No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOE LITTON BAILEY — PETITIONER

vs.

DARREL VANNOY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE LOUISIANA SECOND CIRCUIT COURT OF APPEAL

PETITION FOR CERTIORARI

JOE LITTON BAILEY, PRO SE

130053, WALNUT—4

LOUISIANA STATE PENITENTIARY

ANGOLA, LA 70712

QUESTION(S) PRESENTED

1) In this case, the responding police officer failed to preserve the alleged crime scene. There are no photos of the vehicle, the broken window, or of any blood inside of the vehicle. In fact, the State did not present any physical evidence to establish the charged offense ever happened. Was the evidence presented to the jury in this case sufficient to convict Bailey beyond a reasonable doubt?

2) A six person jury found Bailey guilty of simply burglary. The State filed a habitual offender bill of information alleging Bailey to be a third felony offender. During the hearing, the State used information that was not presented to the jury. In the end, the trial court found Bailey to be a third felony offender and imposed a sentence life imprisonment without benefits. Is Bailey's sentence unconstitutionally excessive?

LIST OF PARTIES

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

[x] 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:

Joe Litton Bailey, Pro Se
130053, Walnut—4
Louisiana State Penitentiary
Angola, LA 70712

James Edward Stewart, Sr.
Caddo Parish District Attorney
501 Texas Street Fifth Floor
Shreveport, LA 71101

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is
[ ]reported at _____; or,
[ ]has been designated for publication but is not yet reported; or,
[ ]unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is
[ ]reported at _____; or,
[ ]has been designated for publication but is not yet reported; or,
[ ]unpublished.

[x] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is
[x] reported at Unknown *State v. Bailey*, 2017 – KO – 1734; or,
[ ]has been designated for publication but is not yet reported; or,
[ ]unpublished.

The opinion of the Louisiana Second Circuit court of appeal court appears at Appendix A to the petition and is
[x] reported at *State v. Bailey*, 51, 627 (La. 9/27/17), 2017 WL 4273444; or,
[ ]has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _, and a copy of the order denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A ___.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[x] For cases from **state courts:**

The date on which the highest state court decided my case was May 18, 2018. A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____A____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United Sates Constitution provides in pertinent part:

> No person shall be held to answer for a capital, or otherwise infamous crime....nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty. Or property without due process of law[.]

The Sixth Amendment to the United Sates Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right....have the assistance of counsel for his defence.

The Eighth Amendment to the United Sates Constitution provides in pertinent part:

> [N]or cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United Sates Constitution provides in pertinent part:

> 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.

Louisiana Constitution Article 1, § 2

> **Due Process of Law.** No person shall be deprived of life, liberty, or property, except by due process of law

Louisiana Constitution Article 1, § 3

> **Right to individual Dignity.** No person shall be denied the equal protection of the laws.

Louisiana Constitution Article 1, § 5

> **Right to Privacy.** Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to

be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

Louisiana Constitution Article 1, § 13

Rights of the Accused.

Louisiana Constitution Article 1, § 16

Right to a Fair Trial.

Louisiana Constitution Article 1, § 19, in pertinent part provides

Right to Judicial Review. No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based.

Louisiana Code of Criminal Procedure Article 821, in pertinent part provides

B. A post verdict judgment of acquittal shall be granted only if the court finds that the evidence, viewed in a light most favorable to the state, does not reasonably permit a finding of guilty.

STATEMENT OF THE CASE

1. Procedural History

On March 18, 2014, the State filed a Bill of Information against Bailey charging him with one count of simple burglary in violation of *La. R.S.* 14:62. The State alleged that Bailey made an unauthorized entry of a vehicle belonging to William Sample with the intent to commit a felony or theft therein. Bailey pled not guilty plea to the charge.[1]

On August 24, 2016, a six person jury was selected and trial began. On August 26, 2016, Bailey was found guilty as charged.[2] On October 27, 2016, Bailey filed a motion for post-verdict judgment of acquittal, or motion for modification of verdict. On December 14, 2016, the trial court denied the motions.[3] On September 8, 2016, the State filed a Third Felony Habitual Offender Bill. The hearing commenced on December 14, 2016, and concluded with the trial court finding Bailey to be a third felony habitual offender.[4]

