

No. 081401 MAY 12 2009

In the Supreme Court OFFICE OF THE CLERK
of the United States

LINDA METRISH, WARDEN,
Petitioner,

v

DANIEL NEWMAN,
Respondent.

*On Petition for Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Where the Sixth Circuit on federal habeas review applied a legal rule ("reasonable speculation") that has not been squarely established by this Court—and which conflicts with this Court's rule in *Jackson v. Virginia*—whether the Sixth Circuit erred in granting habeas relief when the State court's decision applied the *Jackson* standard and found there was sufficient evidence.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is published. *Newman v. Metrish*, 543 F.3d 793 (6th Cir. 2008). Pet. App. 1a-19a. The Order of the United States District Court for the Eastern District of Michigan, Southern Division granting the petition is unpublished. Pet. App. 20a-45a. The Michigan Court of Appeals' decision is unpublished. Pet. App. 47a-52a.

JURISDICTION

The federal district court reviewed the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Following the grant of the petition, the Warden appealed to the Sixth Circuit. The Sixth Circuit, in an opinion filed October 6, 2008, affirmed the grant of the petition. The Warden filed a petition for rehearing and suggestion for rehearing en banc, which were denied on February 11, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The statutes involved are 28 U.S.C. § 1254(1) and the Antiterrorism and Effective Death Penalty Act (AEDPA). 28 U.S.C. § 2254(d)(1) of the AEDPA provides that an application for a writ of habeas corpus:

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. . . resulted 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.

INTRODUCTION

The Sixth Circuit applied a rule never squarely established by this Court and which conflicts with this Court's decision in *Jackson v. Virginia*.¹ The Sixth Circuit's rule that "reasonable speculation" is insufficient to support a conviction undermines this Court's analysis in *Jackson* that allows a jury to convict based on reasonable inferences from the evidence. This rule, which was adopted by the Sixth Circuit in 1981, has not been applied by any other circuit.

The Sixth Circuit, like the district court, also failed to accord the State court decision the deference required under the AEDPA as interpreted by this Court in *Williams v. Taylor*.² Consideration by the Court is necessary to secure and maintain uniformity of this Court's decisions.

The State court applied the rule of *Jackson* in a reasonable manner under AEDPA and *Williams v. Taylor*, and the Sixth Circuit, and the district court, improperly substituted their own independent judgment for that of the State court in granting habeas relief. Moreover, as articulated by the dissent from Judge Sutton in Sixth Circuit, there was ample evidence in this case that showed that Daniel Newman was the killer. Pet. App. 12a.

Notably, this Court recently granted a writ of certiorari in *McDaniel v. Brown* (No. 08-559) involving the Ninth Circuit's analysis of a sufficiency of the evidence claim. Granting the petition for certiorari in this case is likewise necessary not only for the reasons

¹ *Jackson v. Virginia*, 443 U.S. 307 (1979).

² *Williams v. Taylor*, 529 U.S. 362 (2000).

stated above, but also because the Sixth Circuit's decision implicates the State's ability to uphold jury convictions in criminal cases that are based on circumstantial evidence. Reliance on such evidence by a jury is both permissible and commonplace. This particular proceeding is of great importance to the State of Michigan. Newman was convicted of murder and, unlike most cases in which habeas relief is granted, the Sixth Circuit's finding that the evidence was insufficient precludes retrial on the charges.

The State of Michigan notes that it is filing three other petitions for certiorari contemporaneously with this petition. See *Prelesnik v. Avery*, (09-___); *Berghuis v. Thompkins*, (09-___); and *Berghuis v. Smith*, (09-___). All four are murder cases, all published, all reaching disposition in February 2009, in which the State of Michigan contends the Sixth Circuit failed to accord the State court decisions with the proper level of deference required by AEDPA. These cases evidence a pattern by the Sixth Circuit of usurping the role of the State courts by failing to properly apply AEPDA. This failure has dramatic consequences for this case, by wrongly vacating Newman's murder conviction. This Court should grant this petition.

STATEMENT

This is a habeas case involving the February 1992 murder of Harry Chappelle. The physical evidence recovered from the murder scene indicated that Chappelle was blasted off of his couch by a 12-gauge shotgun fired by a person standing in the foyer of Chappelle's home. Chappelle was then shot no less than eight times with a 9-millimeter handgun. Tr. 2/25/93, pp 108-119. The prosecutor's theory was that Chappelle was shot and killed during a robbery of his home and that Newman participated in Chappelle's

killing. Newman's defense was a claimed alibi. Newman did not testify.

