

No. __-____

In The
Supreme Court of the United States

DAMIAN BUCK

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent

**ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MISSISSIPPI**

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QUESTION PRESENTED

Whether the Sixth Amendment's Confrontation Clause permits a State to introduce forensic pathology results and an autopsy through a surrogate pathologist who neither performed nor observed the autopsy first-hand, and whose testimony depends on the truth of an absent pathologist's statements.

PARTIES TO THE PROCEEDINGS BELOW

Damian Buck, Applicant and Petitioner/ Appellant below.

State of Mississippi, Respondent/Appellee

CORPORATE DISCLOSURE STATEMENT

For purposes of Rule 29.6, no party to the proceedings in the Court of Appeals of Mississippi is a nongovernmental corporation.

RELATED PROCEEDINGS

State v. Buck, Cause Number: 2:019-0074-K (Circuit Court of Sunflower County Mississippi) (June 15, 2023, convicted) (July 10, 2023, sentenced)

Buck v. State, 428 So.3d 432 (Miss. 2025) (conviction and sentence affirmed on direct appeal).

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

The Petitioner, Damian Buck, prays for a writ of certiorari to review the judgment of the Supreme Court of Mississippi affirming, on direct appeal, his conviction of second-degree murder and possession of a weapon by a convicted felon.

OPINION BELOW

The opinion of the Mississippi Court of Appeals, Cause No. 2024-00025-COA (Pet. App. A) is reported at *Buck v. State*, 428 So.3d 432 (Miss. 2025), that court's order denying rehearing on December 16, 2025 (Pet. App. B), and the Mississippi Supreme Court's Order denying Buck's Petition for Writ of Certiorari on February 25, 2026. (Pet. App. C).¹

JURISDICTION

The judgment of the Mississippi Court of Appeals was entered on September 2, 2025, and Petition for Writ of Certiorari was denied by the Supreme Court of Mississippi on February 25, 2026. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1257 on the ground that a right or privilege of the defendant which is claimed under the Constitution of the United States has been denied by the State of Mississippi.

¹ The opinion below is attached as Appendix A to this Petition. All citations to that opinion will be to "Pet. App. A" by paragraph. Other appendices to this Petition will be cited as "Pet. App." by letter. Citations to the record below are to the Clerk's Papers and Trial Transcript as "C.P." and "Tr." respectively, by page number, and to trial exhibits as "Trial Ex. S" or "Trial Ex. D" by number.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides that:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him”

STATEMENT OF THE CASE

Damian Buck was charged with murder and found guilty of the lesser-included offense of manslaughter, with a firearm enhancement following a jury trial in the Circuit Court of Sunflower County, Mississippi. Damian Buck was sentenced to a term of twenty (20) years, with five (5) suspended, after serving fifteen (15). A sentence of five (5) years for the firearm enhancement is to run concurrently with the other sentence imposed.

At trial Damian Buck testified he shot Deaubrey Roscoe in self-defense. Damian was 29 years old at the time of the incident. He was friends with the decedent, Deaubrey Roscoe, the two often hung out, sometime cooking bar-be-que together. (Tr. 639). Damiam often loaned money to Deaubrey or let him use his car. (Tr. 647). Damian was at home, when asked to come to Oak Street. (Tr. 641). When he arrived, he went into a bathroom to check on his brother, who had been in a “scuffle” with Deaubrey. (Tr. 643-644). Damian then went outside and saw Deaubrey. After Deaubrey said: “Hey Buck” Damian walked toward him. Damian was wearing a lawfully carried sidearm on his hip. (Tr. 645-646). When he arrived, Damian saw Deaubrey holding a handgun. Damian told him “Man, put your gun up.

Calm down.” (Tr. 646). But Deaubrey was angry. (Tr. 648). The escalation continued and resulted in them standing a few feet apart. Damian’s brother Samuel was nearby. (Tr. 652).

The two men kept talking, Damian trying to diffuse the situation. (Tr. 654). Deaubrey invited Samuel to continue the earlier fight, and Damian said he doesn’t want to fight you. Deaubrey made a hostile response and Damian tried again to diffuse things saying: “[t]his me. This Big Homie you talking to. (Tr. 655). But Deaubrey did not calm down and declared: “I’m fixing to shoot your brother.” (Tr. 655). Deaubrey then pulled his gun on Damian’s brother Samuel. He shot Samuel. (Tr. 655-657). It was at this point, Damian drew his weapon and shot at Deaubrey. (Tr. 657). Meanwhile, Samuel was in the road hollering “I been hit.” At the same time Deaubrey ran towards his yard, Damian ran to his car, and Samuel ran to his house. (Tr. 658-659).