Bailey filed a statement on sentencing and a motion for a downward departure under *State v. Dorothy*, 623 So.2d 1276 (La. 1993). The State filed a response to Bailey's motion and Bailey supplemented the original motion; however, on December 20, 2016, the trial court sentenced Bailey to life imprisonment at hard labor without the benefits of probation, parole, or suspension of sentence. Bailey filed a written motion for reconsideration of sentence which was also denied by the trial court.[5]

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[1]R. pp. 1, 5.

[2]R. pp. 2-3, 105-117, 221-319.

[3]R. pp. 4, 145-146, 325-326.

[4]R. pp. 3-4, 118, 320-349.

[5]R. pp. 3-4, 147-149, 162-207, 211-212, 350-375.

Bailey unsuccessfully appealed his conviction and sentence to the Second Circuit Court of Appeal. On May 18, 2018, although the Louisiana Supreme Court declined discretionary review, Chief Justice Bernette J Johnson and Associate Justice James T. Genovese would have granted the writ. Also, Associate Justice Scott J. Crichton did not sit on the panel.[6]

2. Facts

Bailey stands convicted of one count of simple burglary for allegedly making an unauthorized entry of a vehicle belonging to William Sample with the intent to commit a felony or theft therein.[7]

During the presentation of its case, the State failed to produce any photographs of the alleged crime scene: there are no photos of the vehicle alleged to have been burglarized; of the window alleged to have been broken out of the vehicle; of the damage allegedly done to the interior of the vehicle; and neither are there any photos of the blood allegedly collected from the interior of the vehicle. The State conceded, and the appellate court acknowledged, that there were no photographs taken of the alleged crime scene.[8] The State told the jury they would hear evidence to support its allegation that on June 15, 2013, Bailey committed burglary of a vehicle.[9] The State presented five witnesses in an attempt to establish its case against Bailey. The testimonial evidence presented to the jury is insufficient to affirm Bailey's conviction and sentence.

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[6]See September 27, 2017 Judgment of the Second Circuit Court of Appeal; Attachment "A"; Attachment "B".

[7]R. pp. 1, 5.

[8]See R. p. 227; Attachment "A".

[9]R. p. 236.

Paul Hambleton ("Hambleton"), testified that one of his employees, Roberto Monsivaise, told him someone was breaking into a vehicle across the street from the Scottish Rite Temple in downtown Shreveport. Hambleton said he did not see anyone breaking into a vehicle but he "saw a gentleman walking away from the vehicle that was broken into."[10] When asked if he could describe the person he saw walking away from the vehicle Hambleton said that it had been too long and he could not make a positive identification.[11] According to Hambleton, he tried to stop the person he saw but the individual got in the driver's seat of his vehicle and fled the scene.[12] On cross-examination, Hambleton reiterated that he did not see the alleged burglary or break-in of a vehicle and that he only saw one person leaving from the vicinity of the vehicle alleged to have been burglarized.[13]

Corporal Kevin Duck ("Corporal Duck"), of the Shreveport Police Department ("SPD") testified that he had served as an officer with SPD for 13-years and that he is a patrol officer.[14] Corporal Duck told the jury that patrol officer's are "Jack['s] of all trades; domestic, homicide, rapes, burglaries, [and] home invasions."[15] Corporal Duck said he was the person responsible for collecting the blood from the interior of the vehicle. He said he swabbed for DNA, sealed it; named, dated, put the location, where it happened, where he collected the blood from and then turned it into the patrol desk. Corporal Duck

[10]R. p. 244.

[11]See R. p. 245.

[12]See R. p. 245.

[13]R. p. 250.

[14]R. p. 252.

