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In the
Supreme Court of the United States

TONY DAUGHERTY, *Petitioner,*

v.

DENNIS DINGUS, Warden, *Respondent.*

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

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Dated: June 23, 2026

I. QUESTION PRESENTED FOR REVIEW

Petitioner was charged in West Virginia with numerous counts arising from the alleged sexual abuse of his son. While the jury was deliberating on the charges, a member of the jury lied to his fellow jurors about knowing Petitioner and his family and expressed not only his fear should Petitioner not be convicted, but that his fellow jurors should share that fear. Petitioner was eventually convicted on only four of the twelve counts on which he went to trial in a nonsensical verdict.

This Petition presents the issue of whether a juror's false statement that he knows the defendant and his family, combined with expressions of fear should the defendant be acquitted and exhortations that other jurors should feel the same, constitute an "external influence" on the jury that deprived Petitioner his right to an impartial jury as guaranteed by the Sixth Amendment.

II. LIST OF ALL PARTIES AND RELATED CASES

PARTIES

- Petitioner – Tony Daugherty
- Respondent – Dennis Dingus, Superintendent

DIRECTLY RELATED PROCEEDINGS

- *Daugherty v. Dingus*, No. 5:12-cv-00043, U.S. District Court for the Southern District of West Virginia. Judgment entered October 2, 2023; Certificate of Appealability denied on November 6, 2023.
- *Daugherty v. Dingus*, Appeal No. 23-7016, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on March 30, 2026

III. TABLE OF CONTENTS

I.	QUESTIONS PRESENTED FOR REVIEW	1
II.	LIST OF ALL PARTIES AND RELATED CASES.....	2
III.	TABLE OF CONTENTS	3
IV.	TABLE OF AUTHORITIES	5
V.	OPINIONS BELOW.....	8
VI.	JURISDICTION.....	8
VII.	STATUTES AND REGULATIONS INVOLVED.....	8
VIII.	STATEMENT OF THE CASE	9
A.	Federal Jurisdiction	9
B.	Facts Pertinent to the Issue Presented	10
1.	Trial.....	11
a.	The prosecution case.....	11
b.	The defense case	14
c.	Deliberation & Verdict.....	16
2.	Allegations of juror misconduct arise after trial.	16
3.	Daugherty's convictions are affirmed by West Virginia courts.	19
4.	Daugherty seeks relief in federal court.	21
5.	The Fourth Circuit affirms.....	24

IV. TABLE OF AUTHORITIES

Cases

<i>Allen v. United States</i> , 164 U.S. 492 (1896)	16, 30, 31
<i>Barnes v. Joyner</i> , 751 F.3d 229 (4th Cir. 2014)	27
<i>Brooks v. Harris</i> , 495 S.E.2d 555 (W. Va. 1997)	20
<i>Daugherty v. Dingus</i> , 171 F.4th 326 (4th Cir. 2026)	8, 24, 25
<i>Irvin v. Dowd</i> , 366 U.S. 717 (1961)	27
<i>McDonough Power Equip., Inc. v. Greenwood</i> , 464 U.S. 548 (1984)	27
<i>Pena-Rodriguez v. Colorado</i> , 580 U.S. 206 (2017)	27
<i>Robinson v. Polk</i> , 438 F.3d 350 (4th Cir. 2006)	27, 28
<i>State ex rel. Trump v. Hott</i> , 421 S.E.2d 500 (W. Va. 1992)	20
<i>State v. Daugherty</i> , 650 S.E.2d 114 (W. Va. 2006)	10, 11, 16, 17, 19, 20, 29, 31
<i>State v. Halstead</i> , 791 N.W.2d 805 (Iowa 2010)	32
<i>State v. Hose</i> , 419 S.E.2d 690 (W. Va. 1992)	32
<i>State v. Sayles</i> , 244 A.3d 1139 (Md. Ct. App. 2021)	32

V. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, *Daugherty v. Dingus*, 171 F.4th 326 (4th Cir. 2026), is published and attached to this Petition as Appendix A. The district court's order denying Daugherty's petition under 28 U.S.C. § 2254 is attached to this Petition as Appendix B. The magistrate judge's Proposed Facts and Recommendations, which were adopted by the district court, is attached as Appendix C.

