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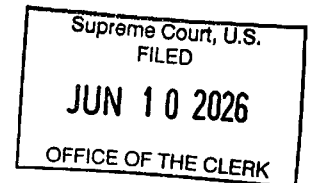
IN THE UNITED STATES SUPREME COURT

ORIGINAL

GEORGE SHRADER,
Petitioner,

Vs.

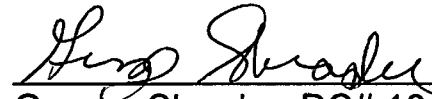
SECRETARY, DEPARTMENT OF CORRECTIONS, et al.
Respondents.

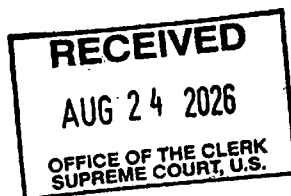


**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF PPEALS FOR
THE ELEVENTH CIRCUIT COURT OF APPEAL**

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,


George Shrader, DC# 101103
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QUESTION(S) PRESENTED

1) WHETHER PETIONER WAS AFFORDED DUE PROCESS OF LAW WHERE THE STATE OF FLORIDA OBTAINED IMPROPER AND MULTIPLE REHEARINGS IN THE CASE?

2) WHETHER THE STATE COURT DECISION WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING WHERE THE JURORS WERE IN POSSESSION OF AN HIGHLY PREJUDICIAL NEWSPAPER ARTICLE IN THE JURY ROOM DURING THE TRIAL?

3) WHETHER OR NOT AEDPA'S SUBSTANTIAL DEFERENCE IS CONSTITUTIONAL IN LIGHT OF THIS COURT'S DECISION IN *LOPER BRIGHT ENTERPRISES V. RAIMONDO*, 144 S.CT. 2244 (2024)?

Certificate of Interested Persons and Corporate Disclosure Statement

Pursuant United States Supreme Court Rules 14.1(b)(ii) and 29.6, the Petitioner, George Shrader, pro se, hereby files with the Court his Certificate of Interested Persons and Corporate Disclosure Statement (CIP).

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LIST OF PARTIES

George Shrader, Petitioner
Secretary, Department of Corrections, Respondent
Attorney General, State of Florida, Respondent

RELATED CASES

Shrader v. State, 2016 Fla. App. LEXIS 13362 (Fla. 2nd DCA, 2016)

Shrader v. State, 2017 Fla. App. LEXIS 17204 (Fla. 2nd DCA 2017)

Shrader v. State, 278 So.3d 270 (Fla 2nd DCA 2019)

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Shrader v. State, 335 So.3d 1197 (Fla. 2nd DCA 2022)

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

FEDERAL COURTS:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

Reported at Unknown, or, Has been designated for publication but is not yet reported; or, is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

Reported at Shrader v. Secretary, Department of Corrections, 2025 U.S. Dist. LEXIS 165225 (M.D. Fla. 2025)

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 17, 2026

A timely motion for reconsideration was denied by the United States Court of Appeals on the following date, May 1, 2026, and a copy of the order denying reconsideration appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment United States Constitution

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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 law.

STATEMENT OF THE CASE

I. THE FACTUAL BACKGROUND

The charges against Mr. Shrader arose from the killing of a young woman in the early morning hours of January 27, 1986, in Hillsborough County. The victim was last seen at the 18 Wheeler Bar in Tampa, Florida, around midnight on January 26, 1986.¹ Her partially nude body was discovered at 7:24 a.m. on January 27, 1986, in the middle of a dirt road at Whiskey Stump, an undeveloped peninsula of land south of Gibsonton that juts into Tampa Bay. The investigation of the victim's murder went cold within a few weeks after it had begun.

Twenty-one years later, in March 2007, Detective Chris Fox of the Hillsborough County Sheriff's Office and Agent James Noblitt of the Florida Department of Law Enforcement decided to reopen the case and to review the physical evidence. They sent two soil samples taken from the crime scene that contained apparent blood to the FDLE lab for DNA testing, along with anal, oral, and vaginal swabs taken from the victim. Both soil samples tested positive for blood, and a partial DNA profile was developed for one soil sample. Partial DNA profiles were found in both the epithelial cell fraction and the sperm cell fraction of the rectal swab, with the profile

from the sperm cell fraction being consistent with the partial profile from the soil sample.