There was abundant evidence, which linked Newman to the crime. It was uncontradicted that Newman owned one of the murder weapons (the 9-millimeter handgun). Pet. App. 12a. Five months before the murder, Newman purchased a 9-millimeter handgun. Tr. 2/25/93, pp 167-180. The firearms expert testified that this 9-millimeter handgun conclusively matched a spent cartridge recovered from the scene and at least one of the bullets recovered from Chappelle's body. Tr. 2/25/93, pp 5-41, 44-79; Pet. App. 12a. One witness saw a similar handgun in Newman's laundry hamper just a week or two before the murder. Tr. 3/3/93, pp 67-69; Pet. App. 12a-13a.

There was also evidence that linked Newman to an abandoned gym bag that contained the tools of the murder. The bag contained not only Newman's 9-millimeter handgun, but also a 12-gauge sawed-off shotgun with tape on it, a ski mask, a blue jean jacket, gloves, and a set of walkie-talkies. Pet. App. 13a. Evidence showed that Chappelle was shot not just with Newman's handgun, but also with a 12-gauge shotgun, and the gym bag contained a 12-gauge sawed-off shotgun. The murderer had cut the shotgun's wooden stock and iron barrel and had wrapped the handle with duct tape. When the police investigated Newman's home, they discovered duct tape similar to the tape wrapped around the shotgun's handle, a hacksaw with wood in the blade's teeth, and a pile of wood and iron shavings on a workbench in his garage. Tr. 3/2/93, pp 27-28, 106-110; Pet. App. 13a-14a.

Also discovered from Newman's home was twine visually and microscopically matching twine that was attached to the gym bag. Tr. 3/2/93, pp 21-22, 79-87; Pet. App. 13a.

Hair found on the ski mask was similar in all measurable characteristics to Newman's hair and the hair of one of Newman's dogs. The police laboratory scientist testified that his identifications regarding these hair samples were the strongest conclusions, as far as identification, that he could make within his field of expertise. Tr. 3/2/93, pp 186-218; Pet. App.13a-14a.

Debris found on the blue jean jacket in the gym bag visually and chemically matched a drywall compound recovered from the car Newman (who was a drywaller) was using on the day police arrested him. Tr. 3/2/93, pp 88-105, 156-157; Tr. 3/3/93, pp 23-24; Pet. App. 13a-14a.

There was evidence that Newman knew Chappellear and had visited his home at least once in the months before the murder. Pet. App. 13a.

Also, evidence was presented that Newman told one witness that he wanted to rob some drug dealers, told her that he "wanted guns, drugs, money, anything that he could use," and implored her, on a daily basis, for names and addresses of potential targets. Tr. 3/3/93, pp 70-75; Pet. App. 13a-14a. There was evidence that Newman frequently used marijuana, knew that Chappellear was a drug dealer, and had purchased drugs from him before. Tr. 3/3/93, pp 6-16, 25-27, 70; Pet. App. 14a. The hiding place where Chappellear stored marijuana (his freezer) had been left open for some time when his body was found. Tr. 2/24/93, pp 45-46, 57, 63, 78; Pet. App.14a.

There was also testimony the Chappelle had made a pass at Newman's girlfriend in Newman's presence sometime before the murder and further that Newman was jealous and possessive. Tr. 3/3/93, pp 25-30, 70.

Newman claimed he had spent the night of the murder at the bar where his girlfriend worked. The testimony of the defense witnesses, however, was vague and of little value, with one witness not recalling which day of the weekend Newman was purportedly at the bar and another admitting that she did not have any idea if he was there on February 27 or 28, 1992, or whether he was there on any particular given weekend. Tr. 3/4/93, pp 62-63, 88-89. However, several prosecution witnesses who were present at the bar that night testified that although they could not recall whether Newman was present that night they did recall that Newman's girlfriend repeatedly asked them to tell police and Newman's attorney that Newman was there. Tr. 3/4/93, 133-139, 151-157, 184-188, 192; Pet. App. 14a.

