

United States Court of Appeals For the First Circuit

No. 22-1924

PHILLIP AYALA,

Petitioner, Appellee,

v.

NELSON ALVES, Superintendent, MCI-Norfolk,

Respondent, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Mark G. Mastroianni, U.S. District Judge]

Before

Montecalvo, Selya, and Lynch, Circuit Judges.

Gabriel Thornton, Assistant Attorney General, Criminal Bureau, with whom Andrea Joy Campbell, Attorney General, was on brief, for appellant.

Janet Heatherwick Pumphrey for appellee.

October 25, 2023

LYNCH, Circuit Judge. Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of the U.S. Code), and Supreme Court precedent, federal habeas courts must give deference to a state court's findings of fact and application of law. White v. Woodall, 572 U.S. 415, 419-20 (2014). In addition, when a habeas petitioner asserts a claim of ineffective assistance of counsel, federal habeas corpus review must be doubly deferential. Burt v. Titlow, 571 U.S. 12, 15 (2013).

Petitioner Phillip Ayala was convicted, in 2007 after a jury trial, of first-degree murder, unlawful possession of a firearm, and unlawful possession of ammunition. His conviction and the denial by the trial court of his motion for a new trial were affirmed by the Massachusetts Supreme Judicial Court ("SJC") in a carefully reasoned, unanimous, nineteen-page decision. Commonwealth v. Ayala ("Ayala"), 112 N.E.3d 239, 241-42 (Mass. 2018).

A Massachusetts federal district court nonetheless granted Ayala's petition for a federal writ of habeas corpus on his argument that his state court trial counsel was ineffective. See Ayala v. Medeiros ("Medeiros"), 638 F. Supp. 3d 38, 46 (D. Mass. 2022). Arguing on appeal that the grant of Ayala's petition was improper, the Commonwealth of Massachusetts seeks to vacate

that order. We vacate, as the district court erred in applying the AEDPA standard. Under that standard Ayala's petition must be denied.¹

I. Facts

A. The Underlying Crimes of First-Degree Murder, Unlawful Possession of a Firearm, and Unlawful Possession of Ammunition

On this habeas review of an ineffective assistance of counsel claim, "[w]e take the facts largely as recounted by the [SJC] decision affirming [Ayala's] conviction, 'supplemented with other record facts consistent with the SJC's findings.'" Field v. Hallett, 37 F.4th 8, 12 (1st Cir. 2022) (second alteration in original) (quoting Yeboah-Sefah v. Ficco, 556 F.3d 53, 62 (1st Cir. 2009)). The SJC found the facts as follows:

In the early morning of June 10, 2007, Robert Perez and his friend, Clive Ramkissoon, attended a house party held on the second floor of a house in Springfield. Upon arriving just before 2 A.M., Perez and Ramkissoon encountered a bouncer on the first floor at the bottom of the stairwell that led to the second floor. The first-floor bouncer was posted there to search guests before letting them upstairs to the party. After being searched, the two men went upstairs to the party. As there were not yet many people at the party, Perez returned to the first floor and began speaking with the first-floor bouncer in the entryway of the stairwell.

Shortly thereafter, as Perez was speaking with the first-floor bouncer, the defendant arrived

¹ We do not consider Ayala's other arguments, which are not before us on appeal.

at the party. As she had done with Perez and Ramkissoon, the bouncer attempted to pat frisk the defendant before allowing him to enter. The defendant refused. After a brief argument related to the search, the defendant aggressively pushed past the bouncer and climbed the stairs to the second floor. A second bouncer intercepted the defendant on the stairs and prevented him from entering the party without having first been pat frisked. The defendant argued with the bouncer and, after yelling and screaming at him, was escorted out of the house. As the defendant was descending the staircase to leave, and just steps away from Perez, the defendant threatened to "come back" and "light the place up." [FN 2] After leaving the house briefly, the defendant returned and kicked in the first-floor door. [FN 3]

[FN 2] At trial, a witness who had attended the party testified that the defendant was upset because he felt that hosting a party at the house was disrespectful to his niece, who had recently been killed at a nearby location.

[FN 3] The door was kicked in with such force that police were later able to take a footprint impression from the door and confirm that it matched the defendant's shoe.

Throughout this interaction inside the house, Perez had an opportunity to observe the defendant closely for several minutes. [FN 4] Concerned by the defendant's threats and behavior, Perez returned upstairs to find Ramkissoon. The two men walked onto the second-floor porch to "assess the situation" and saw the defendant pacing back and forth on the street in front of the house. Rather than leave with the defendant still outside, given his recent threat to "light the place up," Perez and Ramkissoon decided to wait on the porch for a few minutes. After the defendant

moved out of sight, Perez, Ramkissoon, and a female friend decided to leave the party.

[FN 4] Robert Perez's account of the defendant's actions was substantially corroborated at trial by the testimony of the first-floor bouncer.

After leaving the house, Ramkissoon and the woman began walking across the road, while Perez, who had stopped to tie his shoe, trailed slightly behind. As they were crossing the road, the woman stopped in the middle of the road directly in front of the house and began dancing. Perez walked over to where the woman was dancing while Ramkissoon kept moving down the road, to the left of the house, toward the area where his vehicle was parked. As Perez approached the woman to guide her out of the way of oncoming traffic, he heard a gunshot and saw a muzzle flash appear near a street light located on the sidewalk in front of a property adjacent to the house. [FN 5] Perez saw the defendant holding a firearm and testified that he was able to identify the shooter as the defendant because the muzzle flash from the gun illuminated the shooter's face. He then turned and ran away from the shooting as several more gunshots rang out. Perez, who had previously served in the United States Army, testified that he heard between five and seven shots, which he recognized as .22 caliber bullets based on his military experience.

[FN 5] Perez testified that he saw the muzzle flash come from "the sidewalk area under the light," but later noted that he could not be certain whether the street light was on at the time of the shooting.

Perez soon circled back to where Ramkissoon's vehicle was parked and discovered Ramkissoon face down on the street. Perez performed rescue breathing on Ramkissoon and telephoned the police. Police officers arrived at the scene by approximately 3 A.M. It was later

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