Per Curiam

SUPREME COURT OF THE UNITED STATES

BRENDA EVERS ANDREW *v.* TAMIKA WHITE, WARDEN

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

No. 23–6573. Decided January 21, 2025

PER CURIAM.

An Oklahoma jury convicted Brenda Andrew of murdering her husband, Rob Andrew, and sentenced her to death. The State spent significant time at trial introducing evidence about Andrew's sex life and about her failings as a mother and wife, much of which it later conceded was irrelevant. In a federal habeas petition, Andrew argued that this evidence had been so prejudicial as to violate the Due Process Clause. The Court of Appeals rejected that claim because, it thought, no holding of this Court established a general rule that the erroneous admission of prejudicial evidence could violate due process. That was wrong. By the time of Andrew's trial, this Court had made clear that when "evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." *Payne* v. *Tennessee*, 501 U. S. 808, 825 (1991).

I

A

On November 20, 2001, Rob Andrew was fatally shot in his garage. Brenda Andrew, who herself had been shot in the arm during the incident, told the police that two armed assailants had committed the shooting. Andrew further explained that she had separated from her husband and was now dating James Pavatt, but that she and Rob continued to see each other as they had two children together.

Per Curiam

Pavatt and Andrew traveled to Mexico together after Rob Andrew's death and soon became suspects in his murder. Eventually, Pavatt confessed to committing the shooting with a friend. Pavatt denied that Andrew had been involved. The State thereafter charged both Pavatt and Andrew with capital murder, and a jury convicted Pavatt and sentenced him to death.

At Andrew's trial, the prosecution sought to prove that Andrew had conspired with Pavatt, an insurance agent, to murder her husband for the proceeds of his life insurance policy. Among other things, the prosecution elicited testimony about Andrew's sexual partners reaching back two decades; about the outfits she wore to dinner or during grocery runs; about the underwear she packed for vacation; and about how often she had sex in her car. At least two of the prosecution's guilt-phase witnesses took the stand exclusively to testify about Andrew's provocative clothing, and others were asked to comment on whether a good mother would dress or behave the way Andrew had. In its closing statement, the prosecution again invoked these themes, including by displaying Andrew's "thong underwear" to the jury, by reminding the jury of Andrew's alleged affairs during college, and by emphasizing that Andrew "had sex on [her husband] over and over and over" while "keeping a boyfriend on the side." Tr. 4103, 4124–4125 (July 12, 2004). At both the guilt and sentencing phases, prosecutors contrasted Andrew with the victim, whom they asserted had been "committed to God." *Id.*, at 4124; see also, *e.g.*, Tr. 4402 (July 14, 2004) (suggesting nothing could mitigate murder of Rob Andrew because he just "wanted to love God").[1]

---

[1] The dissent recites what it insists was substantial evidence of Andrew's guilt, contending in the process that this Court "inaccurately portrays" that evidence. *Post*, at 2 (opinion of THOMAS, J.). In doing so, it prejudges the prejudice analysis by characterizing as fact the State's narrative at trial. That narrative, of course, was hotly contested then and

B

The jury convicted Andrew and sentenced her to death.

On appeal, Andrew argued that the introduction of irrelevant evidence, including evidence "that she had extramarital sexual affairs with two other men," that she had "'come on to'" another witness's sons, and that she had dressed provocatively at a restaurant, *Andrew* v. *State*, 2007 OK CR 23, ¶¶42–59, 164 P. 3d 176, 190–193, violated Oklahoma law as well as the Federal Due Process Clause. The Oklahoma Court of Criminal Appeals (OCCA) held that admission of evidence about Andrew's extramarital affairs had been proper because it showed that "[h]er co-defendant was just the last in a long line of men that she seduced." *Id.,* at 192.[2] The OCCA "struggl[ed]," however, "to find any relevance . . . other than to show [Andrew's] character" for the