The partial DNA profiles were entered into CODIS,² which presented no immediate hits. But in 2010, after Mr. Shrader was convicted on an unrelated charge that required him to submit a DNA sample, CODIS matched Mr. Shrader's known DNA profile with the partial profiles developed from the soil sample and rectal swab in the victim's case. Ultimately, on May 19, 2011, a grand jury returned an indictment against Mr. Shrader on the following charges: first-degree premeditated murder of the victim with a weapon, a violation of section 782.04(1)(a), Florida Statutes (1985); one count of sexual battery of the victim (penetration or union of penis with vagina) with a deadly weapon or physical force likely to cause serious personal injury, a violation of section 794.011(3), Florida Statutes (1985); and one count of sexual battery of the victim (penetration or union of penis with anus) with a deadly weapon or physical force likely to cause serious personal injury, a violation of section 794.011(3).

At the conclusion of the State's case, Mr. Shrader moved for a judgment of acquittal on the two sexual battery counts and the felony murder theory, citing *Bigham v. State*, 995 So. 2d 207 (Fla. 2008), and arguing that the State's evidence failed to establish that any sexual battery

had occurred. More specifically, defense counsel argued that the State had failed to prove that there was any evidence of sexual trauma to the victim or that any sexual contact between the victim and Mr. Shrader was not consensual. Defense counsel argued "that there's no evidence produced by the State to prove that they did not have consensual sex; and, then ultimately, later, she was killed. That activity of sex would have occurred before the killing and therefore would not be sexual battery if it was consensual in nature." Further, counsel argued that "[s]imply because there was DNA found . . . it in no way means that they did not have consensual sex prior to any killing occurring, which would not be felony murder."

The trial court denied the motion as to the two sexual battery counts and the related theory of felony murder. The jury returned a verdict in which it declined to find Mr. Shrader guilty of premeditated murder, but instead found him guilty of felony murder based upon its finding of guilt on the two sexual battery counts. Because the jury found Mr. Shrader guilty of first-degree felony murder based upon its findings of guilt on the two sexual battery counts, the jury did not address whether the State had established that Mr. Shrader possessed the requisite intent for second-degree murder. The trial court denied Mr. Shrader's motion for new trial and for judgment of acquittal after the verdict.

III. THE NEWSPAPER ARTICLE

Mr. Shrader's trial began on April 29, 2013, and lasted for five days. On the morning of May 1, 2013, the third day of the trial, the trial court raised the issue with the parties that some of the jurors may have seen an article about Mr. Shrader and the trial in a newspaper.³ The article in question was titled, "He thought he got away with it." The article featured a photograph of Mr. Shrader at the trial with a caption that read, "George Shrader, 46, convicted of second-degree murder in 1986 for killing his uncle in a bar fight, faces another murder charge this week." (Appendix F)

The trial court brought in one of two bailiffs at the trial who stated that she saw several jurors standing around a table with the newspaper article open on the table. The bailiff stated that one juror, Juror 12, had the article open and one or two other jurors were looking at it. But the jurors told her that they had just seen the article and had not read it. It did not appear that any discussions were occurring. The bailiff then confiscated the newspaper. The parties agreed to bring the fourteen members of the jury panel (twelve jurors and two alternates) in individually for questioning about what each of them had seen or read.

Many of the jurors were not even aware of the article or that the newspaper had been in the jury room, apparently because they were not in

the jury room at the time of the incident. None of the jurors had read or had seen any of the other jurors read the article in question.

Juror 3 stated that another juror told him not to look at the newspaper page with the article because the juror had noticed an article about the case. Juror 10 stated that Juror 13 had the newspaper in the jury room, but when he opened the page and saw the picture of Mr. Shrader, Juror 13 "said, oh, there's something in here. Don't look at it, and [he] turned the page." He did not say anything else about it. Then the bailiff removed the newspaper. Juror 12 similarly stated that there was a newspaper in the jury room and that Juror 13 was flipping through it. As he did that, "we saw the picture and closed it right away. We did not look at the words or anything." She stated that she saw the picture briefly, out of the corner of her eye, and did not read anything around it. Juror 13 was not reading the newspaper, just flipping, then right away slammed it closed.

Juror 13 also stated that he had the newspaper and was flipping through it. He admitted that he saw a picture, but stated that he did not read anything around it and turned the page. He said that he flipped through the newspaper for a total of about forty-five seconds and that the newspaper was turned to the page with the defendant's picture for about three seconds. Then the newspaper was taken from him. None of the jurors

stated that they had been exposed to anything that would prevent them from being fair and impartial in Mr. Shrader's trial.

