In the Supreme Court of the United States

VELDA DOBSON-DAVIS, WARDEN;
EDMUND G. BROWN JR., ATTORNEY GENERAL, *Petitioners,*

v.

KRISTI LYN LUNBERY, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Chambers* v. *Mississippi,* 410 U.S. 284 (1973), this Court reversed the defendant's conviction for two errors committed by the state court: one in prohibiting the defendant from examining a witness about his recantation of his sworn confession to the charged crime; and a second in "mechanistically" excluding, as hearsay, evidence of the witness's other confessions, despite their trustworthiness and the witness's availability for cross-examination by the prosecution. Here, the Ninth Circuit granted habeas corpus relief on the ground that the state court had violated *Chambers* by excluding proffered hearsay evidence of alleged third-party culpability, even though that evidence did not show that anybody else had confessed to the crime and even though the state court had excluded the evidence only after evaluating its reliability.

Under 28 U.S.C. § 2254(d), was the state court's exclusion of the disputed evidence an "unreasonable application" of any constitutional rule "clearly established" by *Chambers*?

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PETITION FOR WRIT OF CERTIORARI

Velda Dobson-Davis, Warden of Valley State Prison for Women at Chowchilla, California, and Edmund G. Brown Jr., Attorney General of California (the State),[1] respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit (App., infra, 108a) is reported at 605 F.3d 754. The order of the district court (App. 34a) is not published in the Federal Supplement but appears at 2008 U.S. Dist. LEXIS 93932. The opinion of the California Court of Appeal (App. 1a) is not published but appears at 2005 Cal. App. Unpub. LEXIS 5323.

JURISDICTION

The judgment of the Ninth Circuit was entered on May 25, 2010. (App. 108a.) The State's petition for rehearing was denied on June 29, 2010. (App. 130a.) The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 2254(d) of Title 28 of the United States Code provides:

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

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[1] Warden Dobson-Davis is the official who most recently had custody of respondent.

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

STATEMENT OF THE CASE

The Crime and the Trial Proceedings

1. In March 1992, respondent Kristi Lunbery moved with her husband Charley Bateson and their two daughters into a house owned by her grandmother in Burney, California.

On April 17, 1992, Bateson was found dead in the bedroom of the home with a single gunshot wound to the head. He was discovered by a neighbor, Belinda Strickland. Respondent had phoned Strickland, saying she was stranded with a flat tire in Redding and asking her to wake up her husband inside their home.

Detectives contacted respondent at the mall in Redding with her daughters and grandparents. She told detectives that she had awakened around 6:30 a.m. and told Bateson that she was taking the girls shopping in Redding. She said that, at his request, she had set the alarm clock for him. She said she had placed a note for Bateson on the refrigerator to remind him of what she had told him, and that she had left the front door unlocked. Respondent also told the officers that Bateson owned a rifle that he used for deer hunting, but that she had not seen it since their move.

The detectives found no relevant evidence inside respondent's car. Nor did they find any blood on her clothing or person. There was no evidence of forced entry, ransacking, or recent cleaning at the house, and no firearm or expended shell casings were found there. Forensic tests revealed that the bullet that killed Bateson had been fired from a high-velocity rifle, such as the one Bateson owned. Gunpowder marks on the pillow beneath Bateson's head indicated that the muzzle of the gun was within four to six inches of his head when it was fired.

No charges were lodged in the case at that time. Nine years later, detectives reopened the case. On December 20, 2001, detectives spoke to respondent at her home with her consent. By this time, she had married Troy Lunbery, whom she had briefly dated before marrying Bateson. In that interview, respondent at first denied shooting Bateson. The detectives, however, confronted her with a "secret witness tip," an FBI profile on the case, and inconsistencies in her story; they then told her that they knew she had done it and they just wanted to know why. Urging her to tell the truth, a detective asked her if she had shot Bateson. She responded "[y]es." She said that he was asleep when she shot him. She claimed that she had not planned the shooting, and that it was a spur-of-the-moment thing. She explained that she had shot Bateson because she did not like the way he talked to her, he was "controlling," and no one could say "hi" to her without it causing an argument or arousing "suspicion that [she] was sleeping with them . . . ."