---

remains so now. For example, the defense elicited testimony from multiple witnesses that Andrew knew on the day of the murder that she was not the beneficiary on the life insurance policy. The OCCA held that the court also wrongly excluded evidence Andrew argued would cast doubt on the theory that she had staged the shooting, though the OCCA held that exclusion was harmless. *Andrew* v. *State*, 2007 OK CR 23, ¶¶89–92, 164 P. 3d 176, 197. The Court today says nothing about the strength of the evidence against Andrew because the issue of prejudice in both the guilt and sentencing phases of the trial is one for the Tenth Circuit to consider on remand. See *infra*, at 9. Similarly, the dissent asserts that Andrew falsely accuses the prosecution of calling her a "slut puppy" in closing argument. *Post*, at 7, n. 3 (opinion of THOMAS, J.). Whether the prosecution quoted something it believed Andrew once said to suggest to the jury that Andrew herself was a "slut puppy," or simply to recite an alleged abusive phone call, is a question of fact for the Tenth Circuit to resolve.

[2]The dissent asserts that the OCCA held evidence of Andrew's "'close personal relationship'" with two of her affair partners to be relevant because it gave credence to testimony that Andrew had "'shared with both of these men her hatred for Rob Andrew and her wish that he was dead.'" *Post*, at 6 (opinion of THOMAS, J.) (quoting 164 P. 3d, at 192). Andrew never objected to evidence that she had a "close personal relationship" with these men. In fact, defense counsel stipulated that she had affairs with them. See, *e.g.*, Tr. 338 (June 18, 2004) ("We're not contesting the

remaining challenged evidence. *Ibid.* By now, the State "agree[d] that most of this evidence was irrelevant to any issue in this case." *Ibid.* The OCCA nonetheless denied relief on the ground that the trial court's errors had been harmless.

Judge Johnson dissented in part. In his view, the "egregious . . . pattern of introducing evidence that ha[d] no purpose other than to hammer home that Brenda Andrew is a bad wife, a bad mother, and a bad woman . . . trivialize[d] the value of her life in the minds of the jurors." *Id.*, at 206–207. He would therefore have vacated her sentence. Judge Chapel dissented separately, indicating that he would have reversed the conviction and remanded for a new trial. *Id.*, at 208.

In federal court, Andrew reiterated her claim that the admission of this evidence rendered the guilt and penalty phases of her trial fundamentally unfair, in violation of due process. 62 F. 4th 1299, 1312–1313 (CA10 2023). The District Court denied relief. A divided Tenth Circuit affirmed because, it held, Andrew had failed to cite "clearly established federal law governing her claim." *Id.*, at 1314. The majority acknowledged that Andrew had cited *Payne*, in which this Court said that the Due Process Clause "provides a mechanism for relief" when the introduction of unduly prejudicial evidence "renders [a] trial fundamentally unfair." 501 U. S., at 825. According to the majority, however, that had been a "pronouncement," not a "holding," of this Court. 62 F. 4th, at 1314. It therefore concluded Andrew had failed to identify "clearly established federal law governing her claim," as required under the Antiterrorism

---

affair. We have never contested the affair with Nunley or Higgins"). Andrew's claim instead concerned the extensive testimony about how she flirted with these men, how she dressed around them, and how many times (and where) she had sex with them. That testimony appears to have no bearing on Andrew's alleged expressions of hatred for her husband.

and Effective Death Penalty Act of 1996 (AEDPA). *Id.*, at 1316; 28 U. S. C. §2254(d)(1). As a result, the majority declined to consider whether the OCCA unreasonably applied *Payne*, *i.e.*, whether a fairminded jurist could hold that the admission of irrelevant evidence about Andrew's demeanor as a woman was not so prejudicial as to deprive her of a fundamentally fair trial. 62 F. 4th, at 1316 ("'The absence of clearly established federal law is dispositive under §2254(d)(1)'" (quoting *House* v. *Hatch*, 527 F. 3d 1010, 1018 (CA10 2008))).

In dissent, Judge Bacharach condemned the State's focus "from start to finish on Ms. Andrew's sex life," a move he argued "portrayed Ms. Andrew as a scarlet woman, a modern Jezebel, sparking distrust based on her loose morals . . . plucking away any realistic chance that the jury would seriously consider her version of events." 62 F. 4th, at 1366. Judge Bacharach therefore would have held that the combination of evidentiary errors "deprived Ms. Andrew of a fundamentally fair trial." *Id.*, at 1377.