Based on all the evidence presented at trial, a jury convicted Newman of first-degree murder and possession of a firearm during the commission of a felony (felony-firearm). For his crimes Newman was sentenced to life in prison plus two years for the felony-firearm conviction. Following the discovery of an inadvertent procedural error, the trial court correctly vacated the first-degree murder conviction, entered a conviction for second-degree murder, and resentenced Newman to a term of 40-to-80 years in prison.

In his direct appeal, the Michigan Court of Appeals, without dissent, rejected Newman's contention that there was insufficient evidence to convict. Pet. App.

48a-50a. The Michigan Supreme Court denied Newman's application for leave to appeal. Pet. App. 46a.

Newman then filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he alleged that there was insufficient evidence to support his convictions. The State of Michigan answered the petition. The federal district court granted habeas relief, concluding that the State court's decision was an unreasonable application of clearly established federal law. Pet. App. 20a-37a.

The State of Michigan appealed to the Sixth Circuit. Two judges of the Sixth Circuit panel, like the district court judge, ruled in a published opinion that the State court unreasonably applied clearly established law. The other judge on the panel dissented, applying AEDPA deference to the State court and noting that "ample evidence" showed Newman was the killer. Pet. App. 1a-19a.

The State of Michigan filed a petition for rehearing and a suggestion for rehearing en banc, which was denied.

REASONS FOR GRANTING THE WRIT

The petition for writ of certiorari should be granted because:

1. The Sixth Circuit applied a rule not squarely established by this Court, a rule which conflicts with this Court's rule announced in *Jackson*.
2. Even correctly applying the *Jackson* rule, the Sixth Circuit failed to accord the State court's decision the two levels of deference required in reviewing sufficiency claims on federal habeas.

Over a well-reasoned dissent, the Sixth Circuit affirmed the district court's judgment granting the petition for writ of habeas corpus on the grounds that there was insufficient evidence to sustain Newman's convictions.

1. **The Sixth Circuit applied a legal rule that has not been squarely established by this Court and that conflicts with this Court's decision in *Jackson v. Virginia*.**

On habeas corpus review, a State court decision shall be honored unless the State court unreasonably applied a rule announced by the United States Supreme Court.³ The applicable rule or standard for reviewing a sufficiency-of-the-evidence claim was set forth by this Court in *Jackson v. Virginia*.⁴ In *Jackson*, this Court held that in reviewing sufficiency claims, the relevant question is whether – after viewing all of the evidence in the light most favorable to the prosecution – *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The Court emphasized that it is the trier of fact's responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. The Michigan Court of Appeals applied the *Jackson* rule.

But upon federal court habeas review, when analyzing Newman's sufficiency claim, two judges of the Sixth Circuit panel interposed a rule that was neither drawn from *Jackson* nor from any other Supreme Court

³ 28 U.S.C. § 2254(d)(1); *Williams v. Taylor*, 529 U.S. 362, 404-405 (2000).

⁴ *Jackson v. Virginia*, 443 U.S. 307 (1979).

case. These judges drew a distinction between constitutionally sufficient evidence and a jury conclusion based on what they termed a "reasonable speculation" and then held that the evidence did not meet the *Jackson* standard.

A rule holding that a jury's "reasonable speculation" is insufficient to support a conviction is to be found nowhere in *Jackson* or in any subsequent Supreme Court case following *Jackson*. The term "reasonable speculation" first appeared in a 1981 habeas case before the Sixth Circuit in *Fuller v. Anderson*.⁵ The term was repeated in several pre-AEDPA Sixth Circuit habeas cases involving sufficiency claims. It was then apparently abandoned until 2006, when it was resurrected in *Brown v. Palmer*⁶ and reiterated in *Parker v. Renico*,⁷ and then again in this case.

Thus, while the rule was established in *Jackson* that a jury may draw a reasonable inference, a rule was applied by the Sixth Circuit panel that a jury may not, however, reach a conclusion on the basis of "reasonable speculation." The Sixth Circuit's rule of "reasonable speculation" is itself a contradiction in terms.

The word "reasonable" is an integral part of the *Jackson* formula, as well as the standard of review mandated by the AEDPA. The primary task of a federal habeas court is to determine whether the State courts reasonably applied Supreme Court law in examining what reasonable jurors could conclude.

⁵ *Fuller v. Anderson*, 662 F.2d 420 (6th Cir. 1981), cert. den. 455 U.S. 1028 (1982).

