

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 93-7607

(Summary Calendar)

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WILLIE D. HARRISON,

Petitioner-Appellant,

versus

EDWARD HARGETT,  
Superintendent, ET AL.,

Respondent-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(1:93-CV-40)

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(July 13, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Willie D. Harrison, proceeding pro se, appeals the district court's denial of his petition for habeas corpus relief under 28 U.S.C. § 2254 (1988). We affirm.

**I**

Harrison was convicted of murdering his estranged wife, Annie Ruth. On October 13, 1985, Harrison, accompanied by Ray Patty,

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\* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

went to his brother's house, where Annie Ruth had been staying.

When Harrison and Patty arrived at the brother's home, they found Dennis Herrington's car parked there.<sup>1</sup> While Patty proceeded into the house, Harrison procured a knife and went to the Herrington car, where he found Annie Ruth with her head in Herrington's lap. Harrison then pulled Annie Ruth from the car, stabbed her six times, and also scuffled briefly with Herrington. Harrison told his brother to call the police and shortly thereafter was taken into custody. Harrison subsequently confessed to killing Annie Ruth.

A jury found Harrison guilty of murder, and he was sentenced to life imprisonment. The Mississippi Supreme Court affirmed Harrison's conviction and sentence in a published opinion. *Harrison v. State*, 534 So. 2d 175 (Miss. 1988). After exhausting his state habeas remedies, Harrison filed a petition for habeas relief in the federal district court. The district court denied the petition and granted a certificate of probable cause.

## II

Harrison first argues that the state trial court erred with regard to several evidentiary rulings. Harrison contends the court erred in: (1) ignoring Mississippi case law and "an ancient rule of common law" requiring the prosecution to call all eyewitnesses to a crime;<sup>2</sup> (2) allowing the prosecution to impeach Ray Patty, a

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<sup>1</sup> Annie Ruth had previously informed Harrison that she was seeing Herrington.

<sup>2</sup> Harrison styles this contention as a sufficiency claim, contending that the evidence, without Herrington's testimony, was

prosecution witness; (3) allowing Patty to testify that he was afraid of Harrison; and (4) allowing the prosecution to impeach Patty through the testimony of a police officer.

A mere error "in the application of state law by the trial court does not provide grounds for habeas relief." *Pemberton*, 991 F.2d at 1226; see also *Hill v. Black*, 887 F.2d 513, 522 (5th Cir. 1989) (alleged violation of state rule of evidence not an issue for habeas court), *vacated and remanded*, 498 U.S. 801, 111 S. Ct. 28, 112 L. Ed. 2d 6, *reinstated*, 920 F.2d 249 (1990). Instead, "[a] state court's evidentiary ruling presents a cognizable habeas claim only if it runs afoul of a specific constitutional right or renders the trial fundamentally unfair" under the Due Process clause. *Pemberton*, 991 F.2d at 1226; see *Skillern v. Estelle*, 720 F.2d 839, 852 (5th Cir. 1983), *cert. denied*, 469 U.S. 873, 105 S. Ct. 224, 83 L. Ed. 2d 153 (1984).

The Mississippi Supreme Court, on direct appeal, specifically found that the Mississippi Rules of Evidence allowed the prosecution to impeach Patty and allowed Patty to testify that he was afraid of Harrison. *Harrison*, 534 So. 2d at 178-80. The court further held that Mississippi law did not require the prosecution to call Herrington as a witness. *Id.* at 181-83. Thus, it is not clear that Harrison has even alleged an erroneous evidentiary

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insufficient to support his conviction for murder. To the extent Harrison asserted such a claim, we reject it. Viewing the evidence in the light most favorable to the prosecution, as we must, a rational trier of fact could have found Harrison guilty of murdering his wife. See *Pemberton v. Collins*, 991 F.2d 1218, 1227 (5th Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 114 S. Ct. 637, 126 L. Ed. 2d 596 (1993).

ruling by the trial court. Assuming *arguendo*, however, that the trial court erred, Harrison has not demonstrated that the trial court's rulings rendered his trial fundamentally unfair. *Skillern*, 720 F.2d at 852. Consequently, we reject Harrison's claim.

### III

Harrison next contends that the trial court erred in allowing the prosecution to introduce his confession in evidence because "the proof showed that [he] could neither read nor write and did not understand the contents of the written statement taken by police officers immediately after arrest." Because he "had only a third grade education and was unable to read and write," Harrison insists that the record "is not clear that [he] made a knowing and intelligent waiver" of his constitutional rights.

For Harrison's waiver of his Fifth Amendment rights to be valid, two requirements must be satisfied.