[15]R. p. 252.

said that it has a chain of custody from there.[16] However, Corporal Duck did not photograph the scene or the alleged blood found on the scene. He reiterated that he turned the blood in at the patrol desk and that he took it to the crime lab.[17] However, no chain of custody exist showing that the alleged blood was checked into the patrol desk or even checked out again before being taken to the crime lab. On cross-examination, Corporal Duck admitted that he did not take any pictures of the alleged crime scene and that there was no damage to the steering column or ignition of the vehicle.[18]

Sergeant Charles Thompson ("Sergeant Thompson"), testified that he is a SPD patrol sergeant. But at the time of the alleged burglary he was a property crimes investigator.[19] In explaining his duties as an investigator, Sergeant Thompson said, "After [an] initial report is made by a patrol officer, if it is a property related crime, it is sent forward to the property crime unit. And depending on what district it was written in, that particular detective would further investigate the reported crime."[20] Sergeant Thompson said he received a call concerning the burglary of a vehicle on June 15, 2013, and that Bailey was developed as a possible suspect.

Michelle Vrana, ("Vrana"), testified that she was the DNA section supervisor for the North Louisiana Criminalistics Laboratory and that she had worked there since February of 2008.[21] Vrana identified State's Exhibit 2 as her Item Number 3. She also identified

[16]R. p. 254.

[17]See R. p. 254.

[18]See R. pp. 256-257.

[19]R. p.260.

[20]R. p. 260.

[21]See R. p. 268.

State's Exhibit 1 as the report she wrote about Item Number 3. Vrana testified that her Item Number 3 is State's Exhibit 2—a "sealed plastic bag containing a sealed paper bag containing the reference samples from Joe Bailey ... recovered by Detective C. Thompson."[22] In discussing the unknown sample that was tested as suspected blood, Vrana could only say that it was "submitted by Kevin Duck on June 25, 2013."[23]

Bill Sample ("Sample"), testified that he was instructed to examine his vehicle to see if there was anything missing. Sample said he told the officer that "nothing was in [the vehicle] but [he] had to call [his] wife to see if she had left some packages or electronics or anything in there, but she said she did not."[24] Sample noted that the driver's side window was broken completely out of the vehicle. He said that although there was glass on the ground, the majority of the glass was inside of the car.[25] When asked if he noticed any blood in his vehicle, Sample said he did not.[26] Sample also said that there was no damage to the ignition or the steering column.[27]

REASONS FOR GRANTING THE PETITION

Under Rule 10(c), a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court as set forth below:

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[22]See R. pp. 273-274, 276-277.

[23]R. p. 275.

[24]R. p. 288.

[25]R. p. 287.

[26]R. p. 288.

[27]R. p. 289.

In *Coker v. Georgia*, 433 U.S. 584, 592, 97 S.Ct. 2861, 2866, 53 L.Ed.2d 982 (1977), this honorable Supreme Court held that the Eighth Amendment to the United States Constitution bars punishment that is excessive. This honorable Court defined excessive punishment as punishment that "(1) makes no measurable contributions to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime."

Issue No. 1: The trial court erred by imposing an unconstitutionally harsh and excessive sentence.

As it stands, Bailey is to be imprisoned for the rest of his natural life because he has been convicted of simple burglary of a vehicle and subsequently adjudicated a third felony offender. It is possible for a sentence to be within the statutory limits and still be reviewable for constitutional excessiveness.[28] A sentence is constitutionally excessive if it is "grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering."[29] Relying on the controlling jurisprudence of the Louisiana Supreme Court, the Second Circuit Court of Appeal went on to say a "sentence is also considered to be grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice."[30]

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[28]See *State v. Sepulvado*, 367 So.2d 762 (La. 1979); *State v. Cann*, 471 So.2d 701 (La. 1985).

[29]*State v. Wilson*, 44, 586 (La. App. 2 Cir. 10/28/09), 26 So.3d 210, 222; *State v. Smith*, 2001-2574 (La. 1/14/03), 839 So.2d 1; *State v. Dorthey*, So.2d 1276, 1280 (1993).