⁶ *Brown v. Palmer*, 441 F.3d 347 (6th Cir. 2006).

⁷ *Parker v. Renico*, 506 F.3d 444 (6th Cir. 2007).

The word "speculation," however, is generally used in habeas cases as well as in other contexts in a somewhat pejorative sense, as it was in *Strickler v. Greene*, when this Court held that "mere speculation" that some exculpatory material may have been withheld was unlikely to establish good cause for a discovery request on collateral review.⁸

This Court in *Jackson* did not use the phrase "reasonable speculation." Nor has the phrase been used by any subsequent case from this Court or adopted by any other circuit. Nevertheless it has been used by the Sixth Circuit in four cases—all habeas cases granting relief on sufficiency claims.

The "reasonable *inference*" rule established in *Jackson* both recognized and was based on the role of the jury:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts.** Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to

⁸ *Strickler v. Greene*, 527 U.S. 263, 286 (1999).

the prosecution. The criterion thus impinges upon "jury" discretion only to the extent necessary to guarantee the fundamental protection of due process of law.⁹

Clearly there is a difference between an inference and speculation. An inference is defined as "the act or process of deriving logical conclusions from premises known or assumed to be true" whereas speculation is a "conclusion, an opinion, or theory reached by conjecture." [American Heritage College Dictionary, Third Edition, 1997].

Moreover, the Sixth Circuit's "reasonable speculation" rule erroneously diverts a habeas court's focus from the appropriate constitutional inquiry. It does this by permitting a court to ask the wrong question, a point that was duly noted in the Sixth Circuit's dissent:

The majority may be right that the evidence at trial "supported a host of permissible inferences," Maj. Op. at 4 — some indicative of guilt, some perhaps not. But this is the answer to the wrong question, as *Jackson* asks only whether the jury could have convicted, not whether the evidence supported no other possibility. [Pet. App. 14a-15a]

⁹ *Jackson*, 443 U.S. at 319 (emphasis in bold added and emphasis in italics original)(citations omitted).

By interposing a "reasonable speculation" component into its review the Sixth Circuit broadens the scope of review beyond the question whether *no* rational trier of fact could have found proof of Newman's guilt beyond a reasonable doubt. The Sixth Circuit's rule permits it to grant habeas relief merely because the evidence did not exclude every possibility of innocence. Using this method of analysis, the Sixth Circuit thus enlarges the standard set forth in *Jackson* and allows that Court to perform its own subjective review of the legitimacy of the jury verdict de novo. But this is neither the function nor role that is to be performed by a federal habeas court.

This Court recently reaffirmed in *Knowles v. Mirzayance* that the federal courts in habeas corpus cases are not to apply legal rules not clearly established by Supreme Court decisions.¹⁰ The Sixth Circuit's finding that the Michigan courts unreasonably applied the *Jackson* standard based on the panel's application of a "reasonable speculation" rule should not be allowed to stand.

2. The Sixth Circuit failed to accord the State court's decision the two levels of deference required in reviewing sufficiency of the evidence claims on federal habeas review.

Under AEDPA, a federal court may grant a writ of habeas corpus only if the State courts ruled in a way contrary to, or involving an unreasonable application of, clearly established federal law as determined by the United States Supreme Court.¹¹

¹⁰ *Knowles v. Mirzayance*, 556 U.S. ___ (2009)(citing cases).

¹¹ 28 U.S.C. § 2254(d)(1); *Williams v. Taylor*, 529 U.S. 362, 404-405 (2000).

This Court has held that a State-court decision is an unreasonable application of clearly established federal law if it "correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case."¹² When assessing reasonableness, "a federal habeas court may not grant a writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly."¹³ Rather, that application must also be objectively unreasonable.¹⁴

28 U.S.C. § 2254(d) thus imposes an enhanced deferential standard for evaluating State court rulings on habeas review and "demands that state court decisions be given the benefit of the doubt."¹⁵ Moreover, a fundamental concept for this collateral review is that habeas relief may not be granted under AEDPA by a federal habeas court conducting its "own independent inquiry whether the state court was correct as a de novo matter."¹⁶

Here, the Sixth Circuit and district court concluded that the Michigan Court of Appeals unreasonably applied *Jackson v. Virginia*. In *Jackson*, this Court held that critical inquiry on sufficiency claims must determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. The inquiry is not whether the

¹² *Williams*, 529 U.S. at 407-408.

