

No. _____

**In the
Supreme Court of the United States**

JOHN WIMSETT,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of Kentucky**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Remmer v. United States*, 347 U.S. 227, 229 (1954), this Court held that “any private communication, contact, or tampering directly or indirectly, with a juror during trial about the matter pending before the jury” is presumptively prejudicial. Subsequently, in *Smith v. Phillips*, 455 U.S. 209, 215-17 (1982), the Court recognized that due process requires a jury capable and willing to decide the case solely on the evidence before it, with the trial judge “ever watchful” to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen. As stated in *Smith*, this Court “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.

Yet the circuits are split on what a defendant is required to show before a trial court must hold an evidentiary hearing so that a defendant has a meaningful opportunity to show the wrongful conduct and prejudice. In this case the trial court denied Petitioner’s motion for an evidentiary hearing even though he presented credible evidence that during the trial jurors consulted an outside source to look up the definition of murder. That is at odds with *Remmer* and *Smith*. Thus, the question presented is:

Whether the Sixth and Fourteenth Amendments of the U.S. Constitution require a trial court to conduct an evidentiary hearing when presented with credible evidence that a jury was exposed to improper extraneous information, or whether the court may refuse to conduct any inquiry and summarily reject the claim for lack of demonstrated prejudice.

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- John Wimsett

Respondent Plaintiff-Appellee below

- Commonwealth of Kentucky

LIST OF PROCEEDINGS

Supreme Court of Kentucky

No. 2024-SC-0189-MR

John Wimsett, *Appellant* v.

Commonwealth of Kentucky, *Appellee*

Final Opinion: March 19, 2026

Rehearing Denial: June 25, 2026

Kentucky 10th Judicial Circuit, Division 2,
Nelson Circuit Court

No. 21-CR-00018

Commonwealth of Kentucky, *Plaintiff* v.

John Wimsett, *Defendant*

Final Judgment: April 3, 2024

Post Verdict Order on Juror Misconduct: April 5, 2024

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
LIST OF PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	vii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
INTRODUCTION	2
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	9
I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S SIXTH AND FOURTEENTH AMENDMENT JURISPRUDENCE REQUIRING MEANINGFUL JUDICIAL INQUIRY INTO EXTERNAL INFLUENCES ON JURORS.	10
II. PETITIONER PRESENTED CREDIBLE EVIDENCE THAT JURORS WERE EXPOSED TO EXTRANEOUS INFORMATION.	12
III. THIS CASE PRESENTS AN IMPORTANT AND RECURRING QUESTION CONCERNING THE SHOWING NECESSARY TO TRIGGER A <i>REMMER</i> HEARING THAT HAS SPLIT THE CIRCUITS.	14
A. First Circuit	15
B. Second Circuit.....	15
C. Third Circuit	16

TABLE OF CONTENTS (Cont.)

	Page
D. Fourth Circuit.....	17
E. Fifth Circuit	17
F. Sixth Circuit.....	17
G. Seventh Circuit.....	18
H. Eighth Circuit	18
I. Ninth Circuit.....	19
J. Tenth Circuit.....	19
K. Eleventh Circuit	20
L. District of Columbia Circuit.....	20
IV. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THESE IMPORTANT ISSUES.	21
CONCLUSION.....	25

TABLE OF CONTENTS (Cont.)

Page

APPENDIX TABLE OF CONTENTS**OPINIONS AND ORDERS**

Memorandum Opinion, Supreme Court of Kentucky (March 19, 2026).....	1a
--	----

Final Judgment of Conviction, Kentucky 10th Judicial Circuit, Division 2, Nelson Circuit Court (April 3, 2024)	51a
--	-----

Order, Kentucky 10th Judicial Circuit, Division 2, Nelson Circuit Court (April 5, 2024)	54a
--	-----

REHEARING ORDER

Order Denying Petition for Rehearing, Supreme Court of Kentucky (June 25, 2026).....	58a
---	-----

CASE DOCUMENTS

Defendant's Motion for a Continuance and for an Evidentiary Hearing Regarding Juror Misconduct (April 2, 2024)	59a
--	-----

Amended Indictment (July 6, 2022)	67a
--	-----

TABLE OF AUTHORITIES

	Page
CASES	
<i>Barnes v. Joyner</i> , 751 F.3d 229 (4th Cir. 2014)	11
<i>Bey v. Rozum</i> , No. 13-235, 2015 WL 12618788 (E.D. Pa. Aug. 21, 2015)	16
<i>Commonwealth v. Wood</i> , 230 S.W.3d 331 (Ky. App. 2007)	7, 9
<i>Conyers v. Commonwealth</i> , 530 S.W.3d 413 (Ky. 2017)	8
<i>Crowe v. Hall</i> , 490 F.3d 840 (11th Cir. 2007)	20
<i>Cunningham v. Shoop</i> , 143 S.Ct. 37 (2022)	23, 24
<i>Cunningham v. Shoop</i> , 23 F.4th 636 (6th Cir. 2022), <i>cert. denied</i> , 143 S.Ct. 37 (2022)	17
<i>Dietz v. Bouldin</i> , 579 U.S. 40 (2016)	21
<i>Godoy v. Spearman</i> , 861 F.3d 956 (9th Cir. 2017)	19
<i>In re Winship</i> , 397 U.S. 358 (1970)	10
<i>Irvin v. Dowd</i> , 366 U.S. 717 (1961)	10

TABLE OF AUTHORITIES (Cont.)

