
IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES RICHARDSON --- PETITIONER

Vs.

WARDEN JASON KENT, et al., -----RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FIFTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

CHARLES RICHARDSON #329026
(Petitioner)

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QUESTION(S) PRESENTED

1. Whether the prosecutor's improper arguments resulted in an unfair trial and a guilty verdict of murder instead of a lesser charge thereto?
2. Did the Fifth Circuit err in deferring to the state court findings that Mr. Richardson was not prejudiced by his trial counsel's errors when the Fifth Circuit's decision was based on a flagrant misreading of the trial record?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES FIFTH CIRCUIT COURT
OF APPEAL

The Petitioner, Charles Richardson, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Fifth Circuit Court of Appeal rendered in these proceedings on May 29, 2018.

JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeal for the Fifth Circuit was entered on May 29, 2018. The jurisdiction of this Court is invoked under *28 U.S.C. 1254(1)*.

The Judgments of the Louisiana Supreme Court were entered on November 9, 2012 and on May 20, 2016. The jurisdiction of this Court is invoked under *28 U.S.C. 1257(1)*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST., AMEND. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 2254

Louisiana Constitution Art. I, 16, 17.

PROCEDURAL HISTORY OF THE CASE

By indictment returned on March 25, 2009, the State alleged that on January 13, 2009, Charles Richardson, with the specific intent to kill or inflict great bodily harm upon more than one person, did commit the first-degree murder of India Mahoney. Mr. Richardson entered a plea of not guilty and not guilty by reason of insanity. After a sanity commission concluded that Mr. Richardson was not suffering from any mental deficiencies of legal import, Mr. Richardson withdrew his insanity plea. On January 13, 2011, following a two-day trial, a jury found Mr. Richardson guilty as charged. On January 20, 2011, the court sentenced Mr. Richardson to life in prison.¹

On the 21st day of March 2012, the Louisiana Fourth Circuit Court of Appeal affirmed the conviction and sentence.² On the 9th day of November 2012, the Louisiana Supreme denied Petitioner's Writ of Certiorari without opinion.³

¹ See Appendix K

² See Appendix J

³ See Appendix I

Petitioner filed a state post-conviction relief application with the trial court on November 8, 2013.¹ The trial court denied said application after a hearing on January 26, 2015. Thereafter, the Louisiana Fourth Circuit Court of Appeal denied relief.² On May 20, 2016, the Louisiana Supreme Court denied Petitioner's application for supervisory writs of review of the post-conviction relief proceedings.³

On or about June 14, 2016, a Section §2254 Writ of Habeas Corpus petition was filed in the United States District Court-Eastern District of Louisiana.⁴ The Magistrate Judge issued a Report and Recommendation to dismiss the petition with prejudice.⁵ After timely objections to such were filed by Petitioner, the district court judge adopted the magistrate's findings and dismissed the petition with prejudice and denied a Certificate of Appealability.⁶ Notice of appeal was timely filed and granted by the district judge. An Application to the Fifth Circuit Court of Appeals for a Certificate of Appealability was timely filed on June 21, 2017.⁷ The U.S. 5th Circuit Court of Appeal denied said Application for a COA on May 29, 2018.⁸ This Writ of Certiorari now timely follows.

STATEMENT OF THE FACTS⁹

In February 2009, Elizabeth Richardson lived in a house in Violet with her eighteen year-old daughter India Mahoney and with Ms. Richardson's husband Charles Richardson, who was India's stepfather. For reasons not apparent from the record, the Richardson's were not living as husband and wife at the time; they had separate

¹ See Appendix H

² See Appendix G

³ See Appendix F

⁴ See Appendix E

⁵ See Appendix D

⁶ See Appendix C

⁷ See Appendix B

⁸ See Appendix A

⁹ Statement of the facts are taken from the Appellant's Original Direct Appeal Brief

bedrooms, he was not always around, and she had recently told him he was not going to be a part of their lives anymore.

At about five a.m., on February 13, 2009, Ms. Richardson awoke to hear Mr. Richardson, whom she had not seen for a couple of days, arguing with India in the hallway. Ms. Richardson stepped out into the hall and asked Mr. Richardson, who "was in a rage," why he was there. She heard India tell him, "Go back. Go away. Go where you came from." As Ms. Richardson attempted to assuage their anger, Mr. Richardson pushed past her, exclaiming, "I am not taking this anymore."

When her husband returned, Ms. Richardson, who was still standing in the hallway, felt something touch her face. She looked at her hand and saw blood on it. She then looked at Mr. Richardson, who was holding a gun he had retrieved from Ms. Richardson's bureau draw by her bed, a gun she used in her job as a security guard. In fact, she had just been shot in the face, but she did not immediately realize this.