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on March 30, 2026. No petition for rehearing was filed. This Petition is filed within 90 days of the date the court's entry of that judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

The issue in this Petition requires interpretation and application of the Sixth Amendment to the United States Constitution, which provides, in pertinent part:

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

As well as interpretation and application of the Fourteenth Amendment to the United States Constitution, which provides, in pertinent part:

Section 1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law

As well as interpretation and application of 28 U.S.C. § 2254, which provides, in pertinent part:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction

On December 6, 2011, Tony Daugherty filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. JA23.¹ While initially filed in the Northern District of West Virginia, the case was transferred to the Southern District of West Virginia. JA344. The district court had subject matter jurisdiction under 28 U.S.C. § 2241. The district court entered its order denying Daugherty's petition for relief under § 2254 on October 2, 2023. JA557-565. On October 11, 2023, Daugherty filed a timely notice of appeal. JA567. On November 6, 2023, the district court denied Daugherty's motion for a certificate of appealability. JA568-569. Daugherty initially filed a *pro se* brief with the Fourth Circuit, which granted him a

¹ "JA" refers to the Joint Appendix that was prepared in this case for the appeal to the Fourth Circuit.

certificate of appealability. *Daugherty v. Dingus*, Appeal No. 23-7016, Dkt. Nos. 12, 21. The Fourth Circuit had appellate jurisdiction under 28 U.S.C. § 2253 and 28 U.S.C. § 1291.

B. Facts Pertinent to the Issue Presented

This case arose from allegations more than two decades ago that Daugherty sexually abused his minor son, TJ.² TJ was born in 1991 to Daugherty and his wife, Rebecca Daugherty (“Rebecca”). In July 1998, Rebecca and TJ left the marital home and moved to a women’s shelter. While there, allegations arose that TJ had been sexually abused by Daugherty. TJ was subsequently committed to a psychiatric institution on numerous occasions due to behavioral problems. At that time, he made allegations that Daugherty had sexually abused him. In 2001, Daugherty was charged with 16 counts of sexual offenses, including sexual assault, incest, and sexual abuse by a parent. After four counts were dismissed by the state, Daugherty was acquitted on eight counts and convicted on four counts at trial. *State v. Daugherty*, 650 S.E.2d 114, 115 (W. Va. 2006). The issue in this case is whether Daugherty’s convictions violated his constitutional rights because one of the jurors on his case stated (falsely) that he knew Daugherty and that he feared for the safety of his family if Daugherty was not convicted and that other jurors should similarly fear.

² As has been the practice throughout this litigation, the minor will be referred to only by initials.

1. Trial

Trial on the charges against Daugherty began in September 2004.³ During jury selection, Juror McBride indicated that he knew one of the potential witnesses.⁴ However, he did not indicate that he knew anyone else involved with the case, including Daugherty, and remained silent when the trial judge asked if any of the jurors had any knowledge about the case that might prejudice them. JA587. Juror McBride was also questioned individually at the bench. JA637.

a. The prosecution case

Rebecca testified that prior to learning about TJ's allegations of sexual abuse while they were at the women's shelter, TJ had told her "daddy was being mean to him," but hadn't mentioned sexual abuse. JA725.

Steve Farris, a psychologist specializing in treating children, was the first of several expert witnesses to testify. JA800-904. He did not interview TJ, but did review the extensive medical records produced as a result of TJ's multiple hospitalizations. JA803. He testified that no amount of record review can answer the question of whether a child has been sexually abused, nor can a person look at a particular symptom displayed by the child and determine that he has been sexually abused. JA804; JA807. On his first admission – where he was diagnosed with ADHD and encopresis (defecation in one's underwear) – TJ did not make any allegations of

³ The prosecution dismissed four counts of third degree sexual assault. *Daugherty*, 650 S.E.2d 115 n.7.

⁴ That witness ultimately did not testify.

psychiatrist. JA1111-1289. In addition to repeating observations of TJ's behavior, Casdorff testified that TJ's behavior was "consistent" with being a victim of sexual abuse. JA1152. He could not be certain it was sexual abuse, but he was certain that TJ had suffered some kind of "[s]evere trauma." JA1153. Finally, without any objection from trial counsel, Casdorff was allowed to testify that there was no chance – "Zip. Not at all." – that TJ was making up the abuse allegations. JA1147.