	Page
<i>Loughry v. United States</i> , 983 F.3d 698 (4th Cir. 2020), <i>aff'd en</i> <i>banc</i> , 996 F.3d 729 (4th Cir. 2021), <i>cert.</i> <i>denied</i> , 142 S.Ct. 897 (2022)	17, 23
<i>Mattox v. United States</i> , 146 U.S. 140 (1892)	19
<i>Newsom v. Denton</i> , 193 S.W.2d 643 (Ky. 1946)	8
<i>Porter v. Illinois</i> , 479 U.S. 898 (1986)	23
<i>Remmer v. United States</i> , 347 U.S. 227 (1954) i, 8-15, 17-21, 24	
<i>Smith v. Phillips</i> , 455 U.S. 209 (1982) i, 11, 14	
<i>State v. Murdaugh</i> , 931 S.E.2d 294 (S.C. 2026)	11
<i>Stouffer v. Trammel</i> , 738 F.3d 1205 (10th Cir. 2013)	20
<i>United States v. Blumeyer</i> , 62 F.3d 1013 (8th Cir. 1995)	18
<i>United States v. Boylan</i> , 898 F.2d 230 (1st Cir. 1990)	15
<i>United States v. Butler</i> , 822 F.2d 1191 (D.C. Cir. 1987)	20
<i>United States v. Cheek</i> , 94 F.3d 136 (4th Cir. 1996)	11
<i>United States v. Console</i> , 13 F.3d 641 (3d Cir. 1993)	16

TABLE OF AUTHORITIES (Cont.)

	Page
<i>United States v. Fumo</i> , 655 F.3d 288 (3d Cir. 2011), <i>as amended</i> (Sept. 15, 2011).....	16, 21
<i>United States v. Gallardo</i> , 497 F.3d 727 (7th Cir. 2007)	18
<i>United States v. Gemar</i> , 65 F.4th 777 (5th Cir. 2023).....	17
<i>United States v. Ianniello</i> , 866 F.2d 540 (2d Cir. 1989).....	16
<i>United States v. Johnson</i> , 954 F.3d 174 (4th Cir. 2020)	17
<i>United States v. Moore</i> , 954 F.3d 1322 (11th Cir. 2020)	20
<i>United States v. Spano</i> , 421 F.3d 599 (7th Cir. 2005)	18
<i>United States v. Sun Myung Moon</i> , 718 F.2d 1210 (2d Cir. 1983).....	15, 16

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI	i, 2, 3, 9, 10, 13, 21, 22, 24
U.S. Const. amend. XIV.....	i, 2, 3, 9, 10, 11, 13, 14, 24

STATUTES

28 U.S.C. § 1257(a)	2
KRS 503.055(1)	8

TABLE OF AUTHORITIES (Cont.)

	Page
JUDICIAL RULES	
Fed. R. Evid. 606.....	13
Ky. R. App. Pro. 2(A)(1)	7
 OTHER AUTHORITIES	
Andrew S. Rumschlag, <i>Iceberg Ahead: Why Courts Should</i> <i>Presume Bias in Cases of Extraneous</i> <i>Juror Contacts</i> , 72 CASE W. RES. L. REV. 463 (2021)	22
B. Samantha Helgason, Note, <i>Opening Pandora’s Jury Box</i> , 89 FORDHAM L. REV. 231 (2020)	14, 22
Cynara Hermes McQuillan, <i>How to Impeach A Verdict: A Response to</i> <i>Melanie C. Regis</i> , 97 TEMP. L. REV. ONLINE 1 (2024)	23
Melanie Cecelia Regis, <i>Testing the Validity of A Verdict</i> , 96 TEMP. L. REV. 181 (2024)	22



PETITION FOR A WRIT OF CERTIORARI

Petitioner John Wimsett, by counsel, respectfully requests that a Writ of Certiorari issue to review the not-to-be published Opinion of the Kentucky Supreme Court in the case of *John Wimsett v. Commonwealth of Kentucky*, No. 24-SC-0189-MR, filed on March 19, 2026. (App.1a). The Kentucky Supreme Court denied Petitioner's petition for reconsideration in an Order entered on June 25, 2026. (App.58a).



OPINIONS BELOW

Petitioner appealed from the judgment entered following his conviction for murder in the Nelson Circuit Court. (App.51a). The Nelson Circuit Court issued an Order denying Petitioner's motion for an evidentiary hearing on juror misconduct on April 5, 2024. (App.54a). On March 19, 2026, the Supreme Court of Kentucky issued a not-to-be published Opinion affirming Petitioner's conviction and sentence. (App.1a). Petitioner filed a petition for rehearing with the Kentucky Supreme Court, which denied the petition on June 25, 2026. (App.58a).



JURISDICTION

The Supreme Court of Kentucky issued its opinion on March 19, 2026. (App.1a). Petitioner's timely petition for rehearing was denied on June 25, 2026.

