court ignored this legislative solution, instead imposing a complete prohibition that uniquely punished defendant for exercising his right to self-representation.

B. The Ex-Parte Communication with the Deadlocked Jury

On January 11, 2023, after three days of trial, the case was submitted to the jury. At Approximately 7:25 p.m., after more than four hours of deliberation, the jury sent a note to the trial judge, Korey Wahwassuck, stating that they could not reach a unanimous decision. The note read: "Your Honor, we cannot come to a unanimous decision with all of the elements of the charges, please advise us on our next steps. Thank you." (Jan 11, 2023 P189 L20-21)

Without notifying defendant or the prosecutor, and without making any record of her actions, Judge Wahwassuck wrote a response on the bottom of the jury's note instructing them to "keep deliberating a little bit longer". She then gave the note to the bailiff to return to the jury room. (PCRH July 19, 2024 P7 L24-P8 L1). This communication occurred outside the presence of the defendant, counsel, and court reporter.

Only after this ex-parte communication took place did the court administration summon defendant and the prosecutor back to the courthouse. Once they arrived, Judge Wahwassuck informed them for the first time of the jury's note and her unilateral response. The physical note itself was never filed and has since been lost. (Post Conviction Evidentiary Hearing). About twenty minutes after the ex-parte instruction, the court dismissed the jury for the evening. The next morning, after receiving an additional instruction, the jury returned a guilty verdict within an hour.

C. Post-Conviction Evidentiary Hearing

The post-conviction court held an evidentiary hearing which Judge Wahwassuck testified under oath.

Judge Wahwassuck confirmed the sequences of events. She testified that she received the note from a deadlocked jury, wrote her response on it, and sent it back with the bailiff before contacting the parties. (Post-Conviction Hearing July 19, 2024). She admitted: "I—yes I did. I sent the note back. That is correct." She also testified that the physical note was never entered into the court file and that she had "no idea" what happened to it.

REASONS FOR GRANTING THE PETITION

This case satisfies each of this court's criteria under Rule 10: the decision below deepens a conflict among federal and state courts; it sanctions a departure from the constitutional framework governing judicial neutrality and the right to self-representation; and it presents recurring federal questions of exceptional importance.

I. The decision below deepens an intractable conflict on whether ex-parte judicial communication with a deadlocked jury is structural error.

The Minnesota Court of Appeals' holding that an unrecorded, ex-parte communication with a deadlocked jury can be excused as "plain error" squarely conflicts with this court's precedent and deepens a recognized and entrenched split among the federal circuit courts of appeals. This court's review is necessary to establish a uniform rule for this fundamental violation of a criminal defendant's Sixth and Fourteenth Amendments right. As Justice Sotomayor recently explained in dissent from denial of certiorari, unresolved structural Sixth Amendment violations leave defendants without any meaningful avenue for review. See *Crawford v. Mississippi*, 607 U.S. ___ (2025) Sotomayer, J., dissenting from denial of certiorari).

A. The Minnesota Court's decision directly conflicts with this court's precedent in *Remmer* and *U.S. Gypsum Co.*

This court has long held that any private communication or contact with a deliberating juror about the matter pending before the jury is "presumptively

prejudicial.” (Remmer v. United States, 347 U.S. 227, 229 (1954)). The burden rests heavily upon the Government to establish such contact was harmless. This presumption of prejudice is at its apex when the communication comes from the trial judge herself. In United States v. U.S. Gypsum Co., 438 U.S. 422 (1978), this court reversed a conviction where the trial judge engaged in an ex-parte meeting with a single juror, emphasizing that the right to be present is a foundational protection. The court warned that the “central difficulty” of ex-parte proceedings is that they “are not subject to the rigorous adversarial testing that is the norm of an Anglo-American trial”.

The Minnesota court inverted this constitutionally mandated presumption. Instead of requiring the state to prove harmlessness, the court placed the burden on defendant to show prejudice. It found none, reasoning that the unrecorded instruction to a deadlocked jury was merely, “neutral”. This approach flatly contradicts Remmer and Gypsum Co. by treating a presumptively prejudicial error as presumptively harmless.

Because the communication was ex-parte and unrecorded, the reviewing court could not apply the adversarial process that Remmer and Gypsum Co. demand when jury deliberations are influenced outside the parties presence. Where the communication cannot be reconstructed, harmless review becomes speculation rather than adjudication.