Trial counsel cross examined Casdorff the next day. In doing so, he asked whether Casdorff took a history from Rebecca about "what had transpired in [TJ]'s life in the past year or two years?" JA1173. Casdorff answered that he noted that TJ's parents had separated "due to dad's violence to mom and the patient." JA1173. During redirect testimony, the prosecution also asked whether Casdorff received "reports of both sexual abuse and physical abuse in the home" which he said he did. JA1251.

b. The defense case

Daugherty's primary witness was Dr. Joseph Wyatt, a psychologist who had experience doing forensic interviews. JA1290-1422. He testified that, in his opinion based on a review of the medical records, TJ had not been sexually abused and that many of the behavioral problems TJ exhibited started before there was any reported abuse. JA1298; JA1308. He also testified that there were many other stressors in TJ's life that could have produced his behavior issues and that the most serious issues (which led to his final hospitalization) took place 18 months after TJ had last seen Daugherty. JA1313-1314. Wyatt also explained that TJ had been subject to multiple

statements you'd like to make for this jury today," to which he said he did not. JA1573.

c. Deliberation & Verdict

The jury deliberated for three hours before reporting that it was deadlocked. JA1899. The parties agreed that the court should give the jury an *Allen* charge.⁵ After the jury returned to the courtroom, the trial court explained that "the only thing I want to say is we've been here six days, and it's been a long six days," that "I'm tired, the lawyers are tired, and Mr. Daugherty's tired . . . and I'm sure you all are even more tired." JA1905. "If we declare a hung jury," the trial court explained, "what happens is we just have to go back and start over. Start all over again. We throw six days of work out the window in effect." JA1905. The court gave the *Allen* charge, then dismissed the jury for the night. JA1906; JA1911. The next morning, the jury returned its verdict, convicting Daugherty of four counts of sexual abuse by a parent, while acquitting him on the other eight charges in the indictment (including sexual assault and incest). JA1918-1919. Daugherty was sentenced to four terms of 10 to 20 years in prison, to be served concurrently. *Daugherty*, 650 S.E.2d at 115.

2. Allegations of juror misconduct arise after trial.

After Daugherty's conviction and sentence, trial counsel learned that a juror may have made improper remarks about Daugherty during jury deliberations.

⁵ *Allen v. United States*, 164 U.S. 492 (1896); see also Samantha P. Bateman, *Blast It All: Allen Charges and the Dangers of Playing With Fire*, 32 U. Haw. L. Rev. 323 (Summer 2010).

3. Daugherty's convictions are affirmed by West Virginia courts.

Daugherty sought review of his conviction and sentence from the West Virginia Supreme Court of Appeals (“WVSCA”). His petition for appeal raised six issues, but the court ultimately agreed to review only one – the court’s denial of his motion for a new trial due to juror misconduct. *Daugherty*, 650 S.E.2d at 115 n.3. Daugherty argued that Juror McBride’s statements “constituted improper extrinsic evidence” and that therefore “he is entitled to a new trial.” *Daugherty*, 650 S.E. 2d at 116. The case was scheduled for oral argument. However, just prior to argument the Assistant Attorney General representing the prosecution passed away. Following that development, trial counsel, now appellate counsel, agreed (with Daugherty’s consent) to submit the case for resolution on the briefs alone. JA526.

The WVSCA affirmed Daugherty’s conviction. In doing so, the court noted that while Daugherty’s trial lasted for six days, “the record submitted on appeal only contains the transcript of the first two days of the trial.”⁷ *Daugherty*, 650 S.E.2d at 115 n.6. The court held that the general rule of not inquiring into jury deliberations enshrined in Rule 606(b) yields when “extraneous prejudicial information was improperly brought to the jury’s attention or . . . any outside influence was improperly brought to bear upon any juror.” *Id.* at 116, quoting Franklin D. Cleckley, *Handbook on Evidence for West Virginia Lawyers* § 6-6(B). If a jury considers extrinsic evidence,

⁷ Nor were any of the bench conferences transcribed for the record, as evidenced by the first time counsel approached the bench after the second court reporter began working the case. JA973.

been “fully and finally adjudicated in his direct appeal and, thus, was barred from further review.” JA528. Daugherty also filed a *habeas corpus* petition in the WVSCA, invoking its original jurisdiction, raising the same issue, but the WVSCA “denied that petition without making any findings on the merits of those claims.” JA529. The WVSCA also denied Daugherty’s *pro se* petition for a writ of mandamus. JA343-344.