[30]*State v. Wilson*, 26 So.3d at 222; *State v. Bonanno*, 384 So.2d 355 (La. 1980);

There is no dispute that Bailey has prior felony convictions; in fact, it is even true that the State did not incorporate everyone of Bailey's priors against him in the habitual offender bill of information. However, the State used these offenses and other information not presented to the jury against Bailey when emphasizing alleged aggravating circumstances to the trial court in support of the disproportionate sentence imposed in this case.

On January 5, 2017, the trial court held a hearing on Bailey's motion to reconsider sentence. One of the reasons the court had the hearing is because the Judge was unfamiliar with *State v. Dorthey*. In fact, the Judge said she was aware of the statutes that deal with some of those issues but wanted to have the benefit of reading the case.[31]

At the hearing, the State claimed the evidence established two things: 1) Bailey was seen getting into a vehicle to flee the scene; and 2) someone other than Bailey was driving the vehicle Bailey is alleged to have escaped in.[32] This assertion is completely false. No one testified about a second person having anything to do with the burglary alleged in this case. Paul Hambleton's trial testimony established that the person he observed got into the driver's seat of an older model Lexus and that person then drove away.[33] In fact, in its opening statement, the State claimed that Bailey got into a car drove off.[34]

State v. Weaver, 2001-0467 (La. 1/15/02), 805 So.2d 166; *State v. Lobato*, 603 So.2d 739 (La. 1992).

[31]See R. p. 357.

[32]See R. pp. 360-362, 363.

[33]R. pp. 245-246.

[34]R. p. 237 (emphasis added).

It is interesting that the State made at least two plea offers to Bailey. The first offer was for three (3) years and was communicated to Bailey by his trial counsel, Kurt J. Goins, as noted in counsel's notes dated "8/23/16."[35] The State's second offer of twenty (20) years came after the six person jury returned its verdict of guilty as charged. At the hearing on the motion to reconsider sentence, the State reminded the court:

> Your Honor, the defendant has, nonetheless, received an offer from us. We have offered for the defendant to plead guilty as a responsive second felony offender under Paragraph A(1) of the multiple-offender statute, receiving an agreed sentence of 20 years plus any fines and other penalties, recommendations, etcetera, that the Court would deem appropriate under the statute; but so far as the time is concerned, 20 years at hard labor....we would add here that we would tender this offer with the defendant submitting that he would waive all rights to appeal based upon the sentence or the factual conviction itself. That would be part of our offer.[36]

In considering the history of this case and the facts presented and established at trial, it is obvious the State did not deem Bailey an unredeemable threat to society whose mere presence in society would risk violence. It is also obvious, however, that the State's filing of the habitual offender bill of information can only be explained by the State's desire to punish Bailey for exercising his legal rights.[37]

This honorable Supreme Court has repeatedly stressed the special role played by prosecutors in the search for truth in criminal trials.[38] In fact, a "district attorney should not harbor any personal feelings toward an accused that might, consciously or

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[35]See Exhibit "1", p. 2.

[36]R. pp. 323-324.

[37]See *State v. Wilson*, 26 So.3d at 221; *State v. Tassin*, 2008-752 (La. App. 3 Cir. 11/5/08), 998 So.2d 278, *writ denied*, 2008-2909 (La. 9/18/09), 17 So.3d 385.

[38]See *Banks v. Dretke*, 540 U.S. 668, 696, 124 S.Ct. 1256, 1275, 157 L.Ed.2d 1166 (2004).

unconsciously, impair his ability to conduct the accused's trial fairly and impartially," because, "[i]n our system of justice, we intrust vast discretion to the prosecutor in deciding which cases to pursue, whether to dismiss the charges, whether to offer a plea bargain, what any plea bargain will entail, and how the trial will be conducted."[39] Accordingly, Bailey respectfully asks the Court to review this claim on its merit.

Issue No. 2: The State utterly failed to establish, by clear and convincing evidence, that a simple burglary of a vehicle happened in this case. The State also failed to present any evidence proving that Bailey's blood was actually found in the vehicle alleged to have been burglarized.

