ORIGINAL

No. 23-6661

In The

SUPREME COURT OF THE UNITED STATES

JUSTIN GRANIER
Petitioner

v.

STATE OF LOUISIANA
Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit
(22-30240)

PETITION FOR A WRIT OF CERTIORARI

Justin Granier, 474480, Pro Se
Louisiana State Penitentiary
Angola, Louisiana 70712

QUESTION PRESENTED

1. Whether the United States Fifth Circuit Court of Appeal has created a split in the Circuit Courts on this issue of implied bias.

2. Whether the United States Fifth Circuit Court of Appeal erred in their decision that implied bias has never been determined by the United States Supreme Court.

3. Do the provisions of **28** U.S.C. § **2254**(d) exclusively preclude the Fifth Circuit Court of Appeal from making an implied bias determination?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Warden Tim Hooper is the Warden of the Louisiana State Penitentiary and is the person actually holding the petitioner in custody.

Mr. Donald D. Candell is the Assistant District Attorney in and for the 23rd Judicial District Court of Louisiana from where the conviction originates.

Ms. Lindsey Manda is an Assistant District Attorney in and for the 23rd Judicial District Court of Louisiana from where the conviction originates.

Mr. Jeff Landry is the Attorney General in and for the State of Louisiana from where the conviction originates.

Mr. Justin Granier is the petitioner who has been denied his rights under the provisions of the **Sixth, Eighth and Fourteenth Amendments** to the United States Constitution.

RELATED CASE

The Petitioner is aware of no further cases, in State or Federal Court, that are in any way related to or touching upon the matter currently before this Honorable United States Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X] For cases from **federal courts**.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts.**

[ ] The opinion of the highest state court to review the merits appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____court appears at Appendix ____ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 7/17/23.

[ ] No petition for rehearing was timely filed in my case

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ , and a copy of the order denying rehearing appears at Appendix __.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____

.

A copy of the decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a denial of rights provided by the **Fifth, Sixth,** and **Fourteenth Amendments** to the Constitution:

The **Sixth Amendment** guarantees in all criminal prosecutions, the accused shall enjoy the right to . . . 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 have assistance of counsel for his defense.

The **Fourteenth Amendment** guarantees "No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

The **Fifth Amendment** guarantees "No person shall be . . . . deprived of life, liberty or property, without the due process of law . . . ."

28 U.S.C. § 2254(d) provides that the Courts will not review a claim adjudicated in state courts unless it "resulted in a decision that was contrary to . . Clearly established Federal law, as determined by the Supreme Court of the United States".

STATEMENT OF THE CASE

In the pre-dawn hours of September 15, 2001, two men approached Delaune's Supermarket in St. Amant, Louisiana. One man, armed with a rifle, opened fire, killing 18 year old Luke Villar as he cleaned the stores from entrance. Both men fled on foot without taking anything of value. Mr. Granier and two co-defendants were arrested. Mr. Granier gave differing statements to the police admitting to knowledge of the scheme but denying any involvement in the armed robbery or the murder of Luke Villar.

Jury selection began on October 20, 2003. among the jurors selected in the venire was Gladys Mobley (hereinafter "Juror Mobley"), a lifelong resident of Ascension Parish. Juror Mobley's son, Sam Mobley (hereinafter "Suspect Mobley"), was the same age as Villar. He also worked at DeLaune's Supermarket approximately one week before the murder. On recounting the matter to a defense investigator in 2013, Juror Mobley remarked that it "***could have been my son***" who was killed that morning. Nevertheless, during *voir dire* Juror Mobley failed to disclose her knowledge or connection to the offense.

An important factor is that Juror Mobley's son, Suspect Mobley, was an initial suspect in the shooting. Chris Fontenot with the Ascension Parish Sheriff's Office interviewed the store owner, Mark Delaune who identified Suspect Mobley,

who was fired a week before, as a potential suspect. As nothing of value was taken, vengeance seemed a likely motive. Suspect Mobley was interviewed by Detective Mike Toney at his home where he lived with his father and grandmother. A search was conducted of the home. Detective Toney obtained the address of Suspect Mobley's mother who lived nearby. He documented his interview, and Juror Mobley's address, in his interview notes, which were made available to state prosecutors but never turned over to the defense.

Despite these close, significant, connections to the crime, Juror Mobley remained silent at *voir dire*. Even though her son had initially been considered a suspect, and the state prosecutors knew of this, neither of them revealed this information to the court or the defense.

Mr. Granier was found Guilty as Charged on October 24, 2003 and sentenced to spend the remainder of his natural life imprisoned.

REASONS FOR GRANTING THE PETITION

The United States Fifth Circuit Court of Appeals has decided an important question of federal law, which violates provisions of the United States Constitution that should be settled by this Court.