4. Daugherty seeks relief in federal court.

On December 6, 2011, Daugherty filed a *pro se* petition for relief under § 2254. JA23. After a notice from the clerk, he filed an amended motion using the proper form on December 16, 2011. JA28-47. That petition alleged, as the first issue, “Prejudice of a Juror McBride,” adding that his counsel up to that point “won’t finish the job because he feels there’s no justice for one accused of such crimes.” JA29; JA33. Although the petition was not timely filed, the district court concluded that the applicable statute of limitations “should be equitably tolled due to [Daugherty]’s belief that [prior counsel] was going to file his federal habeas corpus petition and [prior counsel]’s related conduct.” JA517.

Following that ruling, undersigned counsel was appointed and Daugherty filed an amended § 2254 motion and supporting memorandum. JA359-362; JA454-479. In those he again raised the issue of Juror McBride’s conduct (among others). JA360. Specifically, Daugherty argued that during lengthy and fraught jury deliberations (which resulted on his acquittal on eight of the charges for which he was tried), Juror McBride had said both that “(1) he knew Daugherty and his family and (2) as a result of that knowledge, he was afraid for his children – and the other jurors should fear

Daugherty should be convicted based on what that juror knew from outside the courtroom, “was external to all the proceedings at trial.” JA554.

On October 2, 2023, the district court overruled Daugherty’s objection and adopted the recommendation of the magistrate judge that Daugherty’s § 2254 motion should be denied. JA557-565. The district court identified “the narrow question before the Court” as “whether the statement by Juror McBride was external, thus violating [Daugherty]’s Sixth Amendment right to an impartial jury and rendering the state court’s decision contrary to, or an unreasonable application of, established federal law.” JA561. The district court concluded it was not. There was “no malicious action by a third-party” and Juror McBride “was not bribed, influenced, or tampered with in any way by a third party.” JA562. Rather, he “spoke his own bias to his fellow jurors,” a statement that “came from his perception of his own personal experiences.” JA562. “Such statements,” the district court concluded, “are intrinsic to the jury deliberation process.” JA562. Therefore, “the state court’s decision was not contrary to, or an unreasonable application of, clearly established federal law.” JA562.

5. The Fourth Circuit affirms.

The Fourth Circuit affirmed the denial of Daugherty’s § 2254 petition. *Daugherty v. Dingus*, 171 F.4th 326 (4th Cir. 2026). The court first “address[ed] and set aside Daugherty’s argument that the WVSCA erred in considering [Juror McBride’s] statements in isolation.” *Id.* at 330 (cleaned up). After noting that “this issue may involve both factual and legal questions,” the court held that “the outcome has no bearing on whether the state court’s decision was unreasonable” because the

“possibility that the comment(s) implied the existence of additional information does not automatically render them external.” *Ibid.* The court then concluded that “clearly established Supreme Court law governing extrinsic jury influence did not extend to cover statements of this sort at the time of the state court’s decision.” *Ibid.*

That was because the statements were not similar to ones this Court has identified as “external.” *Daugherty*, 171 F.4th at 331. There was “no clear evidence of tampering by third parties outside the jury” and Juror McBride’s comments “were not derived from any communication with other individuals during the trial and they did not originate from any non-jury figures, such as law enforcement officers or bailiffs.” *Ibid.* The court agreed “with the State that McBride’s comments ‘came from his own mental machinations, whether true or not,’” which were “a far cry from the Supreme Court’s limited precedent governing external influence.” *Ibid.*, quoting State’s Brief at 47.