In *Jackson v. Virginia*, this honorable Supreme Court established the Standard by which a sufficiency of the evidence claim is to be evaluated by a reviewing court.[40] This Standard has since been adopted by the Louisiana Supreme Court and has also been legislatively embodied in *La. C.Cr.P. art.* 821.[41] The *Jackson* standard of appellate review for a sufficiency of the evidence claim is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.[42]

However, an appellate court may impinge on the fact finder's discretion and its role in determining the credibility of witnesses "to the extent necessary to guarantee the

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[39]*State v. King*, 06-2383, (La. 4/27/07), 956 So.2d 562, 570; quoting *In re Toups*, 00-0634 (La. 11/28/00), 773 So.2d 709, 715.

[40]*Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2980, 61 L.Ed.2d 560 (1979).

[41]See *State v. Mussall*, 523 So.2d 1305 (La. 1988).

[42]*State v. Tate*, 2001-1658 (La. 5/20/03), 851 So.2d 921; *State v. Dotie*, 43, 819 (La. App. 2 Cir. 1/14/09), 1 So.3d 833.

fundamental due process of law."[43] The reviewing court has a constitutional obligation to insure the defendant's guarantee of fundamental due process of law.[44] Moreover, if there exists internal contradictions in a witness' testimony or irreconcilable conflict with the physical evidence, the reviewing court need not defer to the trier of fact.[45] According to *United States v. Vargas-Ocampo*, it is the duty of a reviewing court to "consider, for instance, whether the inferences drawn by a jury were rational, as opposed to being speculative or insupportable, and whether the evidence is sufficient to establish every element of the crime."[46]

In this case, the State did not present any physical evidence to establish that an actual crime scene existed. In other words, the State failed to prove *corpus delicti* or "the body of the crime."[47] In *State v. Willie*, the Louisiana Supreme Court said, "[t]he corpus delicti must be proven by evidence which the jury may reasonably accept as establishing that fact beyond a reasonable doubt."[48] Still, not only did the State not prove the existence of a crime scene, it also failed to satisfy its burden of proving the three essential elements necessary to constitute simple burglary as it applies to this case. Just

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[43]*State v. Mussall*, 523 So.2d 1305, 1310 (La. 1988); *Jackson v. Virginia*, supra, 443 U.S. at 319, 99 S.Ct. at 2798, 61 L.Ed.2d at 573-574.

[44]See *State v. Sosa*, 2005-0213 (La. 1/19/06), 921 So.2d 94, 101.

[45]*State v. Gullette*, 43, 032 (La. App. 2 Cir. 2/13/08), 975 So.2d 753; *State v. Burd*, 40, 480 (La. App. 2 Cir. 1/27/06), 921 So.2d 219.

[46]See *United States v. Vargas-Ocampo*, 747 F.3d 299, 302 (5th Cir.2014).

[47]See *State v. Whittington*, 450 So.2d 47, 48 (La. App. 3 Cir. 1984); *State v. Willie*, 410 So.2d 1019. (La. 1982); *Black's Law Dictionary*, 172 (4th pocket ed. 2011); cf. *Wong Sun v. U.S.*, 371 U.S. 471, 488-89, 83 S.Ct. 407, 417-18, 9 L.Ed.2d 441 (U.S. Cal. 1963).

[48]*State v. Willie*, 410 so.2d at 1029 (emphasis added).

saying that the State met its burden is not sufficient. In *State v. Robinson*, the Second Circuit Court of Appeal said the "elements of the crime of simple burglary consist of: 1) entry into a structure; 2) the entry being unauthorized; and 3) the specific intent to commit a felony or theft therein."[49]

Again, in this case, the State did not present any physical evidence to the jury that a vehicle was broken into. Moreover, the State never proved that Bailey's DNA was recovered from the vehicle alleged to have been broken into. In fact, the State's evidence presents more questions than answers. In other words, there are problems with the State's evidence that Bailey humbly asks this honorable Supreme Court to resolve. The Court's "authority to review questions of fact in [this] criminal case" is indeed unique.[50] This is because when a reviewing court is appraising the sufficiency of evidence under the *Jackson* standard, to resolve any conflict that may exist between direct and circumstantial evidence, there is usually direct evidence tending to prove that a crime has been committed. This is not so in this case.

