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No. 12-794

In the Supreme Court of the United States

RANDY WHITE, WARDEN,
Petitioner,
v.
ROBERT KEITH WOODALL,
Respondent.

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

BRIEF OF ARIZONA AND THIRTEEN OTHER STATES AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*

Amici curiae, as the chief law enforcement officers of their respective states, have a strong interest in protecting the fairness and accuracy of criminal sentencing proceedings. The Sixth Circuit decision degrades fairness and accuracy in sentencing by misapplying the prophylactic Fifth Amendment rule formulated in *Carter v. Kentucky*, 450 U.S. 288 (1981). That rule requires courts to instruct juries not to draw an adverse inference from a defendant's silence regarding disputed elements of the state's case. Here, the defendant's admissions and concessions have established all of the adverse facts that render him eligible for the maximum allowable punishment. Therefore, the no-adverse-inference instruction neither shields the defendant's invocation of his Fifth Amendment right to remain silent from impermissible inferences nor preserves the state's burden of proof. Instead, giving the no-adverse-inference invites confusion and threatens to corrupt the deliberations. The *amici* urge this Court to find the instruction impermissible in these circumstances.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This brief addresses the unsoundness of using the prophylactic "no-adverse-inference" instruction in a case where the defendant has either admitted or conceded the facts a jury might otherwise improperly infer from his silence. The concerns behind the *Carter* rule – fear that the jury will speculate about the existence of adverse facts and that its improper

inferences may effectively shift the burden of proof – do not present themselves in such circumstances.

The Sixth Circuit's decision disregards those circumstances. Rather than grounding its decision in a functional analysis of this Court's case law, the Sixth Circuit erroneously concludes that trial courts must give the no-adverse-inference instruction in every case where the defendant chooses not to testify, including cases such as Woodall's where the instruction serves no purpose.

The no-adverse-inference rule has its modern origins in *Griffin v. California*, 380 U.S. 609, 614-15 (1965). In *Griffin*, this Court prohibited state courts and prosecutors from "solemniz[ing] the silence of the accused into evidence against him" through judicial instruction or prosecutorial commentary that invited jurors to draw inculpatory inferences from the defendant's decision not to testify regarding facts within his knowledge that they would expect him to deny or explain. The rule rests on the principle that adverse inferences based on the refusal to testify are "a remnant of the inquisitorial system of criminal justice" that impermissibly penalize a defendant for exercising the constitutional privilege to decline testifying. *Id*. at 614 (quoting *Murphy v. Waterfront Comm.*, 378 U.S. 52, 55 (1964)).

This Court broadened the rule in *Carter v. Kentucky*, 450 U.S. 288, 300 (1981), finding constitutional error where the trial court denied the defendant's request for a no-adverse-inference instruction. The opinion found that the penalty exacted in *Griffin* by adverse comment on the

defendant's silence "may be just as severe when there is no adverse comment, but when the jury is left to roam at large with only its untutored instincts to guide it, to draw from the defendant's silence broad inferences of guilt." *Id*. at 301. The feared speculation in *Carter*, as in *Griffin*, attached to every element of proof, as the defendant stood on the presumption of innocence and required the state to prove every element of the crime.

This Court extended the privilege against self-incrimination to capital sentencing proceedings in *Estelle v. Smith*, 451 U.S. 454, 462 (1981). *Estelle v. Smith* held that the state violated the privilege by introducing Smith's pretrial statements, which he made during a court-ordered psychiatric examination, to prove his future dangerousness, a contested fact that rendered the defendant eligible for a death sentence. 451 U.S. at 469. Accordingly, the Fifth Amendment now bars the use of a defendant's court-ordered pretrial disclosures at sentencing absent warnings or admonitions demonstrating an awareness of the privilege and the sentencing consequences of forgoing it. *Id*. at 467, 469.

Finally, in *Mitchell v. United States*, 526 U.S. 314, 318 (1999), this Court applied the no-adverse-inference principle to contested facts at sentencing in a case where the defendant had entered a guilty plea. This Court held that the defendant's waiver of the Fifth Amendment privilege for purposes of establishing the factual basis of her guilty plea did not extend to contested facts relevant only to punishment. *Id*. at 325. Consequently, the trial court erred in drawing

adverse inferences as to those contested facts based on her guilty plea waiver. *Id*. at 330.