Ms. Richardson, who went in and out of consciousness, recalled seeing Mr. Richardson looking at her angrily. She also recalled being moved and seeing India lying in the hallway. After Mr. Richardson left the house, Ms. Richardson called 911, though she was unable to speak to the operator due to the injuries she suffered from the gunshot wound. Although the 911 operator could not understand her, police and emergency medical personnel were dispatched to Ms. Richardson's home.

After she called 911, Ms. Richardson sought to assist India, who was lying motionless on the floor. An autopsy revealed that India was killed by a gunshot wound to her face. Forensic analysis indicated that the muzzle of the gun was no more than two inches from the girl's face when the trigger was pulled.

Ms. Richardson, unable to talk, indicated in writing that her husband Charles Richardson was responsible for the shooting, and she gave the police a description of Mr. Richardson's vehicle, a gray Dodge truck.

A long-time neighbor from across the street testified that she awoke when she heard what sounded to her someone was tapping on her car. She looked out and saw Mr. Richardson get into his gray Dodge truck and drive away. The sound she apparently heard was that of a bullet that had been fired from inside the Richardsons' house and which traveled through the Richardsons' front door, striking the neighbor's car, and coming to rest in the neighbor's trailer.

After the shooting, Mr. Richardson headed north in his truck. The police were able to track his travel up Interstate 55, as he made credit-card purchases in Kentwood, Louisiana, Jackson, Mississippi, and Portageville, Missouri. Following a car chase, Missouri law enforcement personnel, who had been alerted to Mr. Richardson's movements, stopped him on Interstate 55 and arrested him.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE FIFTH CIRCUIT IS IN CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER CIRCUITS. THE FINDINGS OF THE FIFTH CIRCUIT ARE APPLIED IN AN "OBJECTIVELY UNREASONABLE" MANNER TO CLEARLY ESTABLISHED PRECEDENT SET AND WARRANTS THIS COURT'S ATTENTION.

IMPROPER AND PREJUDICIAL COMMENTS MADE BY PROSECUTOR

The State's improper suggestion that the police report contained information that the defense did not want the jury to see likely prevented the jury from returning a verdict of manslaughter and therefore violated Mr. Richardson's due-process right to a fair trial.

LAW AND ARGUMENT

During the defense case, counsel for Mr. Richardson questioned Officer McNab regarding statements provided to him by Ms. Richardson about the course of the shooting. During this examination, the defense had Officer McNab refer to his police report to refresh his memory. On cross examination, the State sought to further question Officer McNab about the contents of his report, and defense counsel objected. During the discussion on the objection, the court noted that defense counsel has not introduced the document into evidence, and the State responded, "Yes, sir, I can see why she didn't." The defense objected, and the court told the State not to make commentary, as there would be time for argument later.

This was not merely argument, however, as the court described it, but it was improper argument because the clear import of the State's comment was that Officer McNab's report contained damning information that the defense did not want the jury to know about.¹³ Consequently, the court erred in suggesting that the only thing wrong with the State's comment was its timing.¹⁴ While the jury's verdict of murder is surely supported by the evidence, the jury would nonetheless have been justified in returning a verdict of manslaughter, as it is clear that Mr. Richardson was angered to the point of *rage* during his altercation with his stepdaughter in the hallway, thus causing him to storm into the bedroom past Mrs. Richardson and return with a gun that he then used to shoot the victims, who were still standing in the hallway. The prosecutor's suggestion

¹³ See *United States v. Ramos*, 61 Fed. Appx. 122, 2003 WL 342728 (5th Cir. 2003) ("We agree with the defense that a prosecutor's suggestions that defense counsel is attempting to deceive or trick the jury or hide evidence is improper where the argument is not supported by the record nor offered in response to remarks by defense counsel.").

¹⁴ See La. C. Cr. P. art. 774 ("The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case. The argument shall not appeal to prejudice.").

that there was additional information about the crime that no defense counsel would want the jury to know about fairly eliminated the possibility that the jury could give fair consideration to a manslaughter verdict, thereby rendering the trial unfair as a matter of due process.

This Honorable Supreme Court has explained that a prosecutor's remarks must infect the trial with such unfairness as to make the resulting conviction a denial of due process. *Darden v. Wainwright*, 477 U.S. 168, 181, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986). In the instant case, the remarks made by the prosecutor infected the trial with such unfairness making the resulting conviction a complete denial of Mr. Richardson's due process rights to a fair and impartial jury trial. For the foregoing reasons, the Writ should issue and Mr. Richardson be retried or released from custody.