SUMMARY OF THE ARGUMENT

As the District Court noted in its March 31, 2022 Order, there are four

"inescapable facts" in this matter:

(1) Juror Mobley sat on the jury that convicted Petitioner of second degree murder in October 2003; (2) two years earlier, Suspect Sam Mobley, Juror Mobley's son, was interviewed by Ascension Parish Sheriff's Deputy Mike Toney as a possible suspect in the murder investigation that ultimately resulted in the Petitioner's conviction; (3) Juror Mobley did not divulge that her son had been a suspect when questioned at voir dire regarding her knowledge of and connection to Petitioner's case[1]; (4) Deputy Toney's investigation notes were among the papers in the state's file, but were never disclosed to Petitioner, and were not divulged by the state after Juror Mobley's vior dire answers failed to reveal her son's involvement in Petitioner's case. ROA. 1179

These troubling facts "easily form the basis of a claim of juror bias, and a related claim of prosecutorial misconduct." ROA. 1180. However, the District Court ultimately concluded that Granier failed to establish that Juror Mobley actually *knew* that her son worked at Delaune's or was questioned by police. Therefore, the Court denied relief but acknowledged that "jurist of reason could disagree with this analysis." ROA. 1185.

The sole issue presented to the Circuit Court to support the implied bias claim was whether the facts, as established in both state and federal evidentiary proceedings, demonstrated that Juror Mobley, who passed away on December 18, 2014, was aware of her son's questioning and the search of his residence at the time of Petitioner's jury selection.

The evidence produced during hearings in this matter clearly established that

[1]Nor did she divulge that Mobley worked a Delaune's a week prior and went to school with the victim.

Juror Mobley had knowledge of her son's involvement in the matter. First, the nature of the Mobley's kinship – mother and son – is the type of close, familial connection that would naturally engender communication of this sort. Second, it was Juror Mobley who first disclosed to a defense investigator in 2013 that her son worked at Delaune's and was questioned by police. Third, Suspect Mobley advised the Court that he spoke to his mother regularly and that she knew about the interrogation. Fourth, Juror Mobley;s name and Praireville address were memorialized by police, an unlikely and extraneous detail were officers *not* interested in speaking with her directly. Based upon these, and other details as described below, the Lower Courts committed clear error in concluding that Juror Mobley was not aware of her son's involvement in the case during jury selection. Her silence during *voir dire*, coupled with the State's failure to advise either Petitioner or the trial court of Mobley's interrogation, are violations of Granier's rights as secured under the **Fifth, Sixth and Fourteenth Amendments.**

The touchstone of this inquiry is whether the average person in position of the juror would be prejudiced and feel substantial emotional involvement in the case. In view of that inquiry, we must presume bias whenever a juror shares a very close kinship with someone involved in the case. Petitioner asserts that a distant relative is unlikely to harbor the sort of prejudice that interferes with the

impartial discharge of juror service. On the other hand, the bond between mother and son is intimate enough to generate a stronger likelihood of prejudice, whether unconscious or concealed. Surely a mother, knowing her son was once a suspect in this case, and could potentially become a suspect again if the petitioner was not convicted, would generate a strong likelihood of prejudice.

A violation of the defendant's right to an impartial adjudicator, be it judge or jury, is a structural defect in the trial. See ***United States v. Mitchell***, 690 F.3d 137 (3d Cir 2012); ***Gomez v. United States***, 490 U.S. 858, 109 S.Ct. 2237, 104 L.Ed.2d 923 (1989); ***Gray v. Mississippi***, 481 U.S. 648, 107 S.Ct 2045, 95 L.Ed.2d 622 (1987); See also ***Szuchon v. Lehman,*** 273 F.3d 299 (3d Cir 2001) (holding that a bias juror is a structural defect despite the defendant's failure to object); ***Hughes v. United States***, 258 F.3d 453 (6th Cir 2001); ***Johnson v. Armontrout***, 951 F.2d 748 (8th Cir 1992).

Even though Juror Mobley passed away prior to the hearing conducted in this matter, Petitioner, through official police records and testimony of her son, as well as Wade Petite[2], clearly support that she ***knew***, about her son's connection to the case and failed to disclose this information. This evidence clearly falls within the implied bias doctrine. On this issue of implied bias the Fifth Circuit Court of Appeal held that;

[2]Granier's trial attorney.