These cases, unlike Woodall's case, involved a contested issue of at least one fact necessary to prove guilt or impose a greater punishment. In contrast, Woodall's guilty plea to the kidnapping and rape charges established the two statutory aggravating factors that subjected him to a capital sentence on the murder charge; Woodall expressly conceded the existence of the other adverse facts introduced by the Commonwealth during the penalty phase trial; and the only contested matters were based on evidence Woodall introduced in mitigation.

Absent contested adverse facts, there is no danger of speculation based on adverse inferences, and no possibility that a jury will presume the existence of an adverse fact based on the defendant's silence. This Court's cases cannot be read, together or individually, to require a no-adverse-inference instruction when the defendant's admissions and concessions leave no adverse inference to draw. The no-adverse-inference instruction in such cases invites ridicule, as it informs the jury not to *infer* a fact that the defendant already *established* through his prior admissible statements or has already conceded. The testimonial privilege needs no protection from speculation because the defendant's prior statements and concessions leave nothing to speculate about.

The jury, on the other hand, needs protection from inapplicable instructions that threaten to corrupt the verdict. When the trial court gives a no-adverse-inference instruction in a case where the defendant's

admissions and concessions establish the very same adverse facts that his testimony would otherwise deny or explain, the instruction can only confound a juror. The instruction assumes that facts within the defendant's knowledge are at issue. Consequently, it implies that the prosecution must prove something more – some other fact within the defendant's knowledge – in order to carry its burden of proof. The instruction causes rather than prevents speculation in these circumstances.

A jury that follows the instruction in such circumstances will falter. A jury cannot both consider the defendant's actual statements in his guilty pleas *and* speculate what the defendant's statements might be or why the defendant chose not to speak. The instruction in these circumstances is contradictory. As such, it threatens the accuracy of the jury's deliberations and, therefore, the fairness of its verdicts.

ARGUMENT

I. The No-Adverse-Inference Instruction Serves No Purpose Where the Defendant's Admissions and Concessions Establish the Same Adverse Facts that the Jury Might Otherwise Impermissibly Infer from His Silence.

The issues presented arise in the context of Woodall's penalty phase trial after he pled guilty to an especially brutal and depraved murder. In 1997, Woodall kidnapped, raped, slashed and drowned his teenaged victim – a stranger he happened upon in a convenience store. Pet. App. 32a. After initially

denying his involvement, Woodall pled guilty to kidnapping, rape and murder "after he realized the amount of evidence the state had against him." *Id*. at 285a-286a.

At the penalty trial, Woodall declined to testify. Pet. App. 3a, 33a, 44a. The Commonwealth relied on Woodall's guilty plea to kidnapping and rape to establish his eligibility for a death sentence. Pet. App. 14a, 22a, 27a. Woodall conceded the existence of the additional adverse facts that the Commonwealth introduced at sentencing, including his prior convictions for two counts of first-degree sexual abuse involving one victim.[1] Pet. App. 262a; transcript of evidence vol. 10 pp. 1330, 1422-23.

Notwithstanding his guilty plea to "all of the charged crimes as well as the aggravating circumstances," Pet. App. 263a, and his express admission as to *all* adverse facts introduced by the Commonwealth that "he did those things," Joint App. 69, Woodall requested a *Carter* instruction advising the jurors "to draw no adverse inference from the decision of Woodall not to testify during the penalty trial." Pet. App. 261a. The trial court declined the request, finding it would not be "intellectually honest" and citing the court's "responsibility of not just giving instructions to juries just for the sake of protecting the record and

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[1] The prosecutor introduced evidence of Woodall's prior convictions. Transcript of evidence vol. 10, p. 1330. In cross-examining Woodall's grandmother, the prosecutor elicited testimony that Woodall had sexually abused three of her grandchildren. *Id*. at 1445.

being beyond an abundance of caution." *Id*. Pet. App. 45a.

Woodall assigned error to the trial court's decision not to give the instruction, citing *Mitchell*. Pet. App. 262a. The Kentucky Supreme Court found no error, distinguishing *Mitchell* on the ground that "Woodall did not contest any of the facts or aggravating circumstances surrounding the crimes." *Id*. at 263a.