At the conclusion of the questioning, defense counsel moved for a mistrial on the basis that the jury had been tainted by the newspaper article. Defense counsel suggested that the jurors who had seen the article had reason not to be fully candid about what they had seen because they had been instructed by the court not to look at the news media. Because the caption under Mr. Shrader's picture referred to a prior conviction for second-degree murder, defense counsel argued that Mr. Shrader could not receive a fair trial. The State responded that, in fact, the jury acted the way it had been instructed. Contrary to defense counsel's statement, the trial court had instructed the jurors not to read any articles about the trial rather than instructing them not to read any newspapers. When the jurors saw the photograph in the newspaper, they flipped the page and avoided the article.

The trial court denied Mr. Shrader's motion for mistrial based on the following detailed finding of facts:

The court is going to find that it conducted a thorough inquiry of each of these jurors individually. I've allowed a thorough inquiry of the deputies. The one thing that is clear is, no, there is [no] evidence that they actually read any reports or other the evidence suggests that they were in there.

There was a paper open somewhere to a page at some point obviously to the page that had this photo that apparently they did exactly what I told them. As soon as he saw the picture, they stopped. That is what the evidence indicates, and the testimony from our deputies here today, while it says they were in the area and may have been looking towards the paper is not contradictory to what I've [heard] from 14 individuals who came in and were subjected to full inquiry.

Accordingly, I'll specifically find that they have not, since the allegation is that they have been tainted, they have not been tainted. They have not been privy to information that is going [to] render them unable to be fair and impartial in discharge of their duties here. The court also indicated that it would amend its instructions to the jury so that instead of just avoiding reports about this case, the jury would be directed to avoid exposure to all news reports: "I am going to be directing that they not only not read any news reports about this case, but that they not read any newspaper at all for the duration of this trial and that they not see any news program or listen to any news radio or TV." The trial court instructed the jury along these lines and reiterated the instructions on multiple occasions throughout the remainder of the trial. Notably, Juror 13 was an alternate and did not retire with the jury to deliberate on Mr. Shrader's case.

STATEMENT OF MATERIAL FACTS

A jury found appellant guilty of first-degree murder and two counts of sexual battery, and the trial judge sentenced appellant to life with the eligibility for parole after twenty-five years for the first-degree murder conviction and life without parole for the sexual battery convictions.

Petitioner appealed to the Second District Court of Appeal which originally reversed his case for a new trial with a written opinion. See *Shrader v. State*, 2016 Fla. App. LEXIS 13362 (Fla 2nd DCA September 7, 2016). (Appendix D). Over a year later, the Second District Court of Appeal issued an order withdrawing its previous decision having voted to rehear the appeal en banc. See *Shrader v. State*, 2017 Fla. App. LEXIS 17204 (Fla. 2nd DCA November 17, 2017). On rehearing en banc, the District Court reversed the previous decision granting a new trial and affirmed the conviction. *Shrader v. State*, 278 So. 3d 270 (Fla 2nd DCA August 23, 2019). (Appendix E).

However, the affirmance was accompanied with a scathing dissent by the Honorable Judge Northcutt who stated in pertinent part:

“The majority opinion is premised on significant inaccuracies: It misstates the history of this case by overlooking the panel's opinion on rehearing, then it mischaracterizes the panel's initial published opinion. Further, its position on the propriety of Shrader's convictions relies on a significant and

materially mistaken recitation of the evidence. Worst of all, the majority advances a dangerously expansive notion of the court's en banc authority, premised on mere legal error. The resulting opinion invokes the en banc process not to harmonize this court's decisions or to decide an issue or case of exceptional importance, but merely to overrule the panel majority's opinion in the case. That opinion has no legal viability in any event, and it cannot form the basis of any decision. For that reason alone, the court should refrain from disposing of the case en banc. The majority opinion assails the initial panel decision while failing to discuss the panel's opinion on rehearing, which appropriately applied the customary non-circumstantial evidence standard of review. The majority opinion criticizes the September 2016 panel decision, which by a split vote reversed Shrader's convictions for first-degree felony murder and sexual battery and remanded for a new trial for second-degree murder. But the majority does not mention that the panel circulated a different opinion on rehearing. The latter fact provides necessary context for the majority's observations that "Shrader has maintained throughout this appeal that the special circumstantial evidence standard applies, even in light of our supreme court's Knight decision" and that Shrader is "firmly grounded in his position that the special circumstantial evidence standard applies." *Knight v. State*, 186 So. 3d 1005 (Fla. 2016). In fact, everyone involved in the initial panel disposition—Shrader, the State, the panel majority, and the panel dissenter—accepted that the special standard of review in circumstantial evidence cases applied. This was because Shrader's trial and the briefing in this appeal predated the supreme court's clarification of the special standard of review in *Knight*, and neither party submitted a notice of supplemental authority citing *Knight* when it was issued. (citations omitted).