B. The Federal Circuits are intractably divided on the Standard of Review for ex-parte judicial communications.

The Ninth Circuit has treated ex-parte judicial communications during jury deliberations as structural error defying harmless-error review. See *United States v. Rosales-Rodriguez*, 289 F.3d 1106, 1111 (9th Cir. 2002). Other state high courts agree. These courts recognize that the absence of a record and the inherent potential for coercion make it impossible for an appellate court to gauge the error's effect, thus mandating reversal.

The Fifth and Seventh Circuits, by contrast, have applied harmless-error analysis to nearly identical facts. See *United States v. Peters*, 349 F. 3d 842, 845 (5th Cir. 2003); *United States v. Pressley*, 100 F. 3d 57, 59 (7th Cir. 1996).

The entrenched conflict means a defendant's constitutional rights depend on geography, precisely the disuniformity Rule 10 exists to correct. A defendant in the Ninth Circuit whose jury receives a secret instruction from the judge may receive a new trial, while a defendant in Minnesota facing the exact same violation does not. This disuniformity undermines the public's confidence in the fairness and integrity of the judicial process. Only this court can resolve this conflict.

C. The unrecorded ex-parte communication in this case was Structural Error that defies Harmless-Error review.

The error here was not merely procedural; it was structural. Structural errors are those "affecting the framework within which the trial proceeds", rather than simply an "error in the trial process itself". *Arizona v. Fulminante*, 499 U.S. 279,

310 (1991). As this court held in *Sullivan v. Louisiana*, 508 U.S. 275 (1993), some constitutional violations necessarily render a trial fundamentally unfair, requiring automatic reversal because their effect is simply unquantifiable. A secret, unrecorded instruction from a judge to a deadlocked jury falls squarely within this class of errors.

First, the error tainted the entire verdict. The jury had reported it was deadlocked. The judge's private instruction to "keep deliberating" was not neutral; it was an exhortation to break the impasse. Coming from the ultimate authority figure in the courtroom, it's potential for coercive effect on the dissenting jurors cannot be overstated. Because the communication was unrecorded, no court can ever know the judge's tone in the response, the context, or the precise affect her words had on the deliberating process. The error thus infected the very framework of the trial. *Waller v. Georgia*, 467 U.S. 39 (1984).

Second, the absence of a record makes harmless-error review impossible. The analysis applied by the Minnesota court was pure speculation. It is fundamentally impossible to declare the error harmless beyond a reasonable doubt when the full scope of that error is unknown. By its very nature, the ex-parte communication here created a void in the record that can never be filled, making a finding of harmlessness a "guess" rather than a judicial determination. As in *Sullivan*, the error deprived defendant of a proper jury verdict, and "the Sixth Amendment requires more than appellate speculation about a hypothetical jury's action." 508 U.S. at 281.

In Judge Wahwassuck's own words, "I believe so, it was something to the effect of if you could keep deliberating a little bit longer." (July 19, 2024 Post Conviction Evidentiary Hearing P8 L8-12), she admits she does not remember the exact wording in her note. So, it would be a guessing game as to the wording and the impact on the deadlocked jury.

Allowing courts to deem such violations "harmless" or "plain" waters down the Sixth Amendment's absolute guarantees. If the right to be present at every critical stage can be breached without consequence, the Amendment's command that and accused "shall enjoy" these rights become conditional rather than constitutional.

II. This court's review is needed to define the scope of a pro se defendant's right to access critical evidence.

A. The denial of the forensic video nullified defendant's Sixth Amendment right to self-representation

The question is not whether this defendant personally deserved access to a copy, but whether any pro se defendant can meaningfully exercise the right of self-representation if the state may deny access to the very evidence required to prepare a defense.

In *Faretta v. California*, 422 U.S. 806 (1975), this court recognized a defendant's Sixth Amendment right to waive counsel and represent himself. This right, however, is not merely the right to stand alone before the court; it is the right to present a defense. As this court clarified in *McKaskle v. Wiggins*, 465 U.S. 168 (1984), the right must be meaningful. It requires that pro se defendants be given a fair opportunity to prepare and present his case.