Prior to trial the State produced a letter stating Dr. LeVaughn agreed with the observations and opinion of Dr. Arboe who performed the autopsy in this case. Trial counsel filed a Motion in Limine to Exclude the State Witness Mark LeVaughn and Autopsy findings arguing that the Sixth Amendment confrontation clause demands that Damian be allowed to cross examine the pathologist who actually performed the autopsy. (CP. 77-80). On February 21, 2023, the trial court had a hearing on pretrial motions. (Tr. 51-131). The trial court found Dr. LeVaughn’s testimony admissible. (Tr.111).

At trial Dr. LeVaughn testified that his opinions were consistent with Dr. Arboe's and that Roscoe sustained three gunshot wounds. (Tr. 401). Dr. LeVaughn's opinion was that this wound to the back right shoulder was fatal. (Tr. 412). Dr. LeVaughn testified that there was no photograph showing the entry wound to the back of the decedent's right shoulder and therefore the wound was "not viewable because it wasn't photographed." (Tr. 405, 420). LeVaughn noted the different wound locations indicated that there was movement of the victim and/or the person who shot him. (Tr. 422, 429).

In closing argument, the prosecutor read directly from the autopsy:

¶"Path of the bullet: The bullet creates a hemorrhagic and destructive wound path through the skin and soft tissues of the back and fractures the spinous process of L2, which is your second -- one of the second vertebrae, which is a bone. The other bullet that went through the shoulder, "Path of the bullet: The bullet creates a hemorrhagic and destructive wound path through the skin and the soft tissues of the right arm and exits the right arm through a one centimeter wound centered below the top of the head." And then he goes on to describe, he says, "The bullet then perforates the soft tissues of the back and fractures the right eleventh rib. The bullet then perforates the right lower lung, liver, and penetrates the soft tissues of the abdomen," and that's what he recovered.¶

(Tr. 746-747).

Defense counsel argued that bullets shoot straight and that the bullet tracks are consistent with Damian's version of events that the men were positioned in a triangle and moving at the time of the shooting. (Tr. 760, 765-766, 769).

REASONS WHY THE WRIT SHOULD BE GRANTED

The ruling below defies this Court’s holding in *Smith v. Arizona*, placing it at odds with every other jurisdiction that has addressed this issue. Summary reversal is appropriate here—“the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error.” *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting) (per curiam). At a minimum, this Court should grant review to resolve the split that the decision below created and clarify *Smith*’s application to the common scenario of technical-reviewer testimony.

The decision below conflicts with *Smith*².

The Mississippi Court of Appeals noted in footnote 3 of the opinion that pathologist Dr. LeVaughn provided surrogate testimony based on an autopsy completed by Dr. Arboe. The Court of Appeals found no error because the issue was not raised by appellate counsel and found that LeVaughn’s testimony was based on his own observation. The Court of Appeals also found that any error would be harmless. Pet. App A. ¶12

The Court of Appeals’ finding was error. Dr. LeVaughn’s testimony violated the Sixth Amendment to the Constitution. Damian Buck’s defense was self-defense and the evidence from the autopsy and Dr. LeVaughn’s testimony are central to the jury question of manner and cause of death. Because of the central role of the autopsy

² In the brief in opposition in *Jeffrey Dale Busby v. Mississippi*, No. 25-6885, the State of Mississippi stated that; “[t]his court should summarily vacate the Mississippi Supreme Court’s judgment and remand for further proceedings. The decision below conflicts with *Smith v. Arizona*, 602 U.S. 779 (2024). pp 5-6.

in the State’s case, the State cannot show that it is “clear beyond a reasonable doubt that the error did not contribute to the verdict.” *See Pittman v. State*, 385 So. 3d 1205, 1208 (Miss. 2024) (quoting *Chapman v. California*, 386 U.S. 18, 22 (1967), and *Young v. State*, 99 So. 3d 159, 165 (Miss. 2012)).

In *Smith v. Arizona*, this Court rejected Arizona’s reliance on the testimony of a surrogate expert who had used an absent analyst’s work as a “basis” for his calculations but had no personal knowledge about that work. Arizona offered the evidence provided by the surrogate witness so the jury would believe it—in other words, for its truth. *Smith v. Arizona*, 602 U.S.779, 798-799 (June 21, 2024). *Smith* held that an expert witness cannot present a forensic analyst’s testimonial out-of-court statements by asserting that those statements form the basis for the expert’s opinion. 602 U.S. at 803. Because the forensic analyst’s statements could support the expert’s opinion only if true, the defendant had the right to cross-examine the analyst’s statements. *Id.* In other words, the testifying witness needs personal knowledge of the testimonial facts admitted through his testimony. *Id.* at 796, 799. Allowing a surrogate analyst to testify by forming an “independent opinion” would “end run” the Confrontation Clause’s protections. *Id.* at 799. In light of *Smith*, this Court issued a Grant, Vacate and Remand (“GVR”) in a Texas case involving a pathologist’s surrogate testimony. *Seavey v. Texas*, 145 S. Ct. 368 (Oct. 15, 2024) (state court had rejected confrontation claim, reasoning that the “substitute medical examiner’s testimony, premised upon his independent review of the autopsy file, did not violate the Confrontation Clause.”) (quote from *Seavey v. State*, No. 14-22-00513-

