Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FRY *v.* PLILER, WARDEN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06–5247. Argued March 20, 2007—Decided June 11, 2007

The trial judge presiding over petitioner's criminal trial excluded the testimony of defense-witness Pamela Maples. After his conviction, petitioner argued on appeal, *inter alia,* that the exclusion of Maples' testimony violated *Chambers* v. *Mississippi*, 410 U. S. 284, which held that a combination of erroneous evidentiary rulings rose to the level of a due-process violation. The California Court of Appeal did not explicitly address that argument in affirming, but stated, without specifying which harmless-error standard it was applying, that "no possible prejudice" could have resulted in light of the cumulative nature of Maples' testimony. The State Supreme Court denied discretionary review. Petitioner then filed a federal habeas petition raising the due-process and other claims. The Magistrate Judge found the state appellate court's failure to recognize *Chambers* error an unreasonable application of clearly established law as set forth by this Court, and disagreed with the finding of "no possible prejudice," but concluded there was an insufficient showing that the improper exclusion of Maples' testimony had a "substantial and injurious effect" on the jury's verdict under *Brecht* v. *Abrahamson*, 507 U. S. 619, 631. Agreeing, the District Court denied relief, and the Ninth Circuit affirmed.

Held: In 28 U. S. C. §2254 proceedings, a federal court must assess the prejudicial impact of constitutional error in a state-court criminal trial under *Brecht*'s "substantial and injurious effect" standard, whether or not the state appellate court recognized the error and reviewed it for harmlessness under the "harmless beyond a reasonable doubt" standard set forth in *Chapman* v. *California*, 386 U. S. 18, 24. Pp. 3–8.

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(a) That *Brecht* applies in §2254 cases even if the state appellate court has not found, as did the state appellate court in *Brecht,* that the error was harmless under *Chapman,* is indicated by this Court's *Brecht* opinion, which did not turn on whether the state court itself conducted *Chapman* review, but instead cited concerns about finality, comity, and federalism as the primary reasons for adopting a less onerous standard on collateral review. 507 U. S., at 637. Since each of these concerns applies with equal force whether or not the state court reaches the *Chapman* question, it would be illogical to make the standard of review turn upon that contingency. *Brecht, supra,* at 636, distinguished. Petitioner presents a false analogy in arguing that, if *Brecht* applies whether or not the state appellate court conducted *Chapman* review, then *Brecht* would apply even if a State eliminated appellate review altogether. The Court also rejects petitioner's contention that, even if *Brecht* adopted a categorical rule, post-*Brecht* developments—the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), as interpreted in *Mitchell* v. *Esparza,* 540 U. S. 12—require a different review standard. That result is not suggested by *Esparza,* which had no reason to decide the point, nor by AEDPA, which sets forth a precondition, not an entitlement, to the grant of habeas relief. Pp. 3–7.

(b) Petitioner's argument that the judgment below must still be reversed because excluding Maples' testimony substantially and injuriously affected the jury's verdict is rejected as not fairly encompassed by the question presented. Pp. 7–8.

Affirmed.

SCALIA, J., delivered the opinion for a unanimous Court with respect to all but footnote 1 and Part II–B. ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined that opinion in full; STEVENS, SOUTER, and GINSBURG, JJ., joined it as to all but Part II–B; and BREYER, J., joined as to all but footnote 1 and Part II–B. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER and GINSBURG, JJ., joined, and in which BREYER, J., joined in part. BREYER, J., filed an opinion concurring in part and dissenting in part.