The Kentucky courts committed no error. The *amici* urge this Court to find that the trial court correctly declined the *Carter* instruction on the ground that the instruction is illogical and invites confusion where the defendant has admitted or conceded all of the adverse facts a jury might otherwise improperly infer.

A. This Court's Precedent Requires the No-Adverse-Inference Instruction When the Defendant Chooses Not to Testify Concerning Contested Adverse Facts.

The Fifth Amendment Self-incrimination Clause, applicable to the states through the Fourteenth Amendment,[2] provides that "[n]o person shall be compelled in any criminal case to be a witness against himself." The derivative privilege against compelled self-incrimination is the constitutional right to refuse to answer questions or otherwise give testimony against one's self. *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984).

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[2] *Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

In order to ensure the vitality of the privilege, this Court created rules to prevent trial courts and prosecutors from effectively punishing a defendant for exercising his right not to testify or his right not to respond to testimonial interrogation. In *Griffin*, this Court disapproved an instruction permitting the jury to take the defendant's failure to testify "into consideration as tending to indicate the truth" of "evidence or facts against him which the defendant can reasonably be expected to deny or explain." 380 U.S. at 610. The opinion similarly disapproved the prosecutor's statements in closing argument urging the jury to consider why the defendant had "not seen fit to take the stand and deny or explain." *Id*. at 611.[3] *Griffin* held that the court's instructions and the prosecutor's comments impermissibly burdened the exercise of the privilege against self-incrimination, "cut[ting] down on the privilege by making its assertion costly." *Id*. at 614.

Griffin was a murder case in which the defendant chose not to testify at trial and put the state to its proof on all elements. *See* 380 U.S. at 613 (describing "the prosecutor's comment and the court's acquiescence" as "the equivalent of an offer of evidence and its acceptance"). Acknowledging the proposition "that the inference of guilt for failure to testify as to facts peculiarly within the accused's knowledge" is "natural and irresistible," *Griffin* distinguished "[w]hat the jury may infer, given no help from the court" from "[w]hat it may infer when the court solemnizes the silence of

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[3] The prosecutor added that the murder victim "can't tell … her side of the story" and "[t]he defendant won't." 380 U.S. at 611.

the accused into evidence against him." 380 U.S. at 614. Accordingly, *Griffin* held that the Fifth Amendment "forbids either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." *Id*. at 615.

This Court advanced the doctrine further in *Carter*, finding constitutional error in the trial court's refusal to affirmatively instruct the jury, upon the defendant's request, that "[t]he [defendant] is not compelled to testify and the fact that he does not cannot be used as an inference of guilt and should not prejudice him in any way." 450 U.S. at 294, 305. The decision rested on the premise that the penalty exacted for remaining silent "may be just as severe when there is no adverse comment, but when the jury is left to roam at large with only its untutored instincts to guide it, to draw from the defendant's silence broad inferences of guilt." *Id*. at 301.

While *Carter* involved at least one inculpatory admission by the defendant to police, i.e., that two jackets found at the crime scene belonged to him,[4] the defendant again put the state to its proof. 450 U.S. at 294 (quoting prosecutor's closing argument in which he catalogues uncontroverted facts and states "that is all we have to go on"), *id*. at n. 6 (quoting defense counsel's closing argument in which he discusses the presumption of innocence, the state's burden to prove guilt beyond a reasonable doubt, and states that the defendant "doesn't have to take the stand in his own

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[4] 450 U.S. at 294 n.5.

behalf" and "doesn't have to do anything"). The *Griffin* and *Carter* opinions make clear that the respective defendants stood on the presumption of innocence and required the state to prove the elements of the crimes.

Estelle likewise involved a contested fact – a fact relevant only to sentencing that rendered the defendant eligible for a death sentence. Specifically, the state had to prove "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society," also characterized as "future dangerousness." 451 U.S. at 457. This Court was concerned that the defendant became the "deluded instrument of his own execution" when he submitted to a court-ordered, un-Mirandized pretrial psychiatric interview, and the state relied upon statements the defendant made during the interview to establish future dangerousness at the penalty phase trial. 451 U.S. at 462 (internal citations and quotations omitted). Accordingly, the Fifth Amendment now bars the use of a defendant's court-ordered pretrial disclosures at sentencing absent warnings or admonitions demonstrating an awareness of the privilege and the sentencing consequences of forgoing it. *Id*. at 467, 469.

