WHITTON v. DIXON

608 U.S. ___ (2026)

Case No. 25-580

Decided June 1, 2026

SUMMARY:

Whitton filed an application for a writ of habeas corpus in Federal District Court. He argued that a witness's criminal-history testimony was false, that the prosecution knew the testimony was false, and that there was a reasonable likelihood the testimony affected the jury's verdict. Whitton claimed that, as a result, his due process rights had been violated under this Court's decision in *Giglio* v. *United States*, 405 U. S. 150 (1972). And he contended, as was additionally necessary for federal habeas relief, that the *Giglio* error had a substantial and injurious effect or influence in determining the jury's verdict.

The Court of Appeals for the Eleventh Circuit agreed with Whitton that witness's criminal-history testimony was false, and that the State knew it to be false. Moreover, the court disagreed with the District Court's conclusion that any *Giglio* violation was harmless because of Florida evidence rules about juvenile records. That conclusion, the Court of Appeals explained, was "erroneous" because Florida courts admit such records when a witness opens the door to prior convictions.

The Court of Appeals then considered whether to affirm on another basis advanced by the State: that Whitton was not prejudiced by any *Giglio* error because Ozio's testimony as a whole (not just the false part) was immaterial to the jury's verdict. It considered not only the evidence that was presented to the jury at Whitton's trial, but also evidence the jury never saw. After considering that post-trial DNA evidence (in addition to the trial evidence), the Court of Appeals held that it was not unreasonable for the State court to conclude that even without any of the witness's testimony there was overwhelming evidence against Whitton, and the Court of Appeals affirmed the denial of habeas relief.

The Supreme Court vacated the Eleventh Circuit's judgment because that court should not have considered post-trial DNA evidence in assessing whether the Florida Supreme Court reasonably determined that a witness' testimony was immaterial to the jury's verdict. Because the post-trial DNA evidence was not presented to the jury (indeed, did not exist at the time of the trial), that evidence could not have influenced the jury's verdict. It therefore sheds no light on whether (or to what extent) the witness's testimony influenced that verdict. The Florida Supreme Court did not consider the post-trial DNA evidence in

making its determination, and the Court of Appeals should not have done so in evaluating that determination either.

The Supreme Court commented that it was not expressing any view on whether the Florida Supreme Court's determination was reasonable in light of the evidence that *was* presented at trial. The Court found that it is for the Eleventh Circuit to assess in the first instance. The Supreme Court also commented that it was not expressing any view on the State's argument that Whitton failed to exhaust his *Giglio* claim in the state courts. *See Giglio* v. *United States*, 405 U. S. 150 (1972). The Court found the Eleventh Circuit is of course free to address this argument on remand.

The Supreme Court granted the petition for writ of certiorari, vacated the judgment of the Court of Appeals, and remanded the case for further proceedings consistent with its opinion.

DECISION:

Per Curiam.

A Florida jury convicted petitioner Gary Richard Whitton of murder and sentenced him to death. During his trial, the State called several witnesses, including a jailhouse informant named Jake Ozio. Ozio was a high school student who, on a spring-break trip in Florida, was arrested and jailed for burglary and possession of a short-barrel shotgun. Ozio testified that, while he was incarcerated with Whitton, he overheard Whitton confess to " 'stabb[ing] the bastard.' " *Whitton* v. *Secretary, Fla. Dept. of Corrections*, 2025 WL 1305158, *2 (CA11, May 6, 2025) (*per curiam*). Ozio also testified that he had no criminal history prior to his spring-break arrest. That last piece of testimony turned out to be false. Ozio's juvenile records—which the State had in its possession at the time—showed that he had previously been charged with "assault with bodily injury against his father, terroristic threats against his mother, and at least one other burglary." *Id.*, at *15.

After unsuccessfully pursuing a direct appeal and state postconviction relief, Whitton filed an application for a writ of habeas corpus in Federal District Court. Among other claims, he argued that Ozio's criminal-history testimony was false, that the prosecution knew the testimony was false, and that there was a reasonable likelihood the testimony affected the jury's verdict. Whitton claimed that, as a result, his due process rights had been violated under this Court's decision in *Giglio* v. *United States*, 405 U. S. 150 (1972). And he contended, as was additionally necessary for federal habeas relief, that the *Giglio* error had a " 'substantial and injurious effect or influence in determining the jury's verdict.' " *Brecht* v. *Abrahamson*, 507 U. S. 619, 623 (1993). The District Court denied relief, finding that any *Giglio* error "could not have made a difference" to the jury's verdict because

Florida juvenile criminal records are generally inadmissible to attack a witness's credibility. App. to Pet. for Cert. 79a.