2. The state charged respondent with murder. In pretrial proceedings, respondent sought a ruling that would allow her to introduce evidence tending to show that someone else had committed the shooting. That evidence consisted of the following: (1) In February 1992, Frank Delgado, a former resident of the house where Bateson had been killed, was seen in the home with Henry Garza in possession of $40,000 worth of "dope." (2) Three days after the murder, a confidential informant told a detective that he "felt" the killing had been intended for Delgado because Delgado had allegedly "ripped off several people in town over drug dealings." (3) In the early morning hours on the day of the murder, a neighbor had seen a Ford Fiesta park in front of the Batesons' home, switch off its lights, and then drive off 20-30 seconds later at high speed. (4) The confidential informant had seen Garza and Delgado drive the Ford Fiesta on other occasions. (5) In 1992, Rory Keim told the police that, five days after the murder, he was talking with friends in a restaurant about the killing when Garza approached them and said,

"That's a bummer, my partners blew away the wrong dude." (By the time of respondent's trial, however, Keim did not remember Garza making such a statement.)

The trial court excluded the proffered defense evidence. In a lengthy ruling from the bench, it ruled that the statement attributed to Garza was hearsay and lacked sufficient indicia of reliability that would qualify it as an admissible statement against penal interest. It further ruled that, while the remaining evidence suggested a third party's opportunity and motive to commit the murder, it was insufficient to raise a reasonable doubt as to respondent's guilt. Finally, the court viewed the evidence as minimally probative, likely to confuse the jury, and "very time consumptive."

At the trial, the prosecution introduced respondent's confession to the crime. It also produced respondent's best friend from childhood, who testified that she and respondent shared an ongoing private joke that each would kill her spouse or boyfriend if she could get away with it. When they met for Bateson's funeral, the first thing respondent said to her friend when they were alone was "don't ever tell anyone we talked about that movie." The prosecution argued that respondent's motives for the killing were to escape her husband's controlling behavior and to reconnect with Troy Lunbery.

Respondent testified in her own defense and denied killing Bateson. She recanted her confession, claiming that the detectives made her feel scared, nervous and overwhelmed, and she only confessed to the shooting because she felt that was what they wanted to hear. The defense also produced witnesses to testify to her gentle character and disposition.

3. The jury convicted respondent of second-degree murder. The court sentenced her to state prison for nineteen years to life.

State Appellate Proceedings

1. On direct review, the California Court of Appeal affirmed respondent's conviction. In a reasoned decision, it rejected her assertion that the

trial court's rulings violated her constitutional right to present a defense. After performing its own analysis of the disputed evidence, it agreed with the trial court that the statement attributed to Garza was hearsay, did not implicate his own penal interest, and lacked indicia of reliability. It further agreed that the remainder of respondent's evidence was inadmissible and insufficient to raise a reasonable doubt about her guilt. (App. 13a-17a.)

2. The California Supreme Court denied discretionary review of respondent's appeal.

Federal Habeas Corpus Proceedings

1. Respondent then filed a federal petition for writ of habeas corpus in which she again asserted that she had been denied her constitutional right to present a defense. The magistrate judge, sitting as the district court, denied relief. The court ruled that the proffered evidence, at most,

> affords a possible ground of suspicion pointing to several third parties and does not directly connect any person with the actual commission of the offense. Speculative rumors about the reason for Bateson's murder, the identity of other potential suspects, or the possibility that the killing was accidental, would not have been sufficient to change the outcome of [the] trial. Further, as noted by the state appellate court, much of the evidence excluded by the trial court was introduced into evidence by other means.

(App. 72a.) The court saw no violation of clearly-established federal law.

2. A Ninth Circuit panel reversed in a published decision. It found respondent's case controlled by *Chambers*. In the panel's view, "Garza's statement was against his penal interest," 605 F.3d at 761 (App. 120a), because it was an "admission that his partners committed the murder." 605 F.3d at 762 (App. 122a-123a). After comparing the facts of the case to *Chambers*, the panel found that the defense evidence "bore

substantial guarantees of trustworthiness and was critical to [respondent's] defense." 605 F.3d at 761 (App. 121a). Its exclusion was prejudicial, the panel asserted, because it "stripped her of evidence that someone other than she had probably committed the murder of her husband." 605 F.3d at 762 (App. 122a). The panel concluded that the Court of Appeal's decision was an objectively unreasonable application of *Chambers*. 605 F.3d at 762 (App. 124a).