(App.58a). The jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a), as this petition for a writ of certiorari is being filed within ninety days of the Kentucky Supreme Court's denial of Petitioner's petition for rehearing.



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VI:

“In 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. XIV:

“No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .”



INTRODUCTION

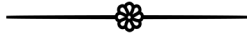
The Constitution guarantees every defendant a trial by an impartial jury whose verdict is based solely upon the evidence presented in open court and the law as instructed by the trial judge. That guarantee is undermined when a juror independently researches the law governing the charged offense and encourages fellow jurors to do the same. This case presents the question of whether a court may deny a defendant's request for an evidentiary hearing and summarily reject a claim of juror misconduct when the defendant

presents credible evidence that such improper conduct occurred during trial.

Petitioner John Wimsett was convicted of murder following a second trial after the first jury was unable to reach a unanimous verdict. Before sentencing, an alternate juror executed a sworn affidavit stating that on the second day of trial, a juror who ended up being part of the jury that delivered the verdict of guilty urged fellow jurors to “look[] up the Kentucky rules on murder” because “they can’t hide the definition of murder.” Wimsett requested an evidentiary hearing so that it could be determined whether jurors had been exposed to extraneous legal information concerning the charged offense. The trial court denied that request without conducting any investigation, concluding that Wimsett did not establish prejudice with the affidavit alone. Despite acknowledging that consulting external sources for the definition of murder would constitute juror misconduct, the Kentucky Supreme Court affirmed, holding that the affidavit was insufficient to demonstrate prejudice. In doing so, the court relied on the very factual uncertainties that an evidentiary hearing is intended to address and resolve.

This case presents an important constitutional issue warranting this Court’s review. The Sixth Amendment guarantees an impartial jury, and due process under the Fourteenth Amendment requires a verdict based solely on the evidence presented at trial. By refusing to investigate sworn allegations that jurors may have been exposed to extraneous information concerning the charged offense, the Kentucky courts denied Petitioner any meaningful opportunity to determine whether the jury’s verdict was tainted by outside influences. Review is warranted to clarify

what is necessary to trigger an evidentiary hearing when a defendant presents credible evidence of juror misconduct in the form of exposure to extraneous information.



STATEMENT OF THE CASE

On March 1, 2024, John Wimsett, an honorably discharged United States Marine veteran, was convicted of murdering Richard Blake Martin at the home of Aarin Seward. (App.51a). Wimsett and Martin both maintained romantic relationships with Seward, and Martin had made his intention to harm Wimsett clear. (VR 2/27/26 at 4:32:25-4:32:43).¹ Martin had previously messaged Seward that “he would kill for her.” (VR 2/27/24 at 4:26:50-4:27:08).

On November 25, 2020, Wimsett was an invited guest in Seward’s home. (VR 2/27/24 at 9:46:50-9:46:53). Martin, who just the previous week had discussed a plan to rough up Wimsett, kidnap him, and leave him tied to a tree (VR 2/27/24 at 3:20:52-3:21:07; 2:00:30-2:00:50), arrived at Seward’s house uninvited. Seward went outside and instructed Martin to stay out of the house. (VR 2/29/24 at 10:16:10-10:16:17). Martin disregarded Seward’s instruction, entered the house, and approached Wimsett. (VR 2/27/24 at 1:19:44-1:19:46; 2:56:30-2:57:44). One of the investigating detectives indicated that Martin was

¹ References to “VR” are references to the Video Record, the official record of proceedings in Kentucky courts. Citations to trial testimony are stated as “VR [date] at [time].” Citations to the trial record are stated as “TR [page number].”

“moving quickly” when he entered the house. (VR 2/27/24 at 3:36:31-3:31:41).

Fearing for his life, Wimsett fired one shot at Martin to stop his advancement. (VR 2/27/24 at 2:28:30-2:28:43). Upon being hit by the shot, Martin stopped his advance. While Martin was standing there, Seward told Martin to get in her car so that she could take him to the hospital. (VR 2/28/24 at 2:05:00-2:05:04). Wimsett left the house through a different door and drove to his parents’ house a few minutes away. Sadly, Martin died as a result of the gun shot fired by Wimsett.

When police arrived at the parents’ home, Wimsett surrendered without incident, advising the police that he shot Martin in self-defense. (VR 2/27/24 at 2:28:30-2:28:43).

Nelson County Sheriff’s Officer Josh Greenwell testified that Seward lied about her continuing relationship with Wimsett multiple times (VR 2/23/24 at 2:28:30-2:28:43), including lying about everything leading up to the encounter between Martin and Wimsett. (VR 2/27/24 at 2:36:48-2:37:00). As a result of those lies Seward told law enforcement that night, Wimsett was immediately arrested and charged with Murder before any actual investigation was undertaken. (VR 2/27/24 at 2:53:05-2:53:30).

The Nelson County Grand Jury indicted Wimsett on the charge of Murder in an amended indictment on July 6, 2022. (App.67a). Wimsett’s first trial ended in a hung jury. (TR 256). In a second trial, the jury was instructed on the offenses of Murder, Second Degree Manslaughter, and Reckless Homicide. (TR 357, 359-62). Wimsett was convicted of Murder, with the jury

recommending a sentence of twenty-five years in prison. (TR 519-29, App.51a-52a).