The Court of Appeals for the Eleventh Circuit affirmed, but on different reasoning.[2] The court agreed with Whitton that Ozio's criminal-history testimony was false, and that the State knew it to be false. Moreover, the court disagreed with the District Court's conclusion that any *Giglio* violation was harmless because of Florida evidence rules about juvenile records. That conclusion, the Court of Appeals explained, was "erroneous" because Florida courts admit such records when a witness opens the door to prior convictions—including by stating that he has none. 2025 WL 1305158, *16. And "impeachment concerning Ozio's juvenile record," the Court of Appeals concluded, "would have undermined [Ozio's] credibility." *Ibid*. So the court "[could not] affirm the district court's decision on its finding of harmless error." *Ibid*.

The Court of Appeals then considered whether to affirm on another basis advanced by the State: that Whitton was not prejudiced by any *Giglio* error because Ozio's testimony as a whole (not just the false part) was immaterial to the jury's verdict. The court explained that the Florida Supreme Court had made a determination relevant to that issue during Whitton's state postconviction proceedings. There, the Florida Supreme Court had stated that, even without Ozio's testimony, the evidence against Whitton was "overwhelming." *Whitton* v. *State*, 161 So. 3d 313, 334 (2014). Under the Antiterrorism and Effective Death Penalty Act of 1996, the Court of Appeals owed deference to that state court determination unless it was " 'based on an unreasonable determination of the facts in light of the evidence presented.' " 2025 WL 1305158, *7 (quoting 28 U. S. C. § 2254(d)(2)); see 2025 WL 1305158, *17. That meant the key question for the Court of Appeals was whether the Florida Supreme Court's determination about the rest of the evidence was a reasonable one.

To answer that question, the Court of Appeals did something peculiar: It considered not only the evidence that was presented to the jury at Whitton's trial, but also evidence the jury never saw. The evidence in question relates to blood stains on Whitton's boots, which were seized the day after the murder. At Whitton's trial, an analyst from the Florida Department of Law Enforcement testified that the DNA in the blood stains matched neither the victim's nor Whitton's. A decade after Whitton was convicted, however, the State ran another DNA test on the blood stains—and this time, the results revealed a match with the victim's DNA. Even though that new DNA evidence was not presented at Whitton's trial, the Court of Appeals took account of it when analyzing the Florida Supreme Court's determination. In describing the evidence that supported that determination, the Court of Appeals related that Whitton's boots "were stained with blood that, after later retesting,

matched [the victim]'s DNA." *Id*., at *18.[3] And in rebutting Whitton's arguments (some of which it thought a jury "may well find" "persuasive"), the court again commented on the new DNA evidence. *Ibid*. Specifically, it observed that, "after retesting the DNA on Whitton's boots," the State "confirmed that the inside of Whitton's right boot contained blood" with DNA "matching the DNA profile of [the victim]." *Id*., at *19 (internal quotation marks omitted). "In short," the court said, "the blood-splatter evidence ties Whitton directly and firmly to [the victim]'s murder." *Ibid*. After considering that post-trial DNA evidence (in addition to the trial evidence), the Court of Appeals held that it was not "unreasonable for the State court to conclude" that even without any of Ozio's testimony "there was 'overwhelming evidence against Whitton.' " *Ibid*. (quoting *Whitton*, 161 So. 3d, at 334). And so the Court of Appeals affirmed the denial of habeas relief.

We vacate the Court of Appeals' judgment because that court should not have considered the post-trial DNA evidence in assessing whether the Florida Supreme Court reasonably determined that Ozio's testimony was immaterial to the jury's verdict. Because the post-trial DNA evidence was not presented to the jury (indeed, did not exist at the time of the trial), that evidence could not have influenced the jury's verdict. It therefore sheds no light on whether (or to what extent) Ozio's testimony influenced that verdict. See *Brecht*, 507 U. S., at 623 ("[T]he standard for determining whether habeas relief must be granted is whether the [constitutional] error had substantial and injurious effect or influence *in determining the jury's verdict*" (emphasis added; internal quotation marks omitted)). The Florida Supreme Court did not consider the post-trial DNA evidence in making its determination, and the Court of Appeals should not have done so in evaluating that determination either. We express no view on whether the Florida Supreme Court's determination was reasonable in light of the evidence that *was* presented at trial. That is for the Court of Appeals to assess in the first instance. We likewise express no view on the State's argument that Whitton failed to exhaust his *Giglio* claim in the state courts. The Court of Appeals "[did] not address" that argument because it concluded that "the claim fails on the merits," 2025 WL 1305158, *15, n. 10, and we are "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). The Court of Appeals is of course free to address that argument on remand. We therefore grant the petition for writ of certiorari, vacate the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion.

It is so ordered.