The Florida Supreme Court denied review of the rehearing en banc written opinion.

Appellant then filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel and the Second District Court of Appeal denied relief. *Shrader v. State*, 335 So.3d 1197 (Fla 2nd DCA 2022). Appellant filed a motion for post-conviction relief which the post-conviction court denied without evidentiary hearing, and the Second District Court of Appeal affirmed in an unpublished opinion.

REASONS FOR GRANTING THE PETITION

Petitioners' constitutional claim is substantial and affects numerous similarly situated defendants. The consequences of error in these cases are too severe to leave petitioners' challenges unanswered, therefore the certiorari should be granted.

This petition raises the question on whether or not a criminal defendant in Florida is entitled to any type of due process where there has been a rehearing had by the State and denied by the District Court of Appeal and then over a year later, after one of the original appellate Judges retires, the State moves for rehearing en banc and gets it and eventually receives the favorable ruling it sought. Thus, the issue of the State of Florida receiving *two (2) rehearings* during the same appellate process in order to get the results that they wanted deserves redress in this Court.

The petition further raises the question on whether or not a criminal defendant receives a fair and impartial jury where the jury panel has been exposed to a newspaper article in the jury room during the trial which contained a picture and what was referred to by trial counsel as a "Cut Line".

The "Cut Line", and what is better known as the caption in the newspaper article just below the picture of petitioner stated "*He thought he got away with it*" in big bold dark letters and under that in slightly smaller print, it stated "*Man accused of raping, killing while out on bail in 1986 murder case*". (see Appendix F).

This Court is free to address "subsidiary questions" in deciding "any questions presented. Stated another way, the subsidiary questions must be "inextricably linked" to the questions under review and necessarily contribute to those question's resolution.

The questions presented and subsidiary questions in this petition are inextricably linked and rise from the facts of this case where petitioner raised in the State Court the issues of the newspaper article (with picture) and the issue of the State seeking and receiving multiple rehearings in the same appellate process.

Lastly, the petitioner raised the issue of AEDPA's constitutionality in the Federal Court's due to the fact that it is an issue dealing solely with federal law, therefore, was not proper to raise in the State Court's.

QUESTION ONE

WHETHER PETITIONER WAS AFFORDED DUE PROCESS OF LAW WHERE THE STATE OF FLORIDA OBTAINED IMPROPER AND MULTIPLE REHEARINGS IN THE CASE?

In this claim, which was raised in his initial 2254 petition and in his reply to the State's response to the 2254 petition, and again in the Eleventh Circuit, petitioner raised the issue of the State of Florida receiving *two (2) rehearings* during the same appellate process in order to get the results that they wanted. A casual reading of the scathing dissenting opinion by the Honorable Judge Northcutt found in *Shrader v. State*, 278 So.3d 270 (Fla. 2nd DCA 2019) will show the appellant's constitutional due process rights were violated. (see the dissenting opinion outlined above)

In that dissent Judge Northcutt "stated in pertinent part" "The majority opinion is premised on significant inaccuracies; it misstates the history of the case by overlooking the panel's opinion on rehearing, then it mischaracterizes the panel's initial published opinion. Further, its position on the propriety of Shrader's convictions relies on a significant and

materially mistaken recitation of the evidence; that the opinion has no legal viability in any event, and it cannot form the basis for any decision. For that reason alone, the court should refrain from disposing of the case en banc. ***“The Majority opinion assails the initial panel decision while failing to discuss the panel’s opinion on rehearing, which appropriately applied the customary non-circumstantial evidence standard of review”.***

Judge Northcutt states further that “the majority opinion criticizes the September 2016 panel decision, which by a split vote reversed Shrader’s convictions for first-degree felony murder and sexual battery and *remanded for a new trial for second degree murder.* (emphasis added). *Shrader v. State*, 2016 Fla. App. Lexis 13362 Fla L. Weekly D2080 (Fla. 2nd DCA Sept. 7, 2016), withdrawn 2017 Fla. App. Lexis 17204, 42 Fla. L. Weekly D4555b (Fla. 2d DCA Nov. 17, 2017. *But the majority does not mention that the panel circulated a different opinion on rehearing.*” (emphasis added).

