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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

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**UTTECHT, SUPERINTENDENT, WASHINGTON
STATE PENITENTIARY v. BROWN****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 06–413. Argued April 17, 2007—Decided June 4, 2007

A Washington jury sentenced respondent Brown to death, and the state appellate courts affirmed. Subsequently, the Federal District Court denied Brown’s habeas petition, but the Ninth Circuit reversed, finding that under *Witherspoon v. Illinois*, 391 U. S. 510, and its progeny, the state trial court had violated Brown’s Sixth and Fourteenth Amendment rights by excusing “Jurors Z” for cause on the ground that he could not be impartial in deciding whether to impose a death sentence.

Held:

1. Courts reviewing claims of error under *Witherspoon* and *Wainwright v. Witt*, 469 U. S. 412, especially federal habeas courts, owe deference to the trial court, which is in a superior position to determine a potential juror’s demeanor and qualifications. This Court’s precedents establish at least four relevant principles. First, a criminal defendant has the right to an impartial jury drawn from a venire that has not been tilted in favor of capital punishment by selective prosecutorial challenges for cause. *Witherspoon, supra*, at 521. Second, the State has a strong interest in having jurors who are able to apply capital punishment within the framework state law prescribes. *Witt*, 469 U. S., at 416. Third, to balance these interests, a juror who is substantially impaired in the ability to impose the death penalty under the state-law framework can be excused for cause, but if the juror is not so impaired, removal for cause is impermissible. *Id.*, at 424. Fourth, in determining whether a potential juror’s removal would vindicate the State’s interest without violating the defendant’s right, the trial court bases its judgment in part on the juror’s demeanor, a judgment owed deference by reviewing courts. *Id.*, at 424–

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434. The trial court is in a superior position to assess demeanor, a factor critical in assessing the attitude and qualifications of potential jurors. *Id.*, at 428. The Antiterrorism and Effective Death Penalty Act of 1996's requirements provide additional, and binding, directions to accord deference, creating an independent, high standard to be met before a federal court may issue a habeas writ to set aside state-court rulings. By not according the required deference here, the Ninth Circuit failed to respect the limited role of federal habeas relief in this area. Pp. 2–7.

2. In applying the *Witherspoon-Witt* rule, it is instructive to consider the entire *voir dire* in Brown's case and then turn to Juror Z's questioning. Pp. 7–12.

(a) Here, 11 days of *voir dire* were devoted to determining whether potential jurors were death qualified. During that phase, 11 of the jurors the defense challenged for cause were excused. The defense objected to 7 of the 12 jurors the State challenged for cause, and only 2 of those 7 were excused. Before deciding a contested challenge, the court allowed each side to explain its position and recall a potential juror. It also gave careful and measured explanations for its decisions. Before individual oral examination, the court distributed a questionnaire asking jurors to explain their attitudes toward the death penalty and explained that Brown was only eligible for death or life in prison without possibility of release or parole. It repeated the sentencing options before Juror Z's group was questioned. Pp. 7–10.

(b) The transcript reveals that, despite the preceding instructions and information, Juror Z had both serious misunderstandings about his responsibility as a juror and an attitude toward capital punishment that could have prevented him from returning a death sentence under the facts of this case. He was told at least four times that Brown could not be released from prison and stated six times that he could follow the law. But he also gave more equivocal statements that he would consider the death penalty only if there was no possibility that Brown would be released to reoffend. When the State challenged Juror Z on the grounds that he was confused about the conditions under which death could be imposed and seemed to believe it only appropriate when there was a risk of release and recidivism, the defense volunteered that it had no objection. Pp. 10–12.

3. The Ninth Circuit erred in holding that both the state trial court's excusal of Juror Z and the State Supreme Court's affirmance were contrary to, or an unreasonable application of, clearly established federal law. Pp. 12–19.

(a) Contrary to the Ninth Circuit's conclusion, the State Supreme Court explicitly found that Juror Z was substantially impaired. Even

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absent this explicit finding, the only fair reading of the opinion is that the state court applied the *Witt* standard in assessing his excusal. Regardless, there is no requirement in a case involving the *Witt-Witherspoon* rule that a state appellate court make particular reference to each juror's excusal, for it is the trial court's ruling that counts. Pp. 12–14.

(b) On this record, the trial court acted well within its discretion in granting the State's motion to excuse Juror Z. His answers, on their face, could have led the trial court to believe that he would be substantially impaired in his ability to impose the death penalty absent the possibility that Brown would be released and would reoffend. The trial court, furthermore, is entitled to deference because it had an opportunity to observe Juror Z's demeanor. The State's challenge, Brown's waiver of an objection, and the trial court's excusal of Juror Z support the conclusion that the interested parties all felt that removal was appropriate under the *Witherspoon-Witt* rule. While there is no independent federal requirement that a state-court defendant object to the prosecution's challenge to preserve a *Witherspoon* claim, voluntary acquiescence to, or confirmation of, a juror's removal can be taken into account. The defense did not just deny a conscientious trial judge an opportunity to explain his judgment or correct an error; it also deprived reviewing courts of further factual findings to help explain the trial court's decision. The need to defer to the trial court's demeanor decision does not foreclose the possibility of reversal where the record discloses no basis for a substantial impairment finding, but the record here does not show the trial court exceeded its discretion in excusing Juror Z. The State Supreme Court recognized the deference owed and, contrary to the Ninth Circuit's misreading of its opinion, identified the correct standard required by federal law and found it satisfied. Pp. 14–17.

(c) The Court is not persuaded by Brown's additional arguments to depart from the State Supreme Court's determination of the state law at issue or to ignore Brown's failure to object to Juror Z's excusal. Pp. 17–19.

451 F. 3d 946, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion, in which SOUTER, J., joined.