

06-5247 FRY V. PLILER

DECISION BELOW:2006 WL 249542

LOWER COURT CASE NUMBER: 04-16876

QUESTIONS PRESENTED:

1. Can a trial court's unconstitutional exclusion of reliable evidence of third party guilt be deemed harmless error?
2. This Court's decisions in *Holmes v. South Carolina*, ___U.S.___, 164 L.Ed.2d 503, 126 S.Ct. 1727 (2006), and *House v. Bell*, ___U.S.___, 2006 U.S. Lexis 4675 (2006), were handed down after the decision of the Ninth Circuit below. Should this Court issue a GVR order in this case, directing the Ninth Circuit to reconsider its decision that the unconstitutional exclusion of reliable evidence of third party guilt can be harmless, in light of *Holmes* and *House*?
3. If constitutional error in a state trial is not recognized by the judiciary until the case ends up in federal court under 28 U.S.C. § 2254, is the prejudicial impact of the error assessed under the standard set forth in *Chapman v. California*, 386 U.S. 18 (1967), or that enunciated in *Brecht v. Abrahamson*, 507 U.S. 619 (1993)? Does it matter which harmless error standard is employed? And, if the *Brecht* standard applies, does the petitioner or the State bear the burden of persuasion on the question of prejudice?

CERT. GRANTED 12/7/2006

LIMITED TO QUESTION 3 PRESENTED BY THE PETITION.