Actual Innocence Procedural Default Exception Clarified By Supreme Court

Paul Gregory House v. Ricky Bell, No. 04-8990, 547 U. S. ____ (U.S. 06/12/2006)

[3] 2006.SCT.0000101<http://www.versuslaw.com>

[9] A Tennessee jury convicted petitioner House of Carolyn Muncey's murder and sentenced him to death. The State's case included evidence that FBI testing showing semen consistent (or so it seemed) with House's on Mrs. Muncey's clothing and small bloodstains consistent with her blood but not House's on his jeans. In the sentencing phase, the jury found, *inter alia*, the aggravating factor that the murder was committed while House was committing, attempting to commit, or fleeing from the commission of rape or kidnaping. In affirming, the State Supreme Court described the evidence as circumstantial but strong. House was denied state post-conviction relief. Subsequently, the Federal District Court denied habeas relief, deeming House's claims procedurally defaulted and granting the State summary judgment on most of his claims. It also found, after an evidentiary hearing at which House attacked the blood and semen evidence and presented other evidence, including a putative confession, suggesting that Mr. Muncey committed the crime, that House did not fall within the "actual innocence" exception to procedural default recognized in *Schlup v. Delo*, 513 U. S. 298, and *Sawyer v. Whitley*, 505 U. S. 333. The Sixth Circuit ultimately affirmed.

[22] The opinion of the court was delivered by: Justice Kennedy.

[78] As a general rule, claims forfeited under state law may support federal habeas relief only if the prisoner demonstrates cause for the default and prejudice from the asserted error. The bar is not, however, unqualified. In an effort to "balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case," … the Court has recognized a miscarriage-of-justice exception. " `[I]n appropriate cases … the concepts of cause and prejudice `must yield to the imperative of correcting a fundamentally unjust incarceration,' " …

[79] In *Schlup*, the Court adopted a specific rule to implement this general principle. It held that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." … This formulation, *Schlup* explains, "ensures that petitioner's case is truly `extraordinary,' while still providing petitioner a meaningful avenue by which to avoid a manifest injustice." … Yet a petition supported by a convincing *Schlup* gateway showing "raise[s] sufficient doubt about [the petitioner's] guilt to undermine confidence in the result of the trial without the assurance that that trial was untainted by constitutional error"; hence, "a review of the merits of the constitutional claims" is justified. …

[80] For purposes of this case several features of the *Schlup* standard bear emphasis. First, although "[t]o be credible" a gateway claim requires "new reliable evidence -- whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence -- that was not presented at trial," … the habeas court's analysis is not limited to such evidence. *Schlup* makes plain that the habeas court must consider " `all the evidence,' " old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under "rules of admissibility that would govern at trial." Based on this total record, the court must make "a probabilistic determination about what reasonable, properly instructed jurors would do." … The court's function is not to make an independent factual determination about what likely occurred, but rather to assess the likely impact of the evidence on reasonable jurors.

[81] Second, it bears repeating that the *Schlup* standard is demanding and permits review only in the " `extraordinary' " case. …[T]he *Schlup* standard does not require absolute certainty about the petitioner's guilt or innocence. A petitioner's burden at the gateway stage is to demonstrate that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt …

[82] Finally, …. Because a *Schlup* claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record. … If new evidence so requires, this may include consideration of "the credibility of the witnesses presented at trial." …

[83] As an initial matter, the State argues that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) …has replaced the *Schlup* standard with a stricter test based on *Sawyer*, … Neither provision addresses the type of petition at issue here -- a first federal habeas petition seeking consideration of defaulted claims based on a showing of actual innocence. …

[84] Yet the Schlup inquiry, we repeat, requires a holistic judgment about " `all the evidence,' " …As a general rule, the inquiry

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Justice:Denied Comment About The *House v. Bell* Decision

It remains to be seen how federal District and Circuit Court judges will apply the U.S. Supreme Court's 5-3 decision in *House v Bell*. If they do so faithfully, it will contribute to serious consideration of many habeas petitions alleging actual innocence that until now have been given the short shrift of a dismissal on the ground of a procedural default, particularly by defendants who did not file a petition within the Anti-terrorism and Effective Death Penalty's (AEDPA) one-year deadline.

There are at least three reasons to hope the *House* decision will contribute to rectifying miscarriages of justice that since the the AEDPA's enactment were unlikely to be accorded fair consideration.

First, House is not plainly innocent. The majority decision described its finding for *House* as being a close call. [1] The scales were barely tilted toward supporting their finding that no reasonable juror would find him guilty based on a consideration of all the evidence now available. Compare that, for example, with the compelling evidence of Frederick Weichel's actual innocence (see page 24 of this *JD* issue.), who after 25 years of imprisonment has yet to file his first federal habeas petition.

Second, while there is DNA evidence favorable to House, it is only a piece of the evidence puzzle that the Supreme Court relied on. There are also multiple confessions and suspicious behavior by the victim's husband, likely contamination of House's pants with the victim's blood stored in a vial after her autopsy, and other evidence tending to support that House isn't the murderer.