Before Wimsett was sentenced, an investigator interviewed some of the jurors in the case. (TR 450). During the course of his investigation, the investigator interviewed one of the alternate jurors who sat on the jury for the entire trial but was excused prior to deliberations. (*Id.*). The alternate juror informed the investigator that a female member of the jury who later deliberated on the case made the following troubling comment to her, and in the presence of other jurors, on the second day of trial: “I hope you all looked up the Kentucky rules on murder, they can’t hide the definition of murder.” (*Id.*). The alternate juror described the incident in an affidavit dated March 29, 2024. (TR 452, App.63a).

In light of the newly discovered information provided by the alternate juror, Wimsett moved the court to continue his sentencing and to set an evidentiary hearing to obtain more information relating to the alternate juror’s allegations. (TR 449-52, App.59a). Wimsett submitted the alternate juror’s affidavit in support of his motion. (App.63a).

The trial court denied Wimsett’s motion and sentenced Wimsett to 25 years in prison. (TR 519-20, App.51a). In its written order denying the motion for an evidentiary hearing, the trial court stated that it “had reviewed several appellate opinions dealing with jurors who consulted outside sources for definitions” and concluded that the affidavit alone did not demonstrate prejudice because it did not indicate that the juror had explained or shared the definition of murder with other jurors. (TR 527, App.56a).

In denying the motion, the trial court cited and relied on *Commonwealth v. Wood*, 230 S.W.3d 331, 333 (Ky. App. 2007), for the proposition that a juror looking up a definition was not per se reversible error. (*Id.*) While that may or may not be true, the trial court ignored the two most important aspects of *Wood*: (1) the trial court in *Wood* gave the defendant the evidentiary hearing that Wimsett sought here; and (2) after considering the evidence presented at that evidentiary hearing, the Kentucky Court of Appeals held that because the jury was instructed not only on first-degree rape but also on first-degree assault, the defendant's substantial rights were prejudiced by the juror's overt act in improperly using an outside source to look up only one of the offenses with which the defendant was charged and on which the jury was instructed (here, the jury was instructed not only on Murder but also on Manslaughter Second Degree and Reckless Homicide).

Wimsett appealed his conviction to the Kentucky Supreme Court.² Wimsett argued to the Kentucky Supreme Court that the trial court erred in failing to conduct an evidentiary hearing after he presented credible evidence of juror misconduct.

On March 19, 2026, the Kentucky Supreme Court issued its Opinion affirming Wimsett's conviction and sentence. (App.1a). The court held that, assuming Martin's entry into Seward's house was unlawful, it

² Wimsett's appeal was directly to the Kentucky Supreme Court pursuant to Kentucky Rule of Appellate Procedure 2(A)(1), which provides that an appeal from a judgment imposing a sentence of imprisonment for 20 years or more shall be taken directly to the Kentucky Supreme Court.

was not “forcible” for purposes of Kentucky’s Castle Doctrine (App.15a),³ even though Kentucky law provides that an unauthorized entry into another’s house is considered forceful. *See Newsom v. Denton*, 193 S.W.2d 643, 644 (Ky. 1946).

With respect to the juror misconduct issue, the court acknowledged that “it would certainly be misconduct for a juror to look to external sources for the definition of murder.” (App.49a). Nevertheless, it concluded that the affidavit was insufficient to establish prejudice and held that the trial court did not err by denying Wimsett’s request for an evidentiary hearing. (*Id.*). The court specifically held that the affidavit “was insufficient to establish a reasonable probability or likelihood that the juror misconduct affected the verdict. . . .” (App.50a).

On April 8, 2026, Wimsett filed a petition for rehearing, arguing that the trial court’s refusal to hold an evidentiary hearing to explore the alleged misconduct deprived him of his constitutional right to an impartial jury deciding the case solely on the evidence presented in court and as instructed by the court. Wimsett pointed out that the affidavit was not intended to establish the juror misconduct but that, under *Remmer v. United States*, 347 U.S. at 227, and *Conyers v. Commonwealth*, 530 S.W.3d 413 (Ky. 2017), the affidavit was credible evidence of juror misconduct that called for the court to hold an evidentiary hearing. (*Id.*). The Kentucky

³ *See* KRS 503.055(1) (person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm when using defensive force if the person against whom the defensive force was used was in the process of unlawfully and forcibly entering a dwelling).

Supreme Court denied the petition on June 25, 2026. (App.58a).



REASONS FOR GRANTING THE PETITION

Certiorari is warranted because the decision below departs from this Court's precedent by effectively requiring Petitioner to prove prejudice before obtaining the hearing necessary to prove prejudice. Despite credible evidence that a juror consulted outside legal information concerning the definition of murder⁴ and encouraged other jurors to do the same, the Kentucky courts refused to conduct any inquiry into the misconduct. This case therefore presents an important opportunity to clarify when the Sixth and Fourteenth Amendments require judicial investigation of juror misconduct and what is necessary to trigger a *Remmer* hearing, an issue on which the lower courts are split.