Finally, in *Mitchell*, this Court applied the no-adverse-inference rule to contested facts at sentencing in a case where the defendant had entered a guilty plea. This Court held that the defendant's waiver of the Fifth Amendment privilege for purposes of establishing the factual basis of her guilty plea did not extend to contested facts relevant only to punishment. 526 U.S. at 325. Consequently, the Court held that the trial court erred in drawing adverse inferences as to

"factual determinations respecting the circumstances and details of the crime." *Id*. at 328. The contested fact in *Mitchell* was the quantity of cocaine the defendant had distributed, the resolution of which "may have resulted in decades of added imprisonment." *Id*. at 329.

B. Upholding the Sixth Circuit Decision Will Undermine the Fairness and Accuracy of Sentencing Proceedings Without Furthering Any Fifth Amendment Principle.

The concern underlying the *Carter* rule is that "without [a] limiting instruction," jurors will "speculate about *incriminating inferences* from a defendant's silence." *Carter*, 450 U.S. at 304 (emphasis supplied). The no-adverse-inference instruction only promotes Fifth Amendment values if there is actually an incriminating inference that the jury might draw from the defendant's decision not to testify. That necessarily means that at least one essential fact is at issue, as in *Griffin*, *Carter*, *Estelle*, and *Mitchell*.

In the sentencing context, an essential fact would be one that renders the defendant eligible for a greater punishment. *See Mitchell*, 526 U.S. at 316-17 (framing the issue as "whether, in determining facts about the crime *which bear upon the severity of the sentence*, a trial court may draw an adverse inference from the defendant's silence") (emphasis added). In the context of a capital sentencing proceeding, the no-adverse-inference instruction prevents a jury from considering the defendant's silence to establish a disputed fact that renders him eligible for the death penalty. *See Estelle*,

451 U.S. at 462 ("the ultimate penalty of death was a potential consequence of what respondent told the examining psychiatrist" because the state used the respondent's statements to the psychiatrist as evidence establishing his future dangerousness).

Griffin, *Carter*, *Estelle*, and *Mitchell* share the critical feature lacking in Woodall's case: a contested issue of fact that either established guilt or exposed the defendant to increased punishment. In *Griffin*, *Carter, Estelle*, and *Mitchell*, this Court prohibited the fact finder from inferring the existence of the disputed fact from the defendant's silence.

In contrast, Woodall's guilty plea to the kidnapping and rape charges established the two statutory aggravating factors that subjected him to a capital sentence on the murder charge. Woodall expressly conceded the existence of the other adverse facts that the Commonwealth introduced during the penalty phase trial. *See* Joint Appendix at 69 (noting that the prosecutor "has talked to you about aggravating circumstances, and I said before, and I will tell you again, he did those things. We've not denied that. We've not offered a defense to that. He did those things."), 74-75 ("[W]hen you consider the punishment, you look at all of those things that [the prosecutor] asked you to look at, and again you look at all these things we've told you about his lifetime and the good things, too, before you make that decision."). Woodall admitted the facts that exposed him to the death penalty, and he conceded the remainder of the fact evidence offered by the Commonwealth at the penalty phase trial.

With no aggravating fact in dispute, the jury cannot have compromised Woodall's privilege against self-incrimination by drawing an adverse inference from his decision not to testify. There were no adverse inferences left to draw concerning any of the Commonwealth's proof. Before the jury deliberated, Woodall had either admitted (through his guilty plea) or conceded (through his attorney's statements) the aggravating facts rendering him eligible for the death penalty and all other relevant adverse facts. The Fifth Amendment concern in *Griffin*, *Carter*, *Estelle*, and *Mitchell* was absent in those circumstances. Accordingly, the trial court correctly declined to issue the no-adverse-inference instruction.