The Ninth Circuit denied rehearing. (App. 130a.)

Further State-Court Proceedings

Respondent has been transported back to Shasta County and released on bail. She returns to court in November 2010 to set a date for her retrial.

REASONS FOR GRANTING CERTIORARI

The meaning and scope of this Court's holding in *Chambers* has been the subject of ongoing debate in this Court and has confounded and divided the circuit courts of appeals. Here, in concluding that the state court's decision was "unreasonable" under its own view of *Chambers*, the Ninth Circuit has again violated the restrictions on its habeas corpus power embodied in 28 U.S.C. § 2254(d).

1. In *Chambers*, this Court reversed the defendant's conviction because the combined effect of two evidentiary errors defeated the ends of justice. First, a state rule of evidence prevented the defense from impeaching a witness's recantation of his own sworn confession to the crime charged against the defendant. Second, the trial courts "mechanistically" excluded, as hearsay, further evidence of the witness's repeated confessions to the crime even though he was available for examination. Although this Court reversed the conviction, it confined its holding to the facts of that case, as it has later reiterated. See *United States* v. *Scheffer*, 523 U.S. 303, 316 (1998).

The circuit courts of appeals have deduced from *Chambers* varying "rules" reflecting different emphases on different aspects of that case. Here, the Ninth Circuit treated *Chambers* as clearly establishing the expansive proposition that due process "is violated by the exclusion of probative admissible evidence that another person may have committed the crime," 605 F.3d at 760 (App. 119a). Other circuits take much narrower views. According to the Seventh Circuit, *Chambers* requires states to allow defendants to put reliable third-party confessions before the jury, despite the hearsay rule, when necessary to assist in separating the guilty from the innocent. See *United States* v. *Hall*, 165 F.3d 1095, 1113 (7th Cir. 1999). Similarly, the Fourth Circuit has construed *Chambers* as requiring admission of exculpatory confessions by third parties, even if hearsay, if reliable and highly relevant to a critical issue. *Huffington* v. *Nuth*, 140 F.3d 572, 584 (4th Cir. 1998). This case provides an opportunity for the Court to clarify what rule, if any, that *Chambers* clearly establishes.

2. Further, this case represents a failure by the Ninth Circuit to adhere to the limits that § 2254(d) imposes on its habeas corpus power—limits that this Court has explained and enforced in reversing many Ninth Circuit § 2254(d) decisions in recent Terms. As certiorari was warranted to ensure fidelity to Congress' intent in those cases, it also is warranted in this matter.

Here, the trial court denied respondent's request to introduce evidence that, five days after the murder, a man named Henry Garza allegedly said, "That's a bummer, my partners blew away the wrong dude." The Ninth Circuit concluded that due process demanded the admission of this hearsay statement because, like the evidence erroneously excluded in *Chambers,* it "bore substantial guarantees of trustworthiness and was critical to [respondent's] defense."

But the panel overlooked the clear differences between this case and *Chambers.* Perhaps most obvious, this case does not present the "vouching

rule" error that was essential to this Court's reversal in that case. Equally important, the state court in *Chambers* had excluded evidence of an available witness's multiple confessions, which were critical precisely because they were confessions and based reliably on asserted first-hand knowledge. Here, in contrast, the main evidence offered by respondent amounted to an assertion by one witness—who no longer even remembered it, rendering the statement multiple hearsay—that another, unavailable witness had asserted, without claiming any first-hand knowledge, that the crime had been committed by yet other, unidentified persons. Keim's twelve-year-old, out-of-court report of Garza's twelve-year-old, out-of-court statement cannot fairly be compared to the multiple confessions that were excluded in *Chambers*.

Further, the state court in *Chambers* had "mechanistically" excluded the disputed evidence as hearsay without considering its trustworthiness. Here, in contrast, the California court did not reflexively reject the evidence on hearsay grounds alone, but instead carefully undertook to consider its reliability. Given the unknowable province of the hearsay-on-hearsay statement attributed to the deceased Garza, and the lack of guarantees of trustworthiness that would accompany a confession rather than a mere assertion that some other people were the culprits, it cannot be said that the state court "unreasonably applied" any rule "clearly established" by *Chambers*.