The trial court's decision to deny defendant a copy of the forensic interview video rendered his *Faretta* right to a hollow formality. The video was not peripheral; it was the state's entire case. The court's rationale that defendant's pro se status made him untrustworthy turned the Sixth Amendment on its head. It used the exercise of a constitutional right as a justification for denying the tools necessary to make the right effective.

The court's order defied Minnesota Statute 634.35, which explicitly provides a mechanism for defendants to receive copies of such evidence. The state, as the enforcer of the law, is held to the highest standard of knowledge and compliance. If

a defendant is not permitted to claim ignorance of the law in his own defense, the court or state surely cannot be permitted to claim ignorance of its own laws when prosecuting him.

Furthermore, the waiver of counsel itself was not knowing and intelligent. A valid waiver under *Faretta* and *Iowa v. Tovar*, 541 U.S. 77 (2004), requires the court to ensure the defendant is aware of the challenges of self-representation. Here, the court never warned defendant that by choosing to represent himself, he would be denied a copy of the most critical piece of discovery in his case. This omission rendered the waiver constitutionally deficient. This court should grant review to clarify that courts cannot penalize a defendant for exercising his *Faretta* right by creating insurmountable discovery barriers. This may seem like a new issue brought up for the first time, however, it most definitely is not, this issue, denying a copy of the forensic disc, had been brought up at every juncture even during the preliminary hearings before the trial which directly ties into a valid waiver to defend himself.

B. The inability to obtain expert review violated defendant's right to present a complete defense.

The right to present a complete defense is a fundamental element of due process. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). This right includes a meaningful opportunity to challenge the reliability of the prosecution's evidence. In a case involving a child's testimony, the reliability of the forensic interview is often the central issue. The techniques used, the suggestibility of the questions, and the

child's demeanor are all critical factors that can only be assessed by an expert viewing the video itself.

By denying defendant a copy of the video, the court made it impossible for an opinion based on a cold transcript or a supervised viewing in a prosecutor's office. This ruling effectively shielded the state's most important piece of evidence from any meaningful adversarial testing, depriving defendant of his only means of challenging its credibility. This is a direct violation of the principles set forth in Crane.

The appellate decision affirming these violations of Constitutional rights allowed another issue that goes against Federal and State Case Law. In *United States of America, Appellee, v. James T. Whited, Appellant*, 11 F.3d 782 (8th Cir. 1993), *State v. Geyman*, 224 Mont. 194 (1986), both cases were reversed for the same reasons as should this case. The forensic interviewer in this case is quoted as saying, "you did, you committed that crime". (Jan 11th, 2023 T P81 L21). This statement is exactly on point as the two cases cited above. However, the state has argued that the trial judge should not have intervened absent an objection to avoid interfering with defendant's trial strategy. But the court did not treat defendant's trial strategy as protected when it denied access to the forensic interview and refused to allow defendant to play portions of the video for the jury.

C. The questions presented are of exceptional National importance.

This case presents questions of exceptional importance that warrants this court's immediate attention.

First, the sanctity of jury deliberations is a cornerstone of our justice system. The issue of ex-parte judicial communication is a recurring problem that directly implicates public confidence in judicial integrity. This court's guidance is necessary to ensure a uniform, nationwide rule that protects jury deliberations from improper outside influence, especially from the judge presiding over the case. Absent this court's intervention, lower courts will continue to apply divergent standards to unrecorded, ex-parte judicial communications with deliberating juries, producing inconsistent outcomes on a recurring Sixth and Fourteenth Amendment problem.

Second, each year, thousands of defendants appear pro se in state courts across the nation. If states are permitted to withhold critical discovery based solely on a defendant's "pro se status", and for "sensitivity", the Sixth Amendment right recognized in *Faretta* becomes a trap for the uncounseled. The right to self-representation is rendered meaningless without the tools to prepare a defense. This court's guidance is urgently needed to ensure that this constitutional right retains practical meaning in every jurisdiction and is not reduced to a hollow formality.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted by,



Lonny S. Glover

Date Corrected:

2-11-2026

~~1-22-2026~~

I, Lonny Glover, do swear that the word count is 3586 according to Microsoft Word Office Professional 2016 in this corrected Writ of Certiorari.



Lonny S. Glover

Date: 2-11-2026