Furthermore, and quite telling, is the fact that the State waited until one of the judges on the original panel retired before seeking the rehearing en banc. This was not done during the first rehearing!

Petitioner asseverates that this excerpt from the dissenting opinion found in *Shrader v. State*, 278 So.3d 270 (Fla. 2nd DCA 2019) shows

without any doubt that petitioner *did not receive procedural due process in the state court* and that not only was this claim raised in the "Petition for Writ of Prohibition" in the Florida Supreme Court, but again in the Petition for Writ of Habeas Corpus alleging Ineffective Assistance of Appellate Counsel.

There is no procedural rule or process in the State of Florida that allows for a party to a proceeding to receive multiple rehearings just to obtain the results that they want. This issue was never addressed in the Middle District Court, nor was it addressed by the Eleventh Circuit.

QUESTION TWO

WHETHER THE STATE COURT DECISION WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING WHERE THE JURORS WERE IN POSSESSION OF AN HIGHLY PREJUDICIAL NEWSPAPER ARTICLE IN THE JURY ROOM DURING THE TRIAL?

The Eleventh Circuit Court of Appeal has entered a decision in conflict with the decision of another United States court of appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Courts supervisory power.

It is incontrovertible that the Petitioner suffered a violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, where the bailiff confiscated a newspaper from jurors during the second day of trial which contained an article about the case and reported about a previous conviction that appellant had for second degree murder as the headline.

Petitioner concedes that the trial court informed the parties that the bailiff confiscated a newspaper from a juror that contained an article about the case, however, the inquiry had by the court and counsel was insufficient to overcome the highly prejudicial nature of the error. For instance, when bailiff deputy Brock was questioned she testified in a manner that left open the question of whether there was several newspapers confiscated or just one? The following exchange between the court and deputy Brock took place:

Bailiff: Do you want me to bring that one juror in?

Trial judge: Not yet. Right now, I'm trying to provide counsel with information about what I understand that I've been advised, and I want to make sure I do that accurately. Ask her to step in if she is the one who observed this.

Deputy Brock: Hi.

Trial judge: And, Deputy, I want to be accurate in advising the jurors. do I understand that you observed a member of the jury

Walk in, carrying in their hand a newspaper called the TBT?

Deputy Brock: Yes, sir.

Trial judge: And you confiscated that?

Deputy Brock: *Several.*

Trial judge: *Several, that they had in their hands"*

Deputy Brock: Yes, sir.

This inquiry continued with Deputy Brock in which it was ascertained that there were several jurors standing around the table looking at a newspaper article pertaining to this trial which had a headline concerning appellants previous conviction for second degree murder in 1986.

Deputy Brock further testified during this inquiry that she observed that several jurors were standing around the table with a couple jurors right behind the female who had the newspaper open to the article about appellant's previous conviction and that it appeared that they were looking at the newspaper article.

Deputy Brock also testified that when she entered the jury room, she saw the newspaper open but could not see anything because the juror immediately closed the newspaper but the deputy did see that the newspaper was open to the page with the article about this case. The bailiff thought that Juror Childs, Smith and Juror Ward looked at the article briefly

and that some of the other jurors may have looked over their shoulders. Deputy Brock testified that she confiscated the newspaper from jurors.

As pointed out above, "The article contained a title in half inch bold font that read, **"He thought he got away with it"**. Just under the title in only a slightly-smaller font was the following: **"Man accused of raping, killing while out on bail in 1986 Murder case"**, There was a photo of Petitioner, the caption underneath read, "George Shrader, 46 convicted of second-degree murder in 1986 for killing his uncle in a bar fight, faces another murder charge this week." (R7:477)(R12: 398).

Further, when juror Christopher Ward was called in, he initially denied seeing any news about the case and further denied seeing any juror reviewing articles about it. (R7: 502) Upon further questioning, Ward admitted that he had bought a TBT into the jury room with him, but claimed he had not yet read it. (R7: 502-03) Eventually he admitted that he had actually flipped through it, but denied seeing anything regarding Petitioner's trial. (R7: 507).