II

A federal court may grant habeas relief as to a claim adjudicated on the merits in state court only if the state court relied on an unreasonable determination of the facts or unreasonably applied "clearly established Federal law, as determined by" this Court. 28 U. S. C. §§2254(d)(1)–(2). To show that a state court unreasonably applied clearly established federal law, a petitioner must show that the court unreasonably applied "'the holdings, as opposed to the dicta, of this Court's decisions.'" *White* v. *Woodall*, 572 U. S. 415, 419 (2014) (quoting *Howes* v. *Fields*, 565 U. S. 499, 505 (2012)). An unreasonable application, in turn, is one with which no fairminded jurist would agree. *Harrington* v. *Richter*, 562 U. S. 86, 101 (2011).

Per Curiam

A

When this Court relies on a legal rule or principle to decide a case, that principle is a "holding" of the Court for purposes of AEDPA. *Lockyer* v. *Andrade*, 538 U. S. 63, 71–72 (2003) ("[C]learly established Federal law . . . is the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision" (internal quotation marks omitted)). Following these principles, it is clear that Andrew properly identified clearly established federal law.

In *Payne*, this Court considered whether to overrule a set of prior cases that had categorically barred the introduction of victim impact evidence during the sentencing phases of a capital trial. The Court noted that, in many circumstances, "victim impact evidence serves entirely legitimate purposes," 501 U. S., at 825, even though in others it could be prejudicial. It then concluded that a categorical bar was not necessary to protect against the risk of prejudicial testimony because "the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief" against the introduction of evidence "that is so unduly prejudicial that it renders the trial fundamentally unfair." *Ibid.* (citing *Darden* v. *Wainwright*, 477 U. S. 168, 179–183 (1986)). In light of that protection, the Court held, it could permit victim impact evidence where appropriate without risking undue prejudice to defendants. 501 U. S., at 825. In other words, the Court removed one protection for capital defendants (the *per se* bar on victim impact statements) in part *because* another protection (the Due Process Clause) remained available against evidence that is so unduly prejudicial that it renders the trial fundamentally unfair. The legal principle on which Andrew relies, that the Due Process Clause can in certain cases protect against the introduction of unduly prejudicial evidence at a criminal trial, was therefore indispensable to the decision in *Payne*. That means it was a holding of this Court for purposes of

AEDPA.

Importantly, *Payne* did not invent due process protections against unduly prejudicial evidence. The Court had several times before held that prosecutors' prejudicial or misleading statements violate due process if they render a trial or capital sentencing fundamentally unfair. *Donnelly* v. *DeChristoforo*, 416 U. S. 637 (1974); *Caldwell* v. *Mississippi*, 472 U. S. 320, 338–340 (1985); *Darden*, 477 U. S., at 178–183. *Payne* thus broke little new ground in this respect. By the time of the OCCA's decision in this case, it was clear that the introduction of unduly prejudicial evidence could, in certain cases, violate the Due Process Clause.[3]

B

The Court of Appeals nonetheless held that *Payne* "merely established that the Eighth Amendment did not erect a '*per se* bar' to the introduction of victim-impact statements in capital cases." 62 F. 4th, at 1314 (quoting *Payne*, 501 U. S., at 827). As just explained, however, *Payne* expressly relied on the availability of relief under the Due Process Clause to reach that conclusion. This Court

---

[3] The dissent argues that *Estelle* v. *McGuire*, 502 U. S. 62 (1991), shows otherwise because it left open whether "'it is a violation of the due process guaranteed by the Fourteenth Amendment for evidence that is not relevant to be received in a criminal trial.'" *Post*, at 16 (opinion of THOMAS, J.) (quoting *Estelle*, 502 U. S., at 70). To be sure, this Court did not hold in *Payne* that the introduction of all irrelevant evidence violates the Due Process Clause. *Payne* established, rather, that due process protects defendants from the introduction of evidence so prejudicial as to affect the fundamental fairness of their trials. This Court squarely acknowledged that rule in *Estelle*, explaining that "the challenged evidence" at issue there did not warrant relief because it did not "'so infus[e] the trial with unfairness as to deny due process of law.'" 502 U. S., at 75 (quoting *Lisenba* v. *California*, 314 U. S. 219, 228 (1941), and citing *Donnelly*, 416 U. S., at 643). In any event, and as recounted below, this Court has continued to rely on *Payne*'s fundamental fairness principle since *Estelle*.