> "it's impossible for Granier to show that the state court contravened 'clearly established Federal law, as determined by the Supreme Court of the United States if he cannot point to a relevant *holding* [on implied bias] from the Supreme Court.' The best he can muster is Justice O'Conner's concurrence in ***Smith v. Phillips***, 455 U.S. 209 (1982), and Justice Brennan's concurrence in ***McDonough Power Equipment***. But concurrences do not create clearly established law. *See* ***Terry Williams***, 529 U.S. at 412. Accordingly, we cannot rely on these authorities, and Granier's claim must fail." (*See Substituted opinion of the Fifth Circuit Court of Appeals, Page 6.*)

In the instant matter, the Fifth Circuit Court of Appeals held that implied bias was not clearly established law as set forth by the United States Supreme Court. This decision conflicts with other panels within the Fifth Circuit as well as other Federal Circuits.

In ***Brooks v. Dretke***, 444 F.3d 328 (5th Cir 2006) the Court rejected the State's argument that the doctrine of implied bias was not clearly established federal law. Citing Supreme Court precedent beginning with ***United States v. Wood***, 299 U.S. 123, 134 (1936) and tracking the doctrine as far back as the treason trial of Arron Burr, ***United States v. Burr***, 25 F. Cas. 49 (D.Va. 1807), the ***Brooks*** Court held: "We maintain that the doctrine of implied bias is 'clearly established Federal law as determined by the United States Supreme Court.'" ***Brooks***, 444 F.3d at 329.

In January of 2023 the Fifth Circuit Court affirmed the doctrine in ***United States v. Abreu***, No. 21-60861, 2023 WL 234766 (5th Cir Jan. 18, 2023), holding

that the "determination of implied bias is an objective legal judgment made as a matter of law and is not controlled by sincere and credible assurances by the juror that he can be fair." *See also*, ***Buckner v. Davis***, 945 F.3d 906 (5th Cir 2019) (holding that "[w]here a juror has a close connection to the circumstances at hand, . . . bias may be presumed as a matter of law."); ***Solis v. Cockrell***, 342F.3d 392, 395 (5th Cir 2003) (The bias of a prospective juror may be actual or implied; that is, "it may be bias in fact or bias conclusively presumed as [a] matter of law.").

The Court's holding in the instant matter also conflicts with decisions of other circuits. *See e.g.*, ***United States v. Brazelton***, 557 F.3d 750 (7th Cir 2009) ("*The concept of implied bias is well-established in the law.*"); ***Conaway v. Polk***, 453 F.3d 567 (4th Cir 2006) ("*the State incorrectly asserts that the doctrine of implied bias was abrogated by the Court over twenty years ago in Smith v. Phillips. To the contrary, the doctrine of implied or presumed bias has been recognized from our country's earliest days, and remains firmly rooted.*").

Petitioner submits that in the instant matter the Mother-Son relationship clearly supports a prejudicial level of implied bias. Facts were developed during hearings that clearly establish that the son was initially a suspect in the murder, the son's home was searched, and the son discussed the matter with his mother. Isn't it reasonable to believe that a mother would vote to convict the petitioner to assure

that her son would not be further investigated and maybe again become a suspect? Granier argues that implied bias is clear due to the close relationship of the Juror Mother and the Suspect Son.

Granier argues that the Doctrine of Implied Bias is well settled constitutional law as set forth by the United States Supreme Court. This doctrine can be traced back to ***United States v Burr***, 25 F.Cas. 49 (No1492g) (C.C.D. Va. 1807).

The 1936 decision of this Court in, ***United States v. Wood***, 299 U.S. 123, 134, 57 S.Ct 177; 81 L.Ed. 78 (1936), held that "bias conclusively presumed as matter of law," and that "bias attributable in law to the prospective juror regardless of actual partiality." Thirty years later, in 1964, this Court expressly relied upon the implied bias doctrine in ***Leonard v. United States***, 378 U.S. 544, 84 S.Ct. 1696, 12 L.Ed.2d 1028 (1964). In this case this Court invalidated the conviction because members of his petit jury had been present when the petitioner was convicted in an unrelated matter. The jurors' presence at the first trial rendered them incapable of serving on the petitioner's second trial, irrespective of the jurors' actual bias. Surely a mother's strong instincts to protect her children should support implied bias.

The decision of the Circuit Court in the instant matter is in error. The decision of the Fifth Circuit Court of Appeal created within the Circuits a conflict that should be resolved by this Honorable Court.

Petitioner understands and respects that the grant or denial of this application for writs rest within the sound discretion of this Honorable Court. Petitioner believes this application should be granted as he has shown that the Fifth Circuit Court of Appeals has clearly erred and this error creates a conflict within the Fifth Circuit Court of Appeal as well as with the other U.S. Circuit Courts on the same legal matter. Mr. Granier seeks to have this Honorable United States Supreme Court to resolve this issue.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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Date: 10-9-23