¹³ *Williams*, 529 U.S. at 411.

¹⁴ *Williams*, 529 U.S. at 409; *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003).

¹⁵ *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002).

¹⁶ *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004).

reviewing court itself believes that the evidence at trial established guilt beyond a reasonable doubt. Instead, "the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹⁷ Thus, under *Jackson*, a habeas petitioner is entitled to relief on a sufficiency claim "if it is found that upon the record evidence adduced at the trial that no rational trier of fact could have found proof of guilt beyond a reasonable doubt."¹⁸

This Court emphasized that *all of the evidence* is to be considered in the light most favorable to the prosecution.¹⁹ This standard was to be applied regardless of whether the evidence of guilt was direct or circumstantial. Indeed, this Court has stated that circumstantial evidence is entitled to equal weight as direct evidence, and the prosecution may meet its burden entirely through circumstantial evidence.²⁰

Thus, under *Jackson*, the prosecutor does not have an affirmative duty to rule out every hypothesis except that of guilt.²¹ And it is the province of the fact-finder—in Newman's case the jury—to weigh the probative value of the evidence and resolve any conflicts in testimony.²² The result is that when "a federal habeas court faced with a record of historical facts that supports conflicting

¹⁷ *Jackson*, 443 U.S. at 318-319 (emphasis in original).

¹⁸ *Jackson*, 443 U.S. at 324.

¹⁹ *Jackson*, 443 U.S. at 319 (emphasis in original).

²⁰ *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003); *Holland v. United States*, 348 U.S. 121, 140 (1954).

²¹ *Jackson*, 443 U.S. at 326.

²² *Jackson*, 443 U.S. at 318-319.

inferences must presume—even if it does not appear affirmatively in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution."²³ Federal habeas courts reviewing sufficiency of the evidence claims were cautioned not to reweigh the evidence or redetermine the credibility of witnesses whose demeanor had been observed by the finder of fact.²⁴

In sum, the scope of review on habeas review of the sufficiency of evidence is decidedly limited and that was true, even before the enactment of the AEDPA in 1996. Thus, 28 U.S.C. § 2254(d) has created additional limits on a federal habeas court's review. In reviewing a sufficiency of the evidence claim, deference is now required at two levels: first, deference should be given to the jury's verdict as contemplated by *Jackson*, and second, deference should be given to the State court's consideration of the jury's verdict as dictated by AEDPA.

With respect to determining whether a State court's application of clearly established law was unreasonable, this Court has stated that "the range of reasonable judgment can depend in part on the nature of the relevant rule."²⁵ Specifically, "applying a general standard to a specific case can demand a substantial element of judgment. As a result, evaluating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations."²⁶ In *Knowles*, this Court held

²³ *Jackson*, 443 U.S. at 326.

²⁴ *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983).

²⁵ *Yarborough*, 541 U.S. at 664.

²⁶ *Yarborough*, 541 U.S. at 664.

that ineffective-assistance-of-counsel claims must be given extra latitude in light of the general nature of the rule:

[B]ecause the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard. See *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) ("[E]valuating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations").²⁷

The standard for sufficiency of the evidence claims constitutes another general rule which, under *Yarborough*, requires the federal courts to allow the State courts more leeway in its application.

In this case, the Michigan Court of Appeals plainly employed the correct rule in considering Newman's sufficiency claim. Next, the State court, viewing the evidence in the light most favorable to the prosecution, reasonably determined that a rational fact-finder could have found proof of the elements of the offense beyond a reasonable doubt. The State court recited the evidence that allowed the jury to convict Newman:

[T]here was evidence that one of the murder weapons belonged to defendant. While defendant asserts that this evidence

²⁷ *Knowles*, 556 U.S. at __.

is of little relevance because the gun was purchased five months before the murder, defendant was the last known purchaser of the gun, and a witness testified she saw a similar-looking gun at defendant's residence a week or two before the murder. Further, the gun was found in an abandoned gym bag that also contained a blue jean jacket, a sawed-off shotgun with tape on it, a ski mask, gloves, and a set of walkie-talkies. Hair found on the ski mask matched defendant's hair when microscopically compared, and hair similar to the hair of one of defendant's dogs was also found on the ski mask. Tape similar to the tape on the shotgun was found at defendant's residence, a substance found on the blue jean jacket appeared to contain the same elements as drywall compound used by defendant, who was a drywaller, and twine found on the gym bag was similar to twine found at defendant's residence. Further, there was testimony that defendant knew the victim and had been to the victim's home, that the victim had made a pass at defendant's girlfriend in defendant's presence, and that defendant was jealous and possessive. There was also evidence that defendant had repeatedly asked a friend for the names of any drug dealers he could rob for drugs or money. Lastly, it appeared that defendant's girlfriend may have been asking others to buttress defendant's alibi defense. [Pet. App. 49a-50a.]