ARGUMENT

I. THE NATURE OF THE *CHAMBERS* RULE IS UNCLEAR

The Ninth Circuit panel in this case discerned that *Chambers* "clearly established" a general rule that the constitutional right to present a defense "is violated by the exclusion of probative admissible evidence that another person may have committed the crime." *Lunbery*, 605 F.3d at 760 (App. 119a).

This case presents the threshold question of whether *Chambers* "clearly established" such a broad and general rule—or any rule—for purposes of the restrictions upon habeas corpus relief contained in 28 U.S.C. § 2254(d). For under that statute, the federal court may override a state-court adjudication of the merits of the petitioner's claim only if the state court's ruling was "contrary to" or "an unreasonable application" of "clearly established Federal law, as determined by the Supreme Court . . . ." "[C]learly established Federal law" is only that established by the "holdings" of this Court's cases "squarely addressing" the question raised by the petition. *Wright* v. *Van Patten,* 552 U.S. 120, 125 (2008) (per curiam); *Carey* v. *Musladin,* 549 U.S. 70, 77 (2006); see *Williams* v. *Taylor,* 529 U.S. 362, 409-10, 412 (2000).

The defendant in *Chambers*, tried for being the sole killer of a police officer, attempted to show that McDonald had committed the murder instead. 410 U.S. at 285-89. He called McDonald to testify as his witness. *Id.* at 291. On the stand, McDonald denied having committed the murder; and he recanted a previous sworn statement in which he had confessed to the murder. *Id.* at 291. Chambers attempted to question McDonald about his refutation and three statements he had made to friends, shortly after the murder and before the sworn statement, in which McDonald also had admitted being the shooter. *Id.* at 291-92. But the trial judge disallowed the examination under a state-law "voucher rule" prohibiting the impeachment of a party's own witness. *Id.* at 291-92, 295. Indeed, under that rule, Chambers was bound by McDonald's recantation. *Id.* at 296-97.

Chambers then attempted to call McDonald's three friends to testify about the other statements McDonald had made to them confessing his guilt. *Id.* at 292. The trial court excluded this evidence as well, because the proposed testimony was hearsay and the state-law exception for statements against interest was limited to statements against pecuniary interest. *Id.* at 292-93, 299.

This Court held that the trial judge's enforcement of the state's voucher rule infringed the defendant's right to defend. 410 U.S. at 298. It observed that the state's proof excluded the theory that there was more than one shooter. *Id.* at 297. Also, the Court determined, McDonald's testimony refuting his confession was "seriously adverse" to the defendant. *Id.*

But this Court did not decide whether that error alone warranted reversal, because the claimed violation of due process rested on that error "in conjunction with" the trial court's refusal to permit the defendant to call other witnesses. 410 U.S. at 298. The Court decided that, although hearsay is traditionally excluded because it is unreliable, the statements in *Chambers* had been made "under circumstances that provided considerable assurance of their reliability": (1) McDonald made the statements spontaneously; (2) he made the statements to close friends; (3) he made the statements shortly after the murder; (4) the statements were corroborated by other evidence and by the number of his confessions; (5) McDonald's statements were unquestionably against his interests; and (6) McDonald was present in court and subject to cross-examination by the state. *Id.* at 298-301. Finally, the evidence bore "persuasive assurances of trustworthiness" and was "critical" to the defense. *Id.* at 302.

The Court condemned the state court's hearsay ruling as improperly "mechanistic[]" under the circumstances and concluded that "the exclusion of this critical evidence, coupled with the State's refusal to permit Chambers to cross-examine McDonald," denied the defendant his right to due process. *Id.*

In deciding *Chambers*, however, this Court made clear that it announced no new rule of law:

> In reaching this judgment, we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their

> own criminal trial rules and procedures. Rather, we hold quite simply that under the facts and circumstances of this case the rulings of the trial court deprived Chambers of a fair trial.

410 U.S. at 302-03.

On several occasions, this Court has suggested that *Chambers* has very limited effect on the resolution of other cases. In *Montana* v. *Egelhoff*, 518 U.S. 37 (1996), a plurality of this Court characterized *Chambers* as "an exercise in highly case-specific error correction." *Id.* at 52 (plurality opinion). The *Egelhoff* plurality rejected the Montana Supreme Court's conclusion that *Chambers* required admission of all relevant evidence. *Id.* Rather,

> [T]he holding of *Chambers*—if one can be discerned from such a fact-intensive case—is certainly not that a defendant is denied "a fair opportunity to defend against the State's accusations" whenever "critical evidence" favorable to him is excluded, but rather that erroneous evidentiary rulings can, in combination, rise to the level of a due process violation.