⁴ The sworn testimony from the alternate juror's affidavit indicated that the juror made the statement about looking up the definition of murder but made no comment about looking up the definition of self-defense or any terms concerning the lesser offenses with which Petitioner could have been charged, and in fact on which the jury was instructed. This case seems indistinguishable from *Commonwealth v. Wood*, 230 S.W.3d at 331. Yet the defendant in *Wood* was granted an evidentiary hearing while Wimsett was not. Thus, even within the same jurisdiction, *Remmer* is not being applied uniformly.

I. The Decision Below Conflicts with This Court's Sixth and Fourteenth Amendment Jurisprudence Requiring Meaningful Judicial Inquiry into External Influences on Jurors.

This Court should grant certiorari because the Kentucky Supreme Court Opinion conflicts with longstanding constitutional principles governing juror exposure to extraneous information. The Sixth Amendment guarantees a defendant's right to trial by an impartial jury, and the Fourteenth Amendment guarantees due process of law. Together, those provisions require that a defendant's guilt be determined solely upon the evidence admitted in open court and the law as instructed by the trial judge. *See, e.g., Irvin v. Dowd*, 366 U.S. 717 (1961) (holding that the right to jury trial guarantees a fair trial by impartial jurors and that a juror's verdict must be based upon evidence developed at trial); *In re Winship*, 397 U.S. 358 (1970) (emphasizing that Due Process protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged).

This Court has long recognized that outside influences on jurors threaten those constitutional guarantees. For example, in *Remmer v. United States*, 347 U.S. at 227, this Court explained that "any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury" is presumptively prejudicial. The burden rests heavily upon the Government to establish, after notice and hearing, that the alleged conduct was harmless. *Id.* *Remmer* does not require a defendant to prove prejudice before a hearing is

conducted. Rather, the hearing is the mechanism through which a court determines whether prejudice occurred.

This principle was reiterated in *Smith v. Phillips*, 455 U.S. at 209, which held that due process entitles a defendant to a jury capable and willing to decide the case solely on the evidence before it, with the trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen. Thus, while due process does not require automatic reversal whenever a juror is placed in a compromised position, it does require a meaningful inquiry sufficient to determine whether the defendant received the impartial jury guaranteed by the Constitution. *Id.* at 215-17. Recent decisions confirm that *Remmer* continues to require judicial inquiry into credible allegations of jury influence. *See, e.g., State v. Murdaugh*, 931 S.E.2d 294, 302 (S.C. 2026), quoting *Barnes v. Joyner*, 751 F.3d 229, 243 (4th Cir. 2014) (“[A] defendant [is] entitled to a hearing when the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury.”). And once that threshold is met, the State bears the heavy burden of proving “there is no reasonable possibility that the verdict was affected by the contact.” *Id.*, quoting *United States v. Cheek*, 94 F.3d 136, 142 (4th Cir. 1996).

The Opinion of the Kentucky Supreme Court departs from those principles. Rather than investigating a credible allegation that a juror consulted extraneous legal information concerning the charged offense (and encouraged others to do so), the Kentucky courts rejected Petitioner’s request for an evidentiary hearing

on grounds that the affidavit alone did not establish prejudice. That approach shifts the burden of proof established by *Remmer*. A hearing should be held before making such determination.

II. Petitioner Presented Credible Evidence that Jurors Were Exposed to Extraneous Information.

Petitioner presented a sworn affidavit from an alternate juror reporting that, during trial, a juror who later deliberated in the case stated: “I hope you all looked up the Kentucky rules on murder, they can’t hide the definition of murder.” The affidavit further indicated that the statement was made in the presence of other jurors, less than halfway through the trial. The allegation concerned independent legal research regarding the very crime for which Petitioner was being tried, a crime the trial court is tasked with defining for the jury.

Petitioner did not seek to overturn the verdict based solely on the affidavit. Rather, he requested an evidentiary hearing to determine the extent to which jurors had been exposed to extraneous information. At that evidentiary hearing, Petitioner could have further developed evidence that the deliberating juror used an outside source to look up the definition of murder on the second day of trial. But the trial court denied Petitioner’s request for an evidentiary hearing without questioning any juror or conducting any investigation. The Kentucky Supreme Court affirmed, emphasizing that the affidavit did not identify the juror who made the statement, establish that the juror actually researched the definition of murder, explain the statement’s context, or show whether other jurors

heard or acted upon it. But those unanswered questions were the very reason an evidentiary hearing was necessary and required under this Court's opinion in *Remmer* and why Petitioner requested an evidentiary hearing. By presuming the absence of prejudice from an undeveloped record, the Kentucky courts engaged in the very speculation that *Remmer* was designed to prevent.

While the Kentucky courts effectively required Wimsett to prove prejudice before obtaining a hearing, he, like most defendants, lacked the means to do so. Defendants cannot compel jurors to submit to questioning, testify under oath, or produce evidence. Moreover, longstanding limitations on post-verdict inquiry, such as Federal Rule of Evidence 606's general prohibition against juror testimony concerning deliberations, further restrict a defendant's ability to determine whether extraneous information affected the jury. As a practical matter, evidence of prejudice rarely can be developed without court intervention.