The State claims that Juror Child Smith denied having seen any news reports about the case. This is incorrect, Bailiff Haliday informed the trial court that the two jurors he had seen looking at the open paper were Childs, Smith and Christopher Ward. (R7: 509). Bailiff Haliday testified that

the total numbers of jurors who had looked at the article to be as many as five. (R7: 510).

Here, it is uncontested that at least five of twelve jurors were exposed to external information (newspaper article) about the case in contravention of court instructions.

The trial judge and the parties then questioned each juror individually about the newspaper article, at which time each juror denied ever reading the article, which in itself is hard to believe after the testimony of deputy Brock and the fact that the headline of any paper is always larger than the article itself and stands out to catch the eye. Plus, the fact that as many as five jurors seen the paper is beyond belief that at least one juror read the headline and seen the picture of the defendant.

After this inquiry the trial judge made a determination that the jury was not tainted. This determination was made without any consideration to the fact that there was a newspaper confiscated from the jury room , and that there may have been as many as five (5) different individuals who more than likely had seen and looked at the article. This determination was also made without considering the fact that the jurors admitted to seeing the article, which in itself is telling, because when a person sees a headline

or object in a glance the mind still registers what it saw, and it was determined that they saw the headline of appellants previous conviction.

Specifically, "Juror Davis stated that another juror told him not to read the newspaper because *the juror saw an article about the case*. Juror Park observed Juror Ward reading a newspaper, looking at a picture of Shrader in the newspaper" but all the jurors denied reading the article! It should go without saying that none of the jurors were going to readily admit to wrong doing or to breaking their oaths.

The Eleventh Circuit Court of Appeal determined that "reasonable jurists would not debate that the trial court did not violate Shrader's constitutional rights by denying his motion for mistrial. The trial court conducted an *exhaustive review of the jurors to determine that none had contact with extraneous information*" (emphasis added).

This in itself is telling because first it is clear from the record in this case that the jurors did in fact have "*contact with extraneous information*". Furthermore, and more importantly, the Eleventh Circuit did not consider the fact that there was a newspaper confiscated from the jury room, and that there may have been as many as five (5) different individuals who more than likely had seen and looked at the article three days into a four day trial, the day before jury deliberations.

Furthermore, the Eleventh Circuit Court of Appeals determination is in direct conflict with the decisions of: *United States v. Thomas*, 463 F.2d 1061, 1063 (7th Cir. 1972) (jury's exposure to a newspaper article that was prejudicial to defendant); *United States v. Hankish*, 502 F.2d 71 (4th Cir. 1974) (convictions reversed and remanded because a newspaper article might have prejudiced the jury); *United States v. Kum Seng Seo*, 300 F.2d 623, (3d Cir. 1962) (reading in jury room, by members of jury, of newspaper article containing material prejudicial to defendant constitutes grounds for granting new trial); *United States v. Williams*, 568 F.2d 464 (5th Cir. 1978) (news publicity during appellant's trial that indicated a previous jury conviction for the same offense, but that erroneous testimony required a new trial was inherently prejudicial to appellant); *United States v. Concepcion Cueto*, 515 F.2d 160 (1st Cir. 1975) (exposure to news article remanded for new trial).

This Court has instructed that each publicity case "must turn on its own special facts." *Marshall v. United States*, 360 U.S. 310, 79 S. Ct. 1171, 3 L. Ed. 2d 1250 (1959). In making this analysis several factors must be considered by the court.

First, the Courts must look to the character or nature of the published information. The newspaper article in issue was written subjectively and

contained inflammatory or editorial material. It was patently obvious in this case that the news media and not the jury passed judgment on the defendant's guilt by reporting/stating that "*He thought he got away with it*". Just under the title in only a slightly-smaller font was the following: *Man accused of raping, killing while out on bail in 1986 Murder case* (emphasis added). There was also a photo of Petitioner along with this headline!

Second, the article was read by the jurors at a "critical time" during the trial. The story was published between the third and fourth days of proceedings when the state was finishing presenting its case, just prior to closing argument, see *United States v. Concepcion Cueto*, 515 F.2d 160, 164 (1st Cir. 1975).

The courts must consider allegations of juror misconduct using only that evidence properly subject to consideration under Rule 606(b). This rule applies to petitions for habeas corpus from state court prisoners. See Fed. R. Evid. 1101(e). See also *Capps v. Sullivan*, 921 F.2d 260, 262 (10th Cir. 1990) (Rule 606(b) applies in federal habeas proceeding).