II. THE FIFTH CIRCUIT COURT OF APPEAL MISAPPLIED THE STRICKLAND STANDARDS OF INEFFECTIVE ASSISTANCE OF COUNSEL.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

A. Defense Counsel rendered ineffective assistance of counsel, violating the Defendant's Sixth Amendment right to effective assistance of counsel when counsel failed to challenge for cause a present employed law enforcement officer.

LAW AND ARGUMENT

The petitioner avers that counsel was ineffective in his representation when counsel failed to challenge for cause under provisions of *LSA-C.Cr.P. art. 797*; it can be reasonable to conclude that it would influence the juror, George Faulkner, to arrive at a guilty verdict, because the prospective juror was an active duty police officer. The

petitioner avers that he was denied a fair trial in violation of his Due Process of Law Rights, violating the State and Federal Constitutions. *U.S. Const. amends. (6) & (14); La. Const. art. 1, 2 & 16.*

The juror, an actively employed law enforcement officer, coupled with circumstances in which that juror (#69) George Faulkner was chosen to be a juror on the trial of the petitioner, counsel failed to object and challenge for cause. In this case, there existed objective evidence of prejudice, such as explicit assertions of partiality by the suspected juror, or implied bias. In *State v. Gain*, 688 So.2d 679, 681 (La.App. 4 Cir. 1997), it has long been held that an actively employed law enforcement officer is not a competent criminal juror. *State v. Simmons*, 390 So.2d 1317, 1318 (La.1980); See also, *State v. Vanderpool*, 493 So.2d 574 (La.1986). Defense Counsel failed to object nor investigate and issue a challenge for cause. It would have been reversible error for the Trial Court to deny the challenge for cause. Counsel could have filed a Motion for a New Trial, however, failed to do so.

Jury Voir Dire Transcript Pages (103 – 104) states as follows:

Mr. NOTO: Sidebar, Judge?

Mr. Diaz: He said he thought. He didn't say he knew.

(OUTSIDE THE HEARING OF THE JURY)

THE COURT: Would you come up Mr. Faulkner.

(Page 104)

THE COURT: I'm doing it because you work for the Sheriff's Office. He's had prior arrests. How do you know Mr. Richardson?

PROSPECTIVE JURORS: He was in jail when I was with the Sheriff's Office.

In conjunction with the constitutional guarantee of a fair trial and due process of law, although a jury is not required to be composed of individuals who are totally unacquainted with the defendant, the prosecution witnesses, the prosecuting attorney and other witnesses, it does require that the jurors be fair and unbiased. As this Honorable Supreme Court stated in *Irwin v. Dowd*, 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961), "it is manifest that a defendant in a criminal case is entitled to an unbiased jury." The Supreme Court has also held that a habeas petitioner who alleges juror partiality is entitled to a hearing in which he may prove actual bias. *Smith v. Phillips*, 455 U.S. 209, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982). In this case, however, petitioner could not make a showing of actual bias and was therefore not entitled to a hearing for that purpose due to the actions of his trial counsel. Had trial counsel immediately halted the proceedings when it was disclosed Faulkner was with the Sheriff's office or even challenged for cause Mr. Faulkner, this juror would not have been on the panel and there would not have been prejudice ensuing from this appointment.

In the instant case, Juror Faulkner should have easily been challenged for cause by counsel and it was prejudicial error not to. The Writ should issue as to this claim.

B. Defense counsel was ineffective in not filing a Motion for Change of Venue because of the pre-trial publicity surrounding the case.

LAW AND ARGUMENT

A review of voir dire examination in this case reveals there was extreme exposure regarding the circumstances of this case as it involved a local distinguished high school honor student. There were numerous articles in print and television reports of the incident

at issue. Petitioner's attorney failed to address this pretrial publicity and the effect that the media had on the case in St. Bernard Parish.

The victim, India Richardson, died at the scene of the shooting. She was going to attend Southern University to study Engineering after her senior year of high school. After the shooting, Mrs. Richardson (India's adopted mother) received notification that India had won the Black Engineers of America Scholarship and would have received \$250,000.00 for her education. Due to her course work during that senior year she was in, she was to have entered college as a sophomore. Classmates walked across the stage in India's stead when diplomas were awarded and India was then buried in her graduation gown. The effect that this traumatic event had on the local community was overwhelming and any chance at a fair and impartial trial was discarded when defense counsel failed to investigate and file a motion for change of venue.

Defense Counsel was ineffective in not filing a Motion for Change of Venue because of the pre-trial publicity surrounding the case and the decrease in population in St. Bernard Parish making it virtually impossible to secure a fair trial and secure a fair and impartial jury because of the size of registered voters in St. Bernard Parish before and after Hurricane Katrina.