IX. REASON FOR GRANTING THE WRIT

The writ should be granted to determine whether a juror’s false statement that he knows the defendant and his family, combined with expressions of fear should the defendant be acquitted and exhortations that other jurors should feel the same, constitute an “external influence” on the jury that deprived Petitioner his right to an impartial jury as guaranteed by the Sixth Amendment.

Daugherty went to trial in a case that resulted in eight acquitted counts. It was, by any measure, a close case. While deliberating, Juror McBride lied to his fellow jurors that he knew Daugherty and his family. He then said that he was afraid for his family if Daugherty was not convicted – and his fellow jurors should be, too. The

combination of those statements, suggesting knowledge of outside facts not presented during the trial, raises the specter that Daugherty was denied his Sixth Amendment right to a trial by an impartial jury. Whether a juror who lies about his knowledge of the defendant and his family and expresses fear should the jury not convict the defendant is an “external” influence on the jury is an important question of federal law that this Court should resolve. *See* Rules of the Supreme Court 10(c).

A. This Court’s precedent establishes that a defendant is denied his right to an impartial jury if external influences impact the jury deliberation process.

The Sixth Amendment guarantees criminal defendants the right to a jury trial. In ages past that right did not include the presence of impartial jurors. To the contrary, “[e]arly jurors were chosen from the vicinity of the crime precisely so they could bring information to trial.” Thomas P. Gallanis, *Reasonable Doubt and the History of the Criminal Trial*, 76 U. Chi. L. Rev. 941, 947 (2009); *see also* Elizabeth Papp Kamali, *Finding Facts In Medieval English Law*, 15 J. Legal Analysis 158, 169 (2023)(London wards “had distinct and at times overlapping gossip networks through which information about an alleged felony might travel, thereby feeding information to men who might be summoned to serve upon the coroner’s inquest” which was “partly self-informing, insofar as men were expected to arrive with local knowledge”). But the Founders recognized that impartiality was key to the jury trial right. As Chief Justice Marshall explained, the “great value of the trial by jury certainly consists in its fairness and impartiality” and those “who most prize” it do so “because it furnishes

(cleaned up). The “exception for extraneous prejudicial information allows the court to consider juror allegations that the defendant’s rights to confrontation were violated,” while the “exception to the exclusionary rule for outside influences . . . protects a defendant’s right to an impartial jury.” *Id.* at 360-361. Thus, as the district court correctly pointed out, the ultimate question in this case is “whether the statement by Juror McBride was external, thus violating [Daugherty]’s Sixth Amendment right to an impartial jury.” JA561.

While a juror’s personal experiences can be properly considered during deliberations, “in some instances a juror’s personal experiences may constitute extrinsic evidence” such as “when a juror has personal knowledge regarding the parties or the issues involved in the litigation that might affect the verdict.” *United States v. Navarro-Garcia*, 926 F.2d 818, 821 (9th Cir. 1991). That is what occurred in this case. Daugherty’s jury contained one juror who told others that he knew Daugherty and his family and that he feared for his family’s safety if Daugherty were not convicted – and that other jurors should be similarly fearful. Those assertions, considered as a whole, are the type of external evidence that undermines the impartiality of a jury and led to a violation of Daugherty’s right to a fair trial.

B. Juror McBride’s false statement that he knew Daugherty and his family cloaked his expressed fears in the garb of an external influence that violated the Sixth Amendment.

In the proposed findings and recommendations, the magistrate judge noted that this case “does not involve any external communication with a third party.” JA542. That is true, but that conclusion does not reflect the full universe of influences

The Sixth Amendment protects a defendant's right to a trial by an impartial jury. Daugherty's jury was not impartial because of the external information brought to it by Juror McBride. Daugherty's conviction therefore violated his Sixth Amendment rights.

X. CONCLUSION

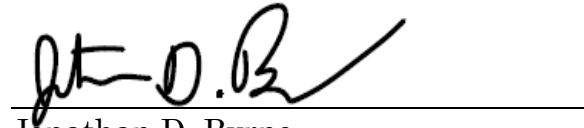
For the reasons stated, this Court should grant certiorari in this case.

Respectfully submitted,

TONY DAUGHERTY

By Counsel

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A handwritten signature in black ink, appearing to read 'J.D. Byrne', is written over a horizontal line.

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