The State court properly recognized that circumstantial evidence and reasonable inferences which arise therefrom can constitute satisfactory proof, and that it is unnecessary for the prosecutor to negate every reasonable theory consistent with a defendant's innocence. The State court concluded that, "when viewed in a light most favorable to the prosecution, the evidence could support an inference beyond a reasonable doubt that [Newman] either committed the murder himself or aided and abetted in its commission." Pet. App. 50a.

The State court's decision evidences an application of the *Jackson* standard that was not objectively unreasonable. The State court viewed the evidence in the light most favorable to the prosecution, then made the reasoned decision that the evidence was sufficiently persuasive to meet the constitutional threshold. As such, 28 U.S.C. § 2254(d) bars Newman from habeas relief, whether or not the State court decision was believed to be correct by the federal courts. It was not unreasonable.

The errors in this case began with the district court's decision. While the district court set forth the appropriate standard of review, it failed to follow it. In reviewing the sufficiency issue, the district court questioned or weighed the importance of certain evidence while it disregarded other evidence. The district court also erroneously quoted the State court decision and accused the State court of ignoring certain evidence, which the district court incorrectly summarized. Instead of conducting its review of the sufficiency claim under the two levels of deference mandated by AEDPA and *Jackson*, the district court considered the sufficiency issue de novo without any deference whatsoever.

Two members of the Sixth Circuit panel perpetuated the errors of the district court when they, too, failed to accord the State court's decision the required two levels of deference and instead second-guessed the jury's decision.

The Sixth Circuit actually acknowledged that there was a "wealth of information showing that Newman owned the gun"; that "ample evidence" was offered to support an inference that Newman had possessed at least one of the murder weapons; and that analysis of the items in the gym bag "strongly suggested that they belonged to Newman and had been used in Chappelle's murder." The Sixth Circuit then speculated, by giving reasons why a juror could have found the prosecution's evidence unpersuasive, mainly, that there was no evidence that Newman used or possessed the murder weapon on the actual day of the murder; no testimony or evidence actually placing him at the scene of the crime; no eyewitness testimony; and no latent fingerprints recovered. In essence, the Sixth Circuit substituted its own fact finding for that of the jury.

The Sixth Circuit then opined that the evidence supported a "host of permissible inferences." But the dissenting judge duly noted that this was "the answer to the wrong question, as *Jackson* asks only whether the jury reasonably could have convicted, not whether the evidence could have supported no other possibility." Pet. App. 15a.²⁸ And, as this Court has noted, it is the province of the jury alone to choose between conflicting inferences.²⁹ The action here by the Sixth Circuit also is

²⁸ *Newman*, 543 F.3d at 799.

²⁹ *Jackson*, 443 U.S. at 326.

not an isolated failure to accord a State court decision the proper deference under AEDPA. Indeed the Sixth Circuit has exhibited a clearly identifiable pattern in its failure to follow AEDPA. In this regard the State would note that it is contemporaneously seeking certiorari in three other murder cases, all published, in which it contends that the Sixth Circuit, in granting habeas relief, failed to properly apply the AEDPA standard.³⁰

The dissent by Judge Sutton correctly determined that the inference drawn by the jury in this case was, in fact, the most reasonable one, and after inquiring into some "other possibili[ties]," justifiably concluded that he could not identify a coherent theory of acquittal:

Did someone borrow or steal Newman's handgun, then place a similar handgun in his laundry hamper, then place a hacksaw and wood and metal shavings matching the other murder weapon in his house, then place matching human hair, dog's hair, and drywall compound in the murderer's gym bag and then convince Newman's girlfriend to tell others to support an alibi defense that was not true and easy to contradict? Or perhaps, less nefariously, no one did any