The relevant distinction of misconduct is between acts that are "internal" to the jury and those that are "external." Statements regarding matters internal to the jury process are not admissible under Rule 606(b). When an incident subjects the jury to external influence, however,

statements regarding it are admissible. See *Gibson v. Clanon*, 633 F.2d 851 (9th Cir. 1980), cert. denied, 450 U.S. 1035 (1983) (juror consultation with medical encyclopedia was external); *United States v. Greer*, 620 F.2d 1383, 1385 (10th Cir. 1980) (when marshal provided information regarding potential sentence, court admitted juror testimony and declared mistrial); *United States v. Thomas*, 463 F.2d 1061 (7th Cir. 1972) (*newspaper in jury room was external*) (emphasis added).

Finally, the record in this case indicates that the evidence before the trial judge went beyond showing that a potentially prejudicial article had been present in the jury room during jury deliberations. Juror Park *observed Juror Ward reading a newspaper, looking at a picture of Shrader*, indicating that the article had in fact been displayed and seen by some of the other jurors.

Thus, the trial judge was not called upon to infer influence from juror exposure to a potentially prejudicial article, there was direct evidence to that effect. However "innocuous" the article may have appeared to the State or to the trial judge from their respective vantage points, it apparently did not appear so to the jurors.

It is clear from the record that the state court clearly limited its review to some circumstances surrounding the newspaper being in the jury room

and being seen and read by at least some of the jurors and the all the reviewing courts have not implicitly reviewed the circumstances the petitioner has presented.

QUESTION THREE

WHETHER OR NOT AEDPA'S SUBSTANTIAL
DEFERENCE IS CONSTITUTIONAL IN LIGHT
OF THIS COURT'S DECISION IN *LOPER*
BRIGHT ENTERPRISES V. RAIMONDO,
144 S.C.T. 2244 (2024)?

Petitioner would also request that this Court grant Certiorari based on the *substantial deference* given to state courts is highly prejudicial and unconstitutional and is presently being challenged in the case of *Sanders v. Plappert*, Case No: 16-6152 in the United States Court of Appeals for the Sixth Circuit raising the following points and constitutional challenges:

- 1) AEDPA deference violates Article III and the Separation of Powers Doctrine in the same way Chevron deference did
- 2) AEDPA deference is unconstitutional because it forbids federal judges from addressing constitutional violations

3) Article III requires federal courts to independently determine and apply the law, and Article VI's Supremacy Clause makes federal law binding on the States

4) Chevron deference's demise means AEDPA deference must be declared unconstitutional

5) The constitutional critiques of Chevron deference are equally relevant, if not more powerful, reasons to condemn AEDPA deference

6) AEDPA deference is materially indistinguishable from Chevron deference, and the foreseeable arguments to uphold AEDPA deference should be rejected.

The Eighth Circuit in *Piper v. Jackley*, 2025 U.S. Dist LEXIS 136978, previously rejected argument that the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), renders AEDPA unconstitutional as violative of Article III of the Constitution.

The only federal appellate court to have ruled on this issue is the Sixth Circuit, which held that *Loper Bright* did not "impliedly overturn AEDPA deference." *Miles v. Floyd*, No. 24-1096, 2025 U.S. App. LEXIS 7146, 2025 WL 902800, (6th Cir. Mar. 25, 2025). Although the Eighth Circuit did not believe that *Loper Bright* made AEDPA unconstitutional, it

noted that its effect on AEDPA is still being litigated and at least one district court has granted a COA on the issue.

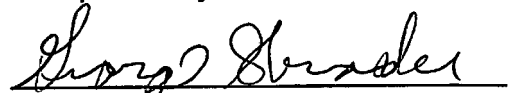
Furthermore, and more importantly, the AEDPA deference issue is currently pending before this Court in the case of *Washington v. Alabama*, Case No: 24-13905. Therefore, this case should be held in abeyance or stayed until such time as a decision is rendered in the cases of *Washington* and *Sanders*.

Petitioner respectfully requests that this Court consider the constitutionality of AEDPA's *substantial deferences* outlined in *Sanders* and declare it unconstitutional or in the alternative stay these proceedings until such time as this Court renders a decision in the case of *Washington v. Alabama*, Case No: 24-13905.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,


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