That reality explains why the Sixth and Fourteenth Amendments require judicial inquiry once a credible allegation of juror misconduct is presented. The decision below reverses that framework and imposes an impossible burden on defendants like Petitioner. While Petitioner was able to talk to a juror and obtain the evidence concerning the clearly inappropriate actions of another juror, it is the court that has the authority to conduct an evidentiary hearing, hear the evidence, and decide whether the defendant is entitled to a new trial. Petitioner was denied such a hearing because he could not establish prejudice, yet he could not establish prejudice because he was denied a hearing. The Sixth Amendment right to an impartial jury and the

Fourteenth Amendment right to due process cannot depend upon a defendant's ability to prove facts only the court can uncover through use of its powers that a defendant does not possess.

III. This Case Presents an Important and Recurring Question Concerning the Showing Necessary to Trigger a *Remmer* Hearing that has Split the Circuits.

Although *Remmer* and *Smith* support the proposition that allegations of juror influence require judicial inquiry, lower courts have adopted various standards governing when such an inquiry must occur. As shown by the following discussion, there is no uniformity in how *Remmer* has been interpreted and applied by the Circuits. As one commentator observed:

Ultimately, the sporadic handful of Supreme Court cases on this matter have confused circuits about what contact to presume prejudicial and by which standard to evaluate alleged taint. Circuits have therefore diverged in their interpretations of *Remmer's* presumption. While they agree that a prima facie showing entitles a defendant to a hearing, *Remmer* left unanswered whether that showing presumes prejudice and reallocates the burden of proof to the government. The perceived ambiguity of, first, whether *Remmer* creates a burden-shifting framework and, second, whether subsequent cases dissolved its standard has challenged courts for years.

B. Samantha Helgason, Note, *Opening Pandora's Jury Box*, 89 FORDHAM L. REV. 231, 242 (2020).

The approaches taken by the Circuits indeed are non-uniform:

A. First Circuit

The First Circuit does not require a trial court to conduct an evidentiary hearing even when there is a colorable claim of jury misconduct. Rather, when a colorable claim of juror misconduct surfaces, “the district court has broad discretion to determine the type of investigation. . . . The trial court may, but need not, convene a fullblown evidentiary hearing.” *United States v. Boylan*, 898 F.2d 230, 258 (1st Cir. 1990). The First Circuit further held in *Boylan* that the presumption of prejudice established in *Remmer* is limited “to cases of significant ex parte contacts with sitting jurors or those involving aggravated circumstances far beyond what has been shown here.” *Id.* at 261.⁵

B. Second Circuit

The Second Circuit has stated a strong aversion to granting a defendant an evidentiary hearing, directing district courts that they should be reluctant “to haul jurors in after they have reached a verdict in order to probe for potential instances of bias, misconduct or extraneous influences.” *United States v. Sun Myung Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983). Its rationale is that “post-verdict inquiries may lead to evil consequences: subjecting juries to harassment, inhibiting juryroom deliberation, burdening courts with meritless applications, increasing temptation for jury tampering and creating uncertainty in jury verdicts.” *United*

⁵ *Boylan* involved the jury being exposed to a magazine article describing one of the defense counsel as an attorney who routinely represented mobsters. *Id.* at 258 n.17.

States v. Ianniello, 866 F.2d 540, 543 (2d Cir. 1989). Thus, while the Second Circuit has reluctantly recognized that a trial court “is required to hold a post-trial jury hearing when reasonable grounds for investigation exist,” *Moon*, 718 F.2d at 1234, it limits what constitutes “reasonable grounds” calling for an evidentiary hearing to when “there is clear, strong, substantial and incontrovertible evidence, that a specific, nonspeculative impropriety has occurred which could have prejudiced the trial of a defendant.” *Id.* (internal citation omitted).

C. Third Circuit

The Third Circuit requires investigation by the trial judge if there is “reason to believe” that jurors have been exposed to prejudicial information. *United States v. Console*, 13 F.3d 641, 669 (3d Cir. 1993) (noting that the trial judge is obligated to investigate the effect of that exposure on the outcome of the trial). However, courts may decline to hold an evidentiary hearing absent “substantial prejudice” resulting from the jury’s exposure. *United States v. Fumo*, 655 F.3d 288, 304 (3d Cir. 2011), *as amended* (Sept. 15, 2011). A district court within the Third Circuit has recognized that courts may presume prejudice when a defendant alleges that extraneous information or an outside influence affected a juror. *See Bey v. Rozum*, No. 13-235, 2015 WL 12618788 (E.D. Pa. Aug. 21, 2015) (“In some instances where the allegations of juror misconduct are readily supported and of sufficient magnitude, the trial court may infer prejudice and be required to hold a hearing to determine the extent and existence of such prejudice. . . .”).

D. Fourth Circuit

The Fourth Circuit has interpreted *Remmer* as calling for an evidentiary hearing when the defendant's allegation of improper jury influence is credible and the influence is of such character as to reasonably draw into question the integrity of the trial proceedings. *Loughry v. United States*, 983 F.3d 698, 705 (4th Cir. 2020), *aff'd en banc*, 996 F.3d 729 (4th Cir. 2021), *cert. denied*, 142 S.Ct. 897 (2022). In light of how easy access to improper outside influences has become, "courts must become more circumspect in undertaking to guard jurors from inappropriate contacts and communications during trial." *Id.* A defendant in the Fourth Circuit is entitled under *Remmer* to a rebuttable presumption that the external influence prejudiced the jury's ability to remain impartial. *United States v. Johnson*, 954 F.3d 174, 179 (4th Cir. 2020).