The Sixth Circuit's contrary conclusion lacks logic and finds no roots in this Court's case law. *Carter*, *Estelle*, and *Mitchell* cannot be read, together or individually, to require a no-adverse-inference instruction when the defendant's admissions and concessions leave no adverse inference to draw. The instruction invites ridicule if issued in such cases, as it commands the jury not to *infer* a fact that the defendant has already *established* through his prior admissible statements or his express concessions. The defendant's decision not to testify regarding admitted or conceded adverse facts is inconsequential. The testimonial privilege needs no protection from speculation because the defendant's prior statements and concessions leave nothing to speculate about.

Conversely however, the jury needs protection from inapplicable instructions that threaten to corrupt the verdict. When the trial court gives the no-adverse-inference instruction in a case where the defendant's

admissions and concessions establish the very facts that his testimony would otherwise address, the instruction can only confound a juror. The instruction necessarily assumes that facts within the defendant's knowledge are at issue. Consequently, it implies that the prosecution must prove something more – some other fact within the defendant's knowledge – in order to carry its burden of proof. The instruction causes rather than prevents speculation in these circumstances.

The jury will falter if it attempts to follow the instruction. A jury cannot both consider the defendant's actual statements in his guilty pleas *and* speculate about what the defendant's statements might be or why he chose not to speak. The instruction in these circumstances is not merely confusing, it is contradictory. It threatens the accuracy of the jury's deliberations and, therefore, the fairness of its verdicts. *Cf. Penry v. Johnson*, 532 U.S. 782, 799 (2001) (finding Eighth Amendment violation where internally contradictory instructions placed jurors in an impossible situation).

To be clear, the parties disputed aspects and implications of the mitigation evidence in Woodall's case. *See* Joint Appendix at 63-64, 71-74 (arguments addressing Woodall's intellectual capacity and upbringing). But the no-adverse-inference instruction does not apply to disputed mitigation evidence. Just as a jury cannot infer a fact the defendant has already admitted, it cannot incriminate a defendant based on his decision not to testify about contested *mitigation* evidence. Death eligibility turned on the Commonwealth's proof of aggravating factors beyond a

reasonable doubt, not on the existence of mitigation evidence. *See Kansas v. Marsh*, 548 U.S. 163, 175 (2006) (holding that "the States are free to determine the manner in which a jury may consider mitigating evidence" and that while "defendants [have] the right to present sentencers with information relevant to the sentencing decision and oblige sentencers to consider that information in determining the appropriate sentence," the thrust of this Court's mitigation jurisprudence ends there). Moreover, a state can constitutionally require a defendant to prove mitigating circumstances to avoid a death sentence, *see Walton v. Arizona*, 497 U.S. 639, 650 (1990) (overruled on other grounds in *Ring v. Arizona*, 536 U.S. 584 (2002)) or "to bear the risk of non-persuasion as to the existence of mitigating circumstances." *Delo v. Lashley*, 507 U.S. 272, 275 (1993) (*per curiam*) (quoting *Walton*, 497 U.S. at 650). *See also United States v. Constantine*, 263 F.3d 1122, 1129 (10th Cir. 2001) ("Because the burden [of proving mitigation] was his, the choice between invoking his right against self-incrimination and proving the applicability of mitigating circumstances was also his."); *Bonin v. Calderon*, 59 F.3d 815, 839-40 (9th Cir. 1995) (presenting defendant with the "Hobson's choice" of either remaining silent or admitting guilt and testifying about mitigating circumstances does not violate Fifth Amendment).[5]

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[5] *Bonin* cites *McGautha v. California*, 402 U.S. 183, 220 (1971), which was later vacated on other grounds in light of *Furman v. Georgia*, 408 U.S. 238 (1972). However, as *Bonin* notes, *Furman* did not in any way "undercut the rationale of *McGautha* that a defendant can be forced to choose between testifying in mitigation and remaining silent on the issue of guilt." 59 F.3d at 840.

The jury cannot improperly relieve the state of a burden it does not have.