CR, 2023 WL 8588054, at *3 (Tex. App. Dec. 12, 2023), petition for discretionary review refused (Apr. 17, 2024), cert. granted, judgment vacated, 145 S. Ct. 368 (2024))

All of Dr. LeVaughn’s testimony relied on Dr. Arboe’s methods and the assumed truth of his results. Dr. Arboe performed his autopsy and prepared his results with the intention that they be used at trial.

Because of the central role of the autopsy in the State’s case, the State cannot show that it is “clear beyond a reasonable doubt that the error did not contribute to the verdict.” *See Pittman v. State*, 385 So. 3d 1205, 1208 (Miss. 2024) (quoting *Chapman v. California*, 386 U.S. 18, 22 (1967), and *Young v. State*, 99 So. 3d 159, 165 (Miss. 2012)).

The decision below conflicts with five other courts’ post-*Smith* rulings.

The Mississippi Supreme Court’s rule conflicts with five other courts’ decisions on the level of personal knowledge required for a technical reviewer’s testimony to satisfy the Confrontation Clause. The high courts of Maine, Massachusetts, Georgia, and Washington, plus the Fourth Circuit, hold that the person who handles, observes, and tests forensic evidence—the analyst with personal knowledge of those testimonial facts—must be subject to cross-examination to satisfy the Confrontation Clause.

Maine. In *State v. Thomas*, 334 A.3d 686, 702–03 (Me. 2025), a chemist analyzed substances seized from the defendant, determined their weight, and concluded the substances were fentanyl before moving out of state prior to trial. *Id.* The State then sought to offer a technical reviewer’s testimony, which was subject to

cross-examination, as to the weight of the two substances and his “independent opinion” that they contained fentanyl. *Id.* at 701. At trial, the technical reviewer based his testimony on the data that was collected by the absent chemist. *Id.* The Maine Supreme Judicial Court found that the trial court’s reliance on the absent chemist’s “file notes, test results, and sample profile, all generated by and based on [the absent chemist’s] actions, carries the same problem identified by the Supreme Court in *Smith*.” *Id.* at 703. The court held that the testimony of the chemist at trial relied on the truth of out-of-court statements which were testimonial, thus violating the defendant’s Confrontation Clause right post-*Smith*. *Id.*; see also *State v. Gleason*, 339 A.3d 774 (Me. 2025) (same).

Massachusetts. In *Commonwealth v. Gordon*, 266 N.E.3d 369, 373 (Mass. 2025), the analyst who conducted a drug-identification test on a substance seized from the defendant was no longer employed by the State at trial. A supervisor who did not perform or observe the testing reviewed the tests and identified the substances, and the State introduced the test results through the supervisor’s testimony. *Id.* at 375–76. The Massachusetts Supreme Judicial Court concluded from the Court’s reasoning in *Smith* that the supervising analyst’s opinion was dependent on the absent analyst’s out of court testimonial statements, thus making it “‘independent’ in name only.” *Id.* at 392–93. The court held that the supervisor’s testimony based on the absent analyst’s test results violated the Confrontation Clause post-*Smith*. *Id.*

Georgia. In *Watkins v. State*, 912 S.E.2d 574, 585 (2025), an analyst prepared a forensic report of substances seized from the defendant and certified that the substance was cocaine. The analyst ended employment with the State before the defendant’s trial, so the State called a reviewing analyst to testify to the factual assertions in the absent analyst’s report and to “state his own conclusion” about the report. *Id.* at 586. The reviewing analyst neither performed nor observed the testing and never handled or witnessed the substance at issue. *Id.* The Georgia Supreme Court reversed the defendant’s drug conviction, holding that the analyst’s trial testimony relaying “the factual assertions in [the absent analyst’s] report violated the Confrontation Clause under the United States Supreme Court’s decision in *Smith*, and therefore the trial court clearly and obviously erred in admitting it.” *Id.* at 587.