E. Fifth Circuit

The Fifth Circuit recognizes that an evidentiary hearing is "ordinarily" appropriate when there is an allegation of juror bias. *United States v. Gemar*, 65 F.4th 777, 780 (5th Cir. 2023). The Fifth Circuit in *Gemar* held that the district court had abused its discretion in denying the defendant's request for an evidentiary hearing "to develop a factual record in the district court in support of a new trial." *Id.* at 781.

F. Sixth Circuit

The Sixth Circuit has held that any "colorable allegation" of private communication with a juror concerning the matter on trial entitles a defendant to a *Remmer* hearing. *Cunningham v. Shoop*, 23 F.4th 636, 648 (6th Cir. 2022), *cert. denied*, 143 S.Ct. 37 (2022). Regardless of the specific type of misconduct,

“the principle is the same: a defendant must be afforded a chance to prove the juror’s bias in a *Remmer* hearing.” *Id.* at 651 (quoting *Remmer*). But the Sixth Circuit has abandoned the presumption of prejudice this Court established in *Remmer*, instead requiring a defendant bringing a challenge based on jury misconduct to show that the juror’s alleged contact caused actual bias. *Id.*

G. Seventh Circuit

The Seventh Circuit holds that a hearing is required only if the extraneous communication to the juror is “of a character that creates a reasonable suspicion that further inquiry is necessary to determine whether the defendant was deprived of his right to an impartial jury.” *United States v. Gallardo*, 497 F.3d 727, 736 (7th Cir. 2007), quoting *United States v. Spano*, 421 F.3d 599, 605 (7th Cir. 2005). The Seventh Circuit is equivocal on the continued validity of the *Remmer* presumption of prejudice; while recognizing that extrajudicial communications with a juror aimed at influencing the jury’s verdict “may” be presumed to be prejudicial, the presumption of prejudice may not apply based on the facts of a particular case. *Id.* at 735.

H. Eighth Circuit

In the Eighth Circuit, if the juror’s extrinsic contact concerns either a question of law or related to factual evidence at trial, the trial court is to employ an objective test to determine if a hypothetical “typical” juror would have been affected by the contact. *United States v. Blumeyer*, 62 F.3d 1013, 1016 (8th Cir. 1995). In making that inquiry, the court can consider (1) the manner in which the juror received the extraneous

information, (2) the length of time the information was available to the jury, (3) whether the information was received before or after deliberations, and (4) the reasonable likelihood that information influenced the jury. *Id.* at 1017.

I. Ninth Circuit

The Ninth Circuit has described the *Remmer* framework as being “straightforward”:

When a defendant alleges improper contact between a juror and an outside party, the court asks at step one whether the contact was “possibly prejudicial.” *Mattox*, 146 U.S. at 150, 13 S.Ct. 50. If so, the contact is “deemed presumptively prejudicial” and the court moves to step two, where the “burden rests heavily upon the [state] to establish” the contact was actually “harmless.” *Remmer*, 347 U.S. at 229, 74 S.Ct. 450. If the state does not prove harmlessness, the court sets aside the verdict. When the presumption 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.” *Id.* at 229–30, 74 S.Ct. 450.

Godoy v. Spearman, 861 F.3d 956, 962 (9th Cir. 2017).

J. Tenth Circuit

The Tenth Circuit has recognized that trial courts have a duty to hold an evidentiary hearing under *Remmer* when there is “credible evidence” of tampering. *Stouffer v. Trammel*, 738 F.3d 1205, 1213 (10th Cir.

2013). The Tenth Circuit is unequivocal on the issue, stating that a trial court’s duty to conduct a *Remmer* hearing when genuine concerns of improper juror contact arises “is clearly established by the Supreme Court.” *Id.* at 1214. The proper inquiry for this type of hearing is whether the unauthorized conduct or contact is potentially prejudicial. *Id.*

K. Eleventh Circuit

In the Eleventh Circuit, “the *Remmer* presumption entitles a defendant to a hearing in the trial court to ascertain actual prejudice following an allegation of extrinsic contacts with the jury.” *Crowe v. Hall*, 490 F.3d 840, 847 (11th Cir. 2007). A district court must conduct a *Remmer* hearing when there is evidence of outside influence. *United States v. Moore*, 954 F.3d 1322, 1332 (11th Cir. 2020). While the trial court in *Moore* did not hold an evidentiary hearing, it did make specific inquiry relating to the two jurors allegedly influenced by outside sources. *Id.*

L. District of Columbia Circuit

The D.C. Circuit does not require trial courts to hold an evidentiary hearing when there is an allegation of juror misconduct. Rather, a trial judge in those circumstances “has broad discretion to fix the exact procedures by balancing the need to make a sufficient inquiry against the concern that the inquiry not create prejudicial effects by unduly magnifying the importance of an insignificant occurrence.” *United States v. Butler*, 822 F.2d 1191, 1196 (D.C. Cir. 1987). As part of whatever procedure the trial court deems fit, the court “then determines whether the exposure was prejudicial or harmless. . . .” *Id.*

IV. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THESE IMPORTANT ISSUES.