Consistent with that premise, this Court has limited its determination of "innocence" for capital sentencing purposes to those factors or elements that make the defendant eligible for the death penalty, excluding mitigating circumstances from the analysis. *Sawyer v. Whitley*, 505 U.S. 333, 347 (1992) ("[T]he 'actual innocence' requirement [to overcome procedural default on habeas review] must focus on those elements that render a defendant eligible for the death penalty, and not on additional mitigating evidence that was prevented from being introduced as a result of a claimed constitutional error."); *see also*, *Bell v. Thompson*, 545 U.S. 794, 812 (2005) (reiterating *Sawyer* standard); *Ring v. Arizona*, 536 U.S. 584 (2002) (holding that the jury must find beyond a reasonable doubt only those facts that make the defendant eligible for the death penalty). Because the self-incrimination privilege is concerned with inferences of guilt or eligibility for greater punishment, this Court could not tether the *Carter* no-adverse-inference instruction to the defendant's decision not to testify regarding mitigation evidence. To do so would unsettle the framework for determining "innocence" in the capital sentencing context.

The Sixth Circuit decision ignored both the purposes of the *Carter* rule and the *Sawyer* implications. The trial court's putative error rested on the panel's observations that "the finding of the aggravating circumstances did not compel the jury to recommend a death sentence," and that the jury "could have rejected the death penalty even if it found the

existence of aggravating circumstances beyond a reasonable doubt." Pet. App. 10a. Those observations are correct but irrelevant. Of course the jury could have recommended a lesser sentence notwithstanding the uncontested aggravating facts: that is what Kentucky's capital sentencing regime contemplates, and that is why the penalty phase trial does not end with proof of an aggravating circumstance beyond a reasonable doubt. Given Woodall's guilty plea to the aggravating circumstances and his concession that "he did those things" that the Commonwealth proved at the penalty phase trial, the "grave doubt" that the death sentence "was not influenced by adverse inferences drawn from Woodall's decision not to testify" can only attach to the jury's evaluation of mitigation evidence, where the self-incrimination principle has no application. *Id*. at 11a.

The Sixth Circuit's decision prohibits adverse inferences from silence even where silence does not implicate self-incrimination. In jurisdictions such as Arizona, where capital sentencing proceedings squarely place the burden on the defendant to prove mitigating facts, it is more readily apparent that the Sixth Circuit's holding would indiscriminately prohibit permissible and impermissible inferences alike. This Court recognizes that the Fifth Amendment does not protect testimony that does not incriminate:

> [W]here there can be no further incrimination, there is no basis for the assertion of the privilege. We conclude that principle applies to cases in which the sentence has been fixed and the judgment of conviction has become final. If no adverse consequences can be visited upon the

> convicted person by reason of further testimony, then there is no further incrimination to be feared.

Mitchell, 526 U.S. at 326 (internal citation omitted). The Sixth Circuit panel's decision should be reversed because a defendant's silence regarding mitigation evidence cannot "incriminate" him at the point where the state has already proven the aggravating facts that permit imposition of the maximum punishment.

So it is here. Woodall's guilty plea established the aggravating facts that rendered him eligible for a capital sentence. He conceded every other adverse fact that the Commonwealth introduced, and defense counsel staked her sentencing strategy entirely on the jury's consideration of Woodall's own mitigation evidence. *See* Joint Appendix at 69-70 (defense counsel arguing to jury that in deciding punishment "you have the right to consider the things that he did, but you look at who he is, and you consider who he is"); 71 (describing the "suffering and the tragedy" in Woodall's early life); 73 (imploring the jury to keep its promise to "consider those things about him and his lifetime" before choosing the punishment); 74 (arguing that Woodall did not rise above his circumstances because "he's not smart, he's imperfect, he's flawed" and "[h]e lacked a support system"); 75 (stating, "I don't believe that God called us together today in this place for the purpose of killing another child of God"); 75-76 (likening punishment based on "[t]hose hours back in January of 1997" to opening a book at the middle, "read[ing] a few pages" and saying, "[y]es, I understand what that book was about"). Where a defendant admits and concedes all of the adverse facts and relies solely

on mitigation evidence to avoid the punishment for which the state has proven him eligible, no adverse consequences can "be visited upon him" by reason of further testimony, and there is "no further incrimination to be feared." *Mitchell*, 526 U.S. at 326. Consequently, as the Kentucky Supreme Court found, the no-adverse-inference instruction had no application.

CONCLUSION

This Court should reverse the Sixth Circuit decision and find that the no-adverse-inference instruction is impermissible in cases where the defendant does not contest the facts that render him guilty or eligible for increased punishment.

Respectfully submitted this 17th day of September, 2013.

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