Third, there is a spirit to the reasoning of the *House* decision that has been generally lacking in review of federal habeas petitions. Namely, that the concept of judicial finality is not intended to perpetrate an injustice by barring the door to serious consideration of a petition submitted by a defendant able to make a colorable showing that while at the time of trial the government was able to overcome the defendant's 'presumption of innocence,' new evidence establishes "it is more likely than not" that is no longer true, and "that no reasonable juror viewing the record as a whole would lack reasonable doubt." [2]

1 *House v. Bell*, No. 04-8990, 547 U. S. ___ (U.S. 06/12/2006), 2006.SCT.0000101 ¶ 123 <www.versuslaw.com> ("Accordingly, and although the issue is close, we conclude that this is the rare case where — had the jury heard all the conflicting testimony — it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt.")

2 *Id.*

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does not turn on discrete findings regarding disputed points of fact, …

[85] With this background in mind we turn to the evidence developed in House's federal habeas proceedings.

[86] DNA Evidence

[87] First, in direct contradiction of evidence presented at trial, DNA testing has established that the semen on Mrs. Muncey's nightgown and panties came from her husband, Mr. Muncey, not from House. … In fact we consider the new disclosure of central importance.

[88] From beginning to end the case is about who committed the crime. When identity is in question, motive is key. … Referring to "evidence at the scene," the prosecutor suggested that House committed, or attempted to commit, some "indignity" on Mrs. Muncey. …

[90] … When the only direct evidence of sexual assault drops out of the case, so, too, does a central theme in the State's narrative linking House to the crime. …

[91] Bloodstains

[92] The other relevant forensic evidence is the blood on House's pants, which appears in small, even minute, stains in scattered places. …House … now presents an alternative explanation that, if credited, would undermine the probative value of the blood evidence.

[93] During House's habeas proceedings, Dr. Cleland Blake, an Assistant Chief Medical Examiner for the State of Tennessee and a consultant in forensic pathology to the TBI for 22 years, testified that the blood on House's pants was chemically too degraded, and too similar to blood collected during the autopsy, to have come from Mrs. Muncey's body on the night of the crime. The blood samples collected during the autopsy were placed in test tubes without preservative. Under such conditions, according to Dr. Blake, "you will have enzyme degradation. … The blood on House's pants, …judging by Agent Bigbee's tests, showed "similar deterioration, breakdown of certain of the named numbered enzymes" as in the autopsy samples. … "[I]f the victim's blood had spilled on the jeans while the victim was alive and this blood had dried," Dr. Blake stated, "the deterioration would not have occurred," ibid., and "you would expect [the blood on the jeans] to be different than what was in the tube," … Dr. Blake thus concluded the blood on the jeans came from the autopsy samples, not from Mrs. Muncey's live (or recently killed) body.

[94] Other evidence confirms that blood did in fact spill from the vials. …

[99] … (As has been noted, no blood was found on House's shoes.)

[101] In sum, considering " `all the evidence,' " … on this issue, we think the evidentiary disarray surrounding the blood, taken together with Dr. Blake's testimony and the limited rebuttal of it in the present record, would prevent reasonable jurors from placing significant reliance on the blood evidence. We now know, though the trial jury did not, that an Assistant Chief Medical Examiner believes the blood on House's jeans must have come from autopsy samples; that a vial and a quarter of autopsy blood is unaccounted for; that the blood was transported to the FBI together with the pants in conditions that could have caused vials to spill; that the blood did indeed spill at least once during its journey from Tennessee authorities through FBI hands to a defense expert; that the pants were stored in a plastic bag bearing both a large blood stain and a label with TBI Agent Scott's name; and that the styrofoam box containing the blood samples may well have been opened before it arrived at the FBI lab. Thus, whereas the bloodstains, emphasized by the prosecution, seemed strong evidence of House's guilt at trial, the record now raises substantial questions about the blood's origin.

[102] A Different Suspect

[103] [I]n the post-trial proceedings House presented troubling evidence that Mr. Muncey, the victim's husband, himself could have been the murderer.

[113] In the habeas proceedings … two different witnesses … described a confession by Mr. Muncey; two more … described suspicious behavior (a fight and an attempt to construct a false alibi) around the time of the crime; and still other witnesses described a history of abuse.

[116] … The confession evidence here involves an alleged spontaneous statement recounted by two eyewitnesses with no evident motive to lie. …

[117] The evidence pointing to Mr. Muncey is by no means conclusive. If considered in isolation, a reasonable jury might well disregard it. In combination, however, with the challenges to the blood evidence and the lack of motive with respect to House, the evidence pointing to Mr. Muncey likely would reinforce other doubts as to House's guilt.

[122] Conclusion

[123] This is not a case of conclusive exoneration. … Accordingly, and although the issue is close, we conclude that … had the jury heard all the conflicting testimony – it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt.

[125] In addition to his gateway claim under *Schlup*, House argues that he has shown freestanding innocence and that as a result his imprisonment and planned execution are unconstitutional. In *Herrera*, decided three years before Schlup, the Court assumed without deciding that "in a capital case a truly persuasive demonstration of `actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim." …

[126] … We conclude here, much as in *Herrera*, that whatever burden a hypothetical freestanding innocence claim would require, this petitioner has not satisfied it. … It follows, given the closeness of the *Schlup* question here, that House's showing falls short of the threshold implied in *Herrera*.

[127] House has satisfied the gateway standard set forth in *Schlup* and may proceed on remand with procedurally defaulted constitutional claims. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

[131] Chief Justice Roberts, with whom Justice Scalia and Justice Thomas join, concurring in the judgment in part and dissenting in part.

[132] Considering all the evidence, … I do not find it probable that no reasonable juror would vote to convict him, and accordingly I dissent.