Washington. In *State v. Hall-Haught*, 569 P.3d 315, 318 (Wash. 2025), a technician performed all toxicology testing used against the defendant at trial. A supervisor did not perform or observe the testing but reviewed and signed off on the lab toxicology report, and the State admitted the toxicology report through the supervisor. *Id.* The Washington Supreme Court departed from precedent, finding that their prior case law which “allowed the supervisor’s expert opinion to rely on the nontestifying forensic analyst’s factual statements as the basis for their opinion . . . [was] unconstitutional under *Smith*.” *Id.* at 323. The court held the supervisor’s testimony admitting the lab toxicology report was based on testimonial hearsay and violated the Confrontation Clause post-*Smith*. *Id.*

Fourth Circuit. In *United States v. Seward*, 135 F.4th 161, 168 (4th Cir. 2025), a non-testifying analyst tested DNA samples taken from a crime scene. The State then introduced the DNA sample through the testimony of a DNA expert who reviewed the analyst’s conclusions and provided those conclusions at trial without having tested the samples herself. *Id.* The court found that “*Smith* makes clear that the government may not ‘eva[de]’ the Confrontation Clause by offering testimony that is based on a non-testifying analyst’s work ‘as long as [the testifying expert] bases an independent opinion on that material.’” *Id.* at 168–69. Any approach otherwise would make “*Smith* and several other post-*Crawford* decisions ‘a dead letter and allow for easy evasion of the Confrontation Clause.’” *Id.* The Fourth Circuit held that “this testimony was offered for the truth of the matter asserted and so implicates the Confrontation Clause.” *Id.*

These cases show that, post-*Smith*, courts are routinely rejecting the use of surrogate witnesses—whether technical reviewers, supervisors, or experts—to bootstrap an absent analyst’s testimonial statements. The work of the absent analyst and the testifying witness are inseverable. The latter’s ultimate, scientific conclusion relies entirely on the former: The testifying witness “could opine that the tested substances were [controlled substances] only because he accepted the truth of what [the absent analyst] had reported about her work in the lab.” See *Smith*, 602 U.S. at 798. In contrast, the Mississippi Supreme Court has created a lopsided split by reaffirming its prior case-law, which allows technical reviewers to sidestep the Confrontation Clause.

Prior to this Court's ruling in *Smith v. Arizona*, New Mexico Court of Appeals held that statements in an autopsy report that formed the basis of the trial testimony of a pathologist were testimonial hearsay under the confrontation clause

New Mexico In *State v. Jarmillo* 272 P.3. 682 (N.M. 2011), Dr. Natarajan who at the time was employed at the Lubbock County Texas Medical Examiner's Office performed an autopsy and determined the cause of death was closed head injuries and the manner of death was homicide. The findings of the autopsy report were reviewed, confirmed and signed off by four medical examiners. By the time of trial, Dr. Natarajan had left the County Medical Examiners for private practice and stated he required a fee of \$60,000 for his testimonial services. At trial, the State called Dr. Thomas Parsons, the Deputy Chief Medical Examiner of Lubbock County to establish cause and manner of death. Dr. Thomas was not one of the four reviewing examiners. Over defense objection, the district court admitted the autopsy report and permitted Dr. Parsons to testify to its contents. *Id.* at 684 The New Mexico Court of Appeals held that the autopsy report was testimonial, and the defendant had no opportunity to cross-examine Dr. Natarajan. Therefore, the admission of the autopsy report violated the confrontation clause. *Id.* at 686-687. The court found that the cause and manner of death as intentional rather than accidental was the crux of the case and thus the constitutional violation was harmful error. *Id.* at 688.

This case is an ideal vehicle to decide this important issue.

This Court often rejects a lower court's erroneous legal rule regardless of whether the error might be deemed harmless. *Pitts v. Mississippi* is a prime example:

The Court summarily reversed the Mississippi Supreme Court on the Confrontation Clause issue and remanded the case for further proceedings, including on harmless error: “[O]n remand the State remains free to argue, and the Mississippi Supreme Court remains free to consider, whether the error in this case warrants a new trial under the harmless-error standard.” *Pitts v. Mississippi*, 607 U.S. 16, 146 S. Ct. 413, 417 (2025); see also *Fields v. Colorado*, 145 S. Ct. 1136 (2025) (mem.) (issuing a GVR despite the state’s harmless-error argument); *McFadden v. United States*, 576 U.S. 186, 197 (2015) (remanding for the lower court to consider harmlessness “in the first instance”); *Hedgpeth v. Pulido*, 555 U.S. 57, 62 (2008) (per curiam) (same); *California v. Roy*, 519 U.S. 2, 6 (1996) (per curiam) (same). The same course is appropriate here.

CONCLUSION

The Court should grant the petition and either (i) reverse the decision below and remand for further proceedings or (ii) set the case for argument.

Respectfully submitted,

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