The Sixth Amendment entitles a defendant to trial by an impartial jury. The showing that must be made concerning improper juror misconduct directly implicates this Sixth Amendment right and thus calls for a uniform standard to be applied by courts in which juror misconduct challenges are made. That is all the more true today, when a juror's access to outside influences through the internet is far easier than when *Remmer* was decided in 1954.

This Court recognized the dangers facing jury impartiality in light of technology advances in *Dietz v. Bouldin*, 579 U.S. 40, 51 (2016), recognizing that it is “a now-ingrained instinct to check our phones whenever possible.” As this Court further recognized, a juror can conduct research on their phone with the touch of a finger. *Id.* The potential of exposure to extraneous information through the internet or social media “now dwarf[s] the previously held concern that a juror may be exposed to a newspaper article or television program.” *United States v. Fumo*, 655 F.3d at 331 (Nygaard, J., concurring in part). Thus, the vigilance with which this Court tasked trial courts in *Remmer* is even more important now, since the ability to engage in misconduct is so much more pervasive.

While some courts may have remained true to their appointed task, this case establishes that not all courts are applying the same vigilance. Indeed, the standard for granting a defendant an evidentiary hearing under *Remmer* is stated differently by almost every court to consider the issue. In Kentucky, as this case establishes, a trial court has no obligation to hold

an evidentiary hearing even when sworn, credible evidence of juror misconduct is presented.

Legal scholars have recognized the growing circuit split and explained why these issues call for a uniform application only this Court can establish. *See, e.g.,* B. Samantha Helgason, Note, *Opening Pandora’s Jury Box*, 89 FORDHAM L. REV. at 242 (“In 1954, the Court first established that a prima facie case of jury tampering presumes prejudice to a defendant’s Sixth Amendment right to a fair trial. Over the almost forty years following, the Court developed its framework by defining criteria for lower courts to utilize when identifying potential intrusions on that right and, once detected, by supplying instructions to redress them. Circuit courts are split over how they interpret these foundational cases, and they ultimately contemplate them as contradictory instead of complementary. Further, circuits’ varying treatment of habeas corpus has overlaid the existing split with even more ambiguity.”); Andrew S. Rumschlag, *Iceberg Ahead: Why Courts Should Presume Bias in Cases of Extraneous Juror Contacts*, 72 CASE W. RES. L. REV. 463, 497 (2021) (“To ensure that the Sixth Amendment’s impartial-jury guarantee is equally available to all defendants, courts must respond to extraneous contacts uniformly.”); Melanie Cecelia Regis, *Testing the Validity of A Verdict*, 96 TEMP. L. REV. 181, 231 (2024) (“While the Supreme Court declined to rectify the circuit split on the issue in its most recent terms, it should do so sooner rather than later to ensure that defendants are treated equally in their request for a hearing and that neither due process nor Sixth Amendment rights are trampled.”) (emphasis in original); Cynara Hermes McQuillan, *How to Impeach A Verdict: A Response to*

Melanie C. Regis, 97 TEMP. L. REV. ONLINE 1, *2 (2024) (“Professor Regis calls for the Supreme Court to resolve the circuit split and makes a compelling argument that failure to resolve this split ‘leaves defendants to confront confusing and unfair procedural standards’ when seeking post-conviction relief as a result of juror misconduct. This is a valid concern.”) (internal citation omitted).

This Court recently denied petitions asking this Court to resolve the issues surrounding this important Constitutional right to an impartial jury on two occasions. *See Loughry v. United States*, 142 S.Ct. 897 (2022); *Cunningham v. Shoop*, 143 S.Ct. 37 (2022). In *Cunningham*, Justice Thomas (joined by Justices Alito and Gorsuch) dissented and indicated they would have granted certiorari and issued a summary reversal. *See id.* In the earlier case of *Porter v. Illinois*, 479 U.S. 898 (1986), Justice Marshall, joined by Justice Brennan, dissented from the denial of a writ petition because the trial court’s refusal to grant the defendant an evidentiary hearing prevented the defendant from even having “the opportunity of demonstrating prejudice due to juror bias. This violated his right to due process and leaves in doubt the impartiality of the jury that convicted him in this capital case. “*Id.* at 901 (Marshall, J., dissenting).

The issue persists throughout federal and state courts, and those courts have done nothing to address or narrow the split that exists and seems to be widening. A different standard applies from jurisdiction to jurisdiction, and Petitioner had the misfortune of being tried in a state court that clearly has a different view of what the Constitution requires than the view held by other courts. This case presents a good example

of the different standards being applied; Petitioner, a defendant in a Kentucky state court proceeding, received no hearing at all while a defendant in a federal criminal proceeding down the street “must be afforded a chance to prove the juror’s bias in a *Remmer* hearing.” *Cunningham v. Shoop*, 23 F.4th at 651 (quoting *Remmer*). Until this Court acts, the showing necessary to invoke the protections recognized in *Remmer* will remain unclear and vary from court to court. This case presents an opportunity to resolve that question and clarify the constitutional standard that should be applied to all cases involving these key Sixth Amendment and Fourteenth Amendment protections.



CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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