Id. at 53.

Since *Egelhoff*, a full majority of this Court has recognized that *Chambers* did not hold that a fair opportunity to defend is denied simply because an evidentiary rule excludes evidence favorable to the defendant. *Scheffer*, 523 U.S. at 316. More recently, this Court explained:

> While the Constitution . . . prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed

> by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.

Holmes v. *South Carolina,* 547 U.S. 319, 326 (2006).

II. THE CIRCUIT COURTS ARE SPLIT ON THE NATURE OF THE *CHAMBERS* "RULE"

Even with these occasional reminders on what *Chambers* does not hold, circuit courts of appeals have been unable to agree on its meaning. The federal appellate courts have variously said that *Chambers*:

- holds that the exclusion of evidence in extreme circumstances violates due process, *DiBenedetto* v. *Hall,* 272 F.3d 1, 7 (1st Cir. 2001);
- announced a three-part test for trustworthiness requiring admission of statements that (1) are made spontaneously to close friends shortly after the event, (2) are corroborated by other evidence, and (3) are self-incriminating and unquestionably against penal interest, *United States* v. *DeVillio,* 983 F.2d 1185, 1190 (2d Cir. 1993);
- requires admission of exculpatory confessions by third parties, even if hearsay, if reliable and highly relevant to a critical issue, *Nuth,* 140 F.3d at 584;
- stands for the limited proposition that " 'certain egregious evidentiary errors may be redressed by the due process clause,' " *Little v. Johnson,* 162 F.3d 855, 860 (5th Cir. 1998) (quoting *Barefoot v. Estelle,* 697 F.2d 593, 597 (5th Cir. 1983));
- requires the admission of critical, exculpatory, and trustworthy evidence, *Turpin* v. *Kassulke,* 26 F.3d 1392, 1396 (6th Cir. 1994);
- requires admission of reliable third-party confessions, despite the hearsay rule, where necessary to separate the guilty from the

innocent, *Hall*, 165 F.3d at 1113;

- stands for the principle that the Constitution " 'prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote,' " *Guinn v. Kemna,* 489 F.3d 351, 354 (8th Cir. 2007) (quoting *Holmes,* 547 U.S. at 326);
- requires admission of evidence that is highly relevant to a critical issue and has adequate indicia of reliability, *Davis* v. *Zant*, 36 F.3d 1538, 1544 (11th Cir. 1994); and
- holds that, where constitutional rights affecting ascertainment of guilt are implicated, hearsay rules may not be applied mechanistically, *United States* v. *North*, 910 F.2d 843, 908 (D.C. Cir. 1990).

Courts have also cited *Chambers* as authority for the right to present witnesses, *Gardner* v. *Barnett*, 199 F.3d 915, 920 (7th Cir. 1999), the right to present a defense, *United States* v. *Szur*, 289 F.3d 200, 217 (2d Cir. 2002), and the right to confront and to cross-examine witnesses, *Mackey* v. *Dutton*, 217 F.3d 399, 407-08 (6th Cir. 2000), *Jones* v. *Goodwin*, 982 F.2d 464, 469 (11th Cir. 1993), *United States* v. *Begay*, 937 F.2d 515, 520 (10th Cir. 1991).

Here, of course, the Ninth Circuit treated *Chambers* as "clearly establishing" that due process "is violated by the exclusion of probative admissible evidence that another person may have committed the crime," 605 F.3d at 760 (App. 119a). But the Fourth and Seventh Circuits construe *Chambers* to require admission of reliable confessions. As will be seen, no third-party confession was excluded in this case. Consequently, the outcome here would likely have been different in the Fourth or Seventh Circuit. Under these circumstances, the rule of *Chambers* cannot be seen as "clearly established" unless and until this Court provides further guidance.

III. THE NINTH CIRCUIT HAS APPLIED THE "FACT-INTENSIVE" CASE OF *CHAMBERS* FAR TOO BROADLY

In granting relief, 605 F.3d at 761-62 (App. 124a), the Ninth Circuit ignored the significant facts that distinguish respondent's case from *Chambers*.