The Fourteenth Amendment protects a defendant's Sixth Amendment right to have his case decided by an impartial jury, *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961), and a defendant may request a "transfer of the proceeding to a different district . . . if extraordinary local prejudice will prevent a fair trial - 'a basic requirement of due process.'" *Skilling v. United States*, 561 U.S. 358, 378, 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010) (quoting *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct.

623, 99 L. Ed. 942 (1955)). The Supreme Court has stated that an impartial jury, however, is not one in which the jurors must be totally ignorant of the facts and issues involved in the case. *Irvin*, 366 U.S. at 722. "To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." Id. at 723. Under *Strickland*, it is defendant's burden to "overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" 466 U.S. at 689 (quoting *Micfshel v. Louisiana*, 350 U.S. 91, 101, 76 S. Ct. 158, 100 L. Ed. 83 (1955)).

In this case, counsel's decision not to move for a change of venue was not tactical and was unreasonable under the circumstances. The record does not indicate the kind of widespread and influential publicity that would have warranted moving the trial. This is a complete failure by the attorney for failing to make the record clear which had a motion been filed and a hearing been held, would have resulted in a clear record of such prejudice. Counsel's failure to file the motion to change venue resulted in Mr. Richardson not being able to demonstrate that the media coverage and pretrial publicity was so pervasive and inherently prejudicial that an unbiased jury pool could not have been assembled in his community. Trial counsel's error resulted in Mr. Richardson not being able to present evidence to show that the publicity and notoriety of the case actually prejudiced his jury selection process.

Mr. Richardson has established prejudice due to counsel's failure to request a change of venue. With the showing of prejudice under *Strickland*, Mr. Richardson has demonstrated that the state courts' decision was contrary to or an unreasonable application of clearly established federal law. A writ should issue.

C. Petitioner's attorney failed to file a Motion to Recuse the District Attorney due to a conflict of interest.

LAW AND ARGUMENT

Defense Attorney Gregory S. Dutty was originally appointed to represent the Petitioner and in fact did appear in his behalf in a number of pre-trial hearings. Thereafter while the case was still pending, Mr. Dutty switched sides and became a St. Bernard Parish Assistant District Attorney.

Assistant District Attorney Dutty was at several pre-trial hearings as a representative of the prosecutor's office after leaving the Petitioner's case. In accordance with Louisiana Code of Criminal Procedure Article 680(3), grounds for recusal by a district attorney exist when that attorney has been employed or consulted in the case as an attorney for the defendant before his election or appointment as an assistant district attorney. In the instant case, Mr. Dotty was privy to confidential lunacy hearing information as Mr. Richardson's attorney as well as other confidential attorney client information. He in no way, shape or form should have been involved in the prosecution's case after said time. This was a clear conflict of interest and an error by trial counsel in not challenging this matter with the trial court. The actions of counsel fell below the objective standard of reasonableness under prevailing standards of professional responsibility and the effect was indeed prejudicial to the Petitioner as it created an unfair

trial with confidential information being used against him. A Writ should issue after an evidentiary hearing on this issue.

D. Cumulative effect of errors committed by trial counsel prejudiced Mr. Richardson and violated his due process rights.

LAW AND ARGUMENT

Petitioner's attorney's performance was highly prejudicial to the extent that the fundamental fairness of the proceeding and the conviction was undermined. Moreover, there was a strong and reasonable probability that the result of the trial would have been different. Here it is evident that counsel's performance fell below the norm standards of professional responsibility owed to a client.

Although trial counsel is typically afforded leeway in making tactical decisions regarding strategy, counsel cannot be said to have made a tactical decision without first procuring the information necessary to make such decisions. See *Riley v. Payne*, 352 F3d. 1313, 1329 (9th Cir. 2003). The cumulative errors in this case committed by counselor Gordon cannot be accepted under the reasonable judgment of attorneys in the profession. Multiple errors, even if harmless individually, may entitle a petitioner to habeas relief if their cumulative effect prejudiced the defendant. *Mak v. Blodgett*, 970 F.2d 614, 622 (9th Cir. 1992), *cert. denied*, 507 U.S. 951, 122 L. Ed. 2d 742, 113 S. Ct. 1363 (1993).

In the instant case, the cumulative effect of the errors committed by counsel was prejudicial to the Petitioner and had a substantial and injurious effect on the proceedings. A writ should issue.

CONCLUSION

For all the foregoing reasons, Mr. Richardson respectfully requests this Court to grant the Petition for Writ of Certiorari and/or in the alternative, remand to the trial court for an evidentiary hearing on the merits of these claims.

Dated this 31 day of July, 2018, in Jackson, Louisiana.

Respectfully submitted,

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