³⁰ See *Avery v. Prelesnik*, 548 F.3d 434 (6th Cir. 2008)(the Sixth Circuit rejected the State court's determination that there was no prejudice on the claim of ineffective assistance of counsel because alibi testimony is always a jury question); *Thompkins v. Berghuis*, 547 F.3d 572 (6th Cir. 2008)(the Sixth Circuit determined that there was a violation of *Miranda* where the police continued to interview the defendant where the defendant acknowledged his rights but did not expressly waive them); and *Smith v. Berghuis*, 543 F.3d 326 (6th Cir. 2008)(the Sixth Circuit adopted a new rule – the comparative disparity test – for evaluating whether there was a fair cross section of the community under the Sixth Amendment).

of this, and it was all a remarkable string of coincidences. Whichever way you slice it, I see nothing unreasonable in the state court's conclusion that a rational juror could have found Newman guilty beyond a reasonable doubt. [Pet. App. 16a-17a]³¹

The dissent then astutely notes that while the majority of the Sixth Circuit panel offered several reasons why a juror might have found the prosecution's evidence unpersuasive, "it offered nothing to show why *no* rational juror could have found guilt and nothing to show why that conclusion is not just wrong but unreasonable." Pet. App. 18a.³² In other words, the Sixth Circuit panel majority both ignored and failed to apply the enhanced deferential standard that Congress ordained in AEDPA.

While parroting that circumstantial evidence alone can support a conviction, the Sixth Circuit panel majority's disagreement with the jury is based on the fact that there were no eyewitnesses to the crime or latent fingerprints recovered. Yet this reasoning is plainly at odds with accepted legal precedent, which holds that circumstantial evidence is entitled to be given equal weight as direct evidence and that the prosecution may meet its burden entirely through circumstantial evidence. Indeed, numerous convictions are based on evidence that did not include eyewitness testimony or fingerprints. Here, the lack of fingerprint evidence could be readily explained by trial testimony, which revealed that the murderer's gym bag contained cotton gloves and that the surface of firearms was not conducive to retaining fingerprints.

³¹ *Newman*, 543 F.3d at 800.

³² *Newman*, 543 F.3d at 801.

With regard to the Sixth Circuit panel majority's statement that there was no evidence placing Newman at the scene of the crime, the dissent appropriately questions why placing Newman's gun at the scene of the crime and conclusively establishing that it was one of the murder weapons "does not do the trick—particularly in view of the other evidence linking Newman to the killer's abandoned gym bag, his acquaintance with the victim and his desire to rob a drug dealer (like the victim)." Pet. App.18a.³³

The jury's decision in this case should not be overturned merely because it drew inferences to find Newman guilty. The twelve jurors, who actually heard the testimony and the evidence presented and considered all reasonable inferences arising therefrom, unanimously concluded Newman was guilty. Because it reasonably could have reached that conclusion, the jury's verdict should be respected.

With the combination of all of the evidence presented at trial, together with the inferences properly deducible therefrom, the jury did not act irrationally in finding Newman guilty of murder, nor did the trial judge in denying the motion for a directed verdict, nor did the three judges of the Michigan Court of Appeals in affirming the conviction, nor did the seven judges of the Michigan Supreme Court in affirming the judgment of the Michigan Court of Appeals. As aptly noted by the dissenting judge, there was abundant circumstantial evidence linking Newman to Chappelle's murder and there was simply nothing objectively unreasonable about the State court conclusions that a rational juror could have found Newman guilty beyond a reasonable doubt.

³³ *Newman*, 543 F.3d at 801.

Had the Sixth Circuit and district court properly applied the two levels of deference required upon federal habeas review and had they considered all of the evidence that had been presented in the light most favorable to the prosecution, they should have undoubtedly affirmed the State court's decision. Instead, both federal courts swept aside the requirement of according the State court's decision deference under AEDPA and this Court's precedent, and the requirement that they view all of the evidence in the light most favorable to the prosecution. The result was to set aside the jury's verdict only to substitute their own. Similar actions by federal judges were strongly condemned in 1982, when then Chief Justice Burger's dissented to this Court's denial of a petition for writ of certiorari in another sufficiency case, also involving a Michigan murder.³⁴ That well-reasoned dissent has even greater resonance today, particularly in light of the additional layer of deference required by AEDPA.

³⁴ *Anderson v. Fuller*, 455 U.S. 1028 (1982).

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted

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