A. Garza's Statement Was Unreliable

The centerpiece of the evidence proffered by respondent was the statement reportedly made by Henry Garza: "That's a bummer, my partners blew away the wrong dude." Relying on *Chambers* as well as its own precedent, the Ninth Circuit found that this statement bore "substantial guarantees of trustworthiness . . . ." 605 F.3d at 761 (App. 121a). But, unlike the multiple confessions to the crime that were consciously self-incriminatory in *Chambers*, Garza's alleged statement instead attributed the crime to other people. As this Court has recognized, confessions are "like no other evidence," and " 'have profound impact on the jury . . . .' " *Arizona* v. *Fulminante*, 499 U.S. 279, 296 (1991) (quoting *Bruton* v. *United States*, 391 U.S. 123, 139-140 (1968) (White, J., dissenting)). And, unlike a confession that purports to be based on first-hand knowledge, nothing in respondent's proffer indicated whether Garza had any reliable basis for his assertion. It might well have been based on mere rumor or speculation, or, as the trial judge observed, multiple levels of hearsay. Further, unlike the witness McDonald's formal sworn confession and his confessions to close friends in *Chambers*, 410 U.S. at 300, Garza's alleged statement was made casually to three people drinking in a pizza parlor. Unlike McDonald, Garza was dead at the time of respondent's trial and thus was unavailable for examination by either party. See *id.* at 301 (McDonald's availability at trial was "significant[]" distinguishing feature of Chambers's case). Finally, according to respondent's offer of proof at the time of trial in 2004, Keim could not remember whether Garza had made the reported statement at all.

The statement attributed to Garza also lacked evidence or circumstances to corroborate it. In *Chambers,* the circumstances corroborating McDonald's inculpatory statements included his own "sworn confession, the testimony of an eyewitness to the shooting, the testimony that McDonald was seen with a gun immediately after the shooting, and proof of his prior ownership of a .22-caliber revolver and subsequent purchase of a new weapon." 410 U.S. at 300. No such evidence is present in respondent's case. In addition, this Court held that "[t]he sheer number of independent confessions [by McDonald] provided additional corroboration for each." *Id.* By contrast, Garza was reported by Keim to have made but a single out-of-court statement.

Moreover, virtually all of the information corroborating Garza's disputed statement was hearsay. Cf. *Chambers,* 410 U.S. at 300 (each of McDonald's confessions was corroborated by some other evidence at trial). The confidential informant who expressed his belief to Detective Cox that the murder had been a mistake, and that its intended victim was Delgado, could not, at the time of trial, be identified; consequently, these statements to Detective Cox were hearsay. Cal. Evidence Code § 1200. The same is necessarily true of the informant's identification of Garza and Delgado as drivers of the Ford Fiesta. While possession of narcotics by Garza and Delgado in the house about a month before the Batesons moved in and two months before the murder was not incompetent hearsay, its probative value was reduced by its remoteness in time. Cf. *United States v. Beechum,* 582 F.2d 989, 915 (5th Cir. 1978) (temporal remoteness of extrinsic offense from charged offense depreciates its probity).

Under these circumstances, it is difficult to imagine that the Constitution required admission of the statement attributed to Garza. See *Egelhoff,* 518 U.S. at 42 (plurality opinion) (rules barring hearsay "prohibit the introduction of testimony which, though unquestionably relevant, is deemed insufficiently reliable"). The difference in quality between this evidence and the excluded evidence in *Chambers* is

vast. Cf. *Chambers,* 410 U.S. at 300 (due process violated by exclusion of three out-of-court confessions made by third party to close friends).

B. There Was No Combined Evidentiary Error

Furthermore, *Chambers* made clear that its holding rested, in part, on Mississippi's separate application of its "voucher rule" of evidence. See *Chambers,* 410 U.S. at 296-98. No such claim is made in this case, and, indeed, California has no such rule of evidence, see Cal. Evidence Code §§ 773(b), 785. *Chambers* is thus distinguishable on this additional basis. See *Egelhoff,* 518 U.S. at 53 (plurality opinion) (if *Chambers* contains a discernable holding, it is "that erroneous evidentiary rulings can, in combination, rise to the level of a due process violation.)