has accordingly applied *Payne*'s framework to a claim much like Andrew's: "that the introduction of [prejudicial] evidence" at the sentencing phases "violated the Due Process Clause of the Fourteenth Amendment." *Romano* v. *Oklahoma*, 512 U. S. 1, 12 (1994). More recently, the Court relied on *Payne* in the same way that Andrew sought to rely on it here: for the proposition that "the Due Process Clause . . . wards off the introduction of unduly prejudicial evidence that would render the trial fundamentally unfair." *Kansas* v. *Carr*, 577 U. S. 108, 123 (2016) (quoting *Payne*, 501 U. S., at 825; internal quotation marks and alteration omitted). This Court has also relied on the underlying fundamental fairness principle in the jury-impartiality context. See *Rideau* v. *Louisiana*, 373 U. S. 723, 726 (1963); *Skilling* v. *United States*, 561 U. S. 358, 379 (2010).

To the extent that the Court of Appeals thought itself constrained by AEDPA to limit *Payne* to its facts, it was mistaken. General legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court. For example, the Eighth Amendment principle that a sentence may not be grossly disproportionate to the offense is "'clearly established' under §2554(d)(1)," even though it arises out of a "thicket of Eighth Amendment jurisprudence" and lacks "'precise contours.'" *Lockyer*, 538 U. S., at 72. Although this Court has not previously relied on *Payne* to invalidate a conviction for improperly admitted prejudicial evidence, moreover, "certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." *White*, 572 U. S., at 427 (quoting *Yarborough* v. *Alvarado*, 541 U. S. 652, 666 (2004)); see also *Taylor* v. *Riojas*, 592 U. S. 7, 9 (2020) (*per curiam*) ("'[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question'" (quoting *Hope* v. *Pelzer*, 536 U. S. 730, 741 (2002))). The Court of Appeals thus erred by refusing

even to consider whether the OCCA unreasonably applied established due process principles to Andrew's case.

The dissent maintains that a reasonable jurist could agree with the Tenth Circuit's understanding of our precedent. That assertion conflates the deference federal habeas courts must extend to a state court's "application of" this Court's precedent with the federal courts' independent obligation to first identify the relevant "clearly established Federal law." 28 U. S. C. §2254(d)(1); *Lockyer*, 538 U. S., at 71 (identifying clearly established law "[a]s a threshold matter"). A legal principle is clearly established for purposes of AEDPA if it is a holding of this Court. *White*, 572 U. S., at 419. This Court has no occasion to defer to other federal courts' erroneous interpretations of its own precedent. Nor is such double deference necessary to prevent expansion of federal habeas relief to those who rely on "debatable" interpretations or extensions of our holdings. *Post* at 17–18 (opinion of THOMAS, J.). Andrew does not rely on an interpretation or extension of this Court's cases but on a principle this Court itself has relied on over the course of decades.

Because the Tenth Circuit nonetheless held that no relevant clearly established law existed (a ruling this Court reviews *de novo*) it never considered whether the state court's application of that law was reasonable. On remand, the Court of Appeals should conduct that inquiry in the first instance. Specifically, the question now is whether a fair-minded jurist reviewing this record could disagree with Andrew that the trial court's mistaken admission of irrelevant evidence was so "unduly prejudicial" as to render her trial "fundamentally unfair." *Payne*, 501 U. S., at 825.

The Court of Appeals must ask that question separately for the guilt and sentencing phases. As to each phase, it might consider the relevance of the disputed evidence to the charges or sentencing factors, the degree of prejudice Andrew suffered from its introduction, and whether the trial

court provided any mitigating instructions. Cf. *Romano*, 512 U. S., at 13. The ultimate question is whether a fair-minded jurist could disagree that the evidence "so infected the trial with unfairness" as to render the resulting conviction or sentence "a denial of due process." *Ibid.*

* * *

At the time of the OCCA's decision, clearly established law provided that the Due Process Clause forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair. This Court accordingly grants the petition for certiorari and the motion for leave to proceed *in forma pauperis*, vacates the judgment below, and remands the case for further proceedings consistent with this opinion.

It is so ordered.