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

*Moran v. Burbine*, 475 U.S. 412, 422, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410 (1986). "[T]he state bears the burden of proving by a preponderance of the evidence that a defendant has waived the protections established by *Miranda*." *Self v. Collins*, 973 F.2d 1198, 1206 (5th Cir. 1992), *cert. denied*, \_\_\_ U.S. \_\_\_, 113 S. Ct.

1613, 123 L. Ed. 2d 173 (1993).<sup>3</sup> Here, Harrison does not allege that officers intimidated, coerced, or deceived him. Thus, we need only determine whether the state met its burden of proof as to the second prong of the waiver inquiry.

After reviewing the totality of the circumstances, we conclude that Harrison waived his rights with a full awareness of both the nature of the rights being abandoned and the consequences of the decision to abandon them. During the suppression hearing, Officer Greg Clark testified that he, in the presence of at least one other officer, interrogated Harrison. Clark stated that he read Harrison his *Miranda* rights word-for-word from the standard form. In response to Clark's inquiry, Harrison declared that he understood his rights. Clark then read Harrison the waiver section of the form, and Harrison again stated that he understood what Clark had read to him. Harrison subsequently signed the form and gave a statement, which Clark transcribed. When Clark read the statement back to Harrison, Harrison acknowledged its accuracy and signed it. Clark further testified that neither he nor anyone else made any promises to or in any way threatened Harrison. Finally, Harrison

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<sup>3</sup> After holding a suppression hearing, the state trial court found that Harrison's confession was given knowingly, voluntarily, and intelligently. The state supreme court upheld that determination on direct appeal. *Harrison*, 534 So. 2d at 180-81. Although the ultimate question of whether a defendant waived his constitutional rights is an issue of federal law, we accord "great weight to the considered conclusions of a coequal state judiciary." *Hawkins v. Lynaugh*, 844 F.2d 1132, 1137 (5th Cir.), cert. denied, 488 U.S. 900, 109 S. Ct. 247, 102 L. Ed. 2d 236 (1988); see also *Self*, 973 F.2d at 1204. Moreover, subsidiary factual determinations made by the state court are accorded a presumption of correctness under 28 U.S.C. § 2254(d). *Self*, 973 F.2d at 1204.

testified that Clark informed him of his *Miranda* rights,<sup>4</sup> read his entire statement back to him, "had written down everything [Harrison] told him," did not make any promises to him, and did not threaten him. This testimony clearly supports a finding of voluntary waiver. See *Kelly v. Lynaugh*, 862 F.2d 1126, 1131 (5th Cir. 1988), *cert. denied*, 492 U.S. 925, 109 S. Ct. 3263, 106 L. Ed. 2d 608 (1989). Moreover, our conclusion is bolstered by the findings of the state trial judge, who, as a result of having an opportunity to observe Harrison testify both at the suppression hearing and trial, was in a much better position than we are to evaluate Harrison's capacity. See *Self*, 973 F.2d at 1218. Consequently, we find Harrison's claim that his confession was obtained in violation of his constitutional rights without merit.

V

Lastly, Harrison contends that the state trial court erred in refusing to grant a mistrial "when one of the jurors left the jury during deliberation and came into the Judge's Chambers and requested to be relieved from the jury." Harrison alleges that when the trial judge informed her that she could not be disqualified, the "juror just simply went back into the jury room and found [him] guilty of murder just like all of the jurors were

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<sup>4</sup> Harrison testified that officer Clark told him: he did not have to say anything; he could have a lawyer present and if he didn't have the money to hire a lawyer, one would be appointed for him; and he was charged with murder. Additionally, Clark "might have" told Harrison that if he started answering questions, he could stop at any time.

trying to do anyway. Thus, undue pressure on this juror caused her to compromised [sic] her vote."

Jury misconduct will not result in federal habeas relief unless it deprived the petitioner of a fair and impartial trial. *Drew v. Collins*, 964 F.2d 411, 415 (5th Cir. 1992), *cert. denied*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 3044, 125 L. Ed. 2d 730 (1993). Where the misconduct results from the acts of a juror and not from any outside influence, the petitioner must demonstrate that the misconduct prejudiced his constitutional right to a fair trial. *Id.* at 415-16. Here, Harrison has not attempted to demonstrate any prejudice resulting from the alleged misconduct. The record contains no evidence suggesting the reason for the juror's request, and the trial judge simply told her that she could not be relieved. Additionally, a poll of the jury revealed the verdict of murder to be unanimous, thereby indicating that the juror fully supported the verdict that was reached. Thus, we find that Harrison's claim of juror misconduct is without merit.

## VI

For the foregoing reasons, we AFFIRM the judgment of the district court.