C. The State Courts' Rulings Were Not "Mechanistic"

Following *Chambers,* the Ninth Circuit held that "depending on the facts and circumstances of the case, at times a state's rules of evidence cannot be mechanistically applied and must yield in favor of due process and the right to a fair trial." 605 F.3d at 762 (App. 123a). But the panel overlooked the state courts' evidentiary analyses, which were in no way "mechanistic[]" applications of California's rules of evidence. On the contrary, the record reflects that the trial court carefully analyzed the information proffered by respondent as to its relevancy, hearsay character, and risk of misleading the jury. This Court has recognized that this latter inquiry involves discretionary decisions that trial courts commonly and properly make. See *Holmes,* 547 U.S. at 326 ("well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury"). For its part, the Court of Appeal upheld the trial court's evidentiary rulings under

People v. *Hall,* 41 Cal. 3d 826, 833 (Cal. 1986), and its progeny, which this Court has cited as an example of "widely accepted" rules of evidence. *Holmes,* 547 U.S. at 327 & n.*. It follows that the California courts avoided the "mechanistic[]" application of state procedural rules condemned by *Chambers.* 410 U.S. at 302; cf. *id.* at 289.

In short, because of the many features distinguishing *Chambers,* the Ninth Circuit erred by finding it controlling.

IV. THE NINTH CIRCUIT FAILED TO ACCORD DUE DEFERENCE TO THE STATE COURT'S DECISION

The Ninth Circuit was wrong to deduce an unduly-broad "rule" from *Chambers.* It was also wrong in concluding, under § 2254(d), that the state court's decision had applied *Chambers* "unreasonably" to the radically different facts in this case.

Section 2254(d) of 28 U.S.C. imposes a "highly deferential standard for evaluating state-court rulings," *Lindh* v. *Murphy,* 521 U.S. 320, 333, n. 7 (1997), and "demands that state-court decisions be given the benefit of the doubt," *Woodford* v. *Visciotti,* 537 U.S. 19, 24 (2002) (per curiam). A state-court decision involves an "unreasonable application" of clearly-established federal law within the meaning of the statute only if the decision is "objectively unreasonable," and not merely incorrect. *Williams,* 529 U.S. at 409-10.

In respondent's case, the Ninth Circuit determined that *Chambers* clearly established the principle that the constitutional right to present a defense "is violated by the exclusion of probative admissible evidence that another person may have committed the crime." *Lunbery,* 605 F.3d at 760 (App. 119a). But what *Chambers* actually established has caused disagreement even among the federal courts. The Ninth Circuit went further and found that the Court of Appeal's decision was an objectively unreasonable application of *Chambers,*

605 F.3d at 762 (App. 124a), despite the numerous features distinguishing that case from respondent's. Under these circumstances, the Ninth Circuit panel failed to accord the state-court decision the statutory deference required under § 2254(d). Review is warranted to ensure that Congress' intent in enacting AEDPA is carried out.[2]

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[2] E.g., *McDaniel v. Brown*, ___ U.S. ___, 130 S. Ct. 665, 666 (2010) (per curiam); *Wong v. Belmontes*, ___ U.S. ___, 130 S. Ct. 383, 384 (2009) (per curiam); *Waddington v. Sarausad*, ___ U.S. ___, 129 S. Ct. 823 (2009); *Hedgpeth v. Pulido*, ___ U.S. ___, 129 S. Ct. 530, 530-31 (2008); *Knowles v. Mirzayance*, 556 U.S. ___, 129 S. Ct. 1411 (2009); *Uttecht v. Brown*, 551 U.S. 1, 10 (2007); *Carey*, 549 U.S. 70; *Rice v. Collins*, 546 U.S. 333 (2006); *Kane v. Garcia-Espitia*, 546 U.S. 9 (2005) (per curiam); *Brown v. Payton*, 544 U.S. 133 (2005); *Yarborough v. Alvarado*, 541 U.S. 652 (2004); *Middleton v. McNeil*, 541 U.S. 433 (2004) (per curiam); *Yarborough v. Gentry*, 540 U.S. 1 (2003) (per curiam); *Lockyer v. Andrade*, 538 U.S. 63 (2003); *Woodford*, 537 U.S. 19; *Early v. Packer*, 537 U.S. 4 (2002) (per curiam). This Term, the Court also granted certiorari in *Harrington v. Richter* (09-587), *Belleque v. Moore* (09-658), and *Cullen v. Pinholster* (09-1088) out of the Ninth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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