In its opening statement the State told the jurors that they would have an opportunity to examine "evidence supporting the State's charge that on or about June 15th of 2013, the defendant, Joe Bailey, committed a burglary of a vehicle owned by Bill Sample."[51] The State also told the jury that Roberto Monsivaise "approached Paul [Hambleton] and he says, that man is breaking into a car. And he points, and Paul looks over, and he sees a man there, a man leaving the car that was indicated. A man who will be proven by the

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[49]*State v. Robinson*, 29, 488 (La. App. 2 Cir. 6/18/97), 697 So.2d 607, 609.

[50]*State v. Robinson*, 697 So.2d at 609.

[51]R. p. 236.

evidence to be the defendant, Joe Bailey."[52] Not only did the State fail to prove this claim, it presented impermissible hearsay to the jury.

According to the State, Corporal Duck proceeded to the scene of the alleged crime and began to conduct an investigation. Allegedly, Corporal Duck found blood in the vehicle that had been burglarized. This prompted Corporal Duck to collect the alleged blood and place the swabs into an envelope and deliver it to the crime lab.[53] Strangely though, there is no mention of Corporal Duck preserving the alleged crime scene. In fact, Corporal Duck did not even take pictures of the supposed crime scene or of the blood that he is said to have swabbed in the vehicle. Even so, Sergeant Charles Thompson was allegedly able to discover that Bailey was the donor of the blood allegedly found in a vehicle.[54]

The Testimony of Paul Hambleton

Hambleton testified that Roberto Monsivaise came to him and said he saw someone breaking into a car across the street from the Scottish Rite Temple. According to Hambleton's testimony, he did not see anyone breaking into a vehicle. He told the jury that he "saw a gentleman walking away from the vehicle that was broken into."[55] However, he did not say he observed the gentleman breaking into a vehicle. Again, the State relied on Roberto Monsivaise's uncorroborated out-of-court statement, which is impermissible hearsay. Also, Hambleton admitted that he could not make a positive

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[52]R. p. 237.

[53]R. p. 238.

[54]R. p. 238.

[55]R. p. 244.

identification.[56] Hambleton also admitted on cross-examination that he did not actually see any alleged burglary or break-in of a vehicle.[57]

The Testimony of Corporal Kevin Duck

Corporal Duck testified that he is a patrol officer, and that he has been with SPD for 13-years.[58] When asked about the normal duties of a patrol officer, Corporal Duck said that patrol officer's were "Jack['s] of all trades; domestic, homicide, rapes, burglaries, home invasions. Anything that the public needs, [they] respond to."[59] However, this statement does nothing to inform the jury of the actual duties of a patrol officer. It especially does not inform the jury of whether patrol officer's have any training in the preservation of crime scenes, the collection and preservation of DNA, or any other scientific evidence. The knowledge that patrol officer's respond to all manner of calls does not clarify for the jury the capacity in which patrol officers operate in once on the scene of any crime or incident. For instance, Corporal Duck is not a crime scene investigator. He is also not a detective. His role at the scene of the alleged burglary was not made clear to the jury.

As for the collection of the alleged blood from the crime scene, although it was not photographed, Corporal Duck testified that:

> It has a chain of custody. In my case, I would take it, swab it for DNA, seal it; name, date, location, where it happened, where I collected

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[56]R. p. 245.

[57]R. p. 250.

[58]R. p. 252.

[59]R. p. 252.

> the blood from, etcetera, and I would turn it into the patrol desk. And then it has a chain of custody from there.[60]

When asked if that is what he had done in this case, Corporal Duck answered, "Yes."[61] He then said that, although he had turned the blood into the patrol desk, he also took it to the crime lab.[62] However, if Corporal Duck created a chain of custody by turning the evidence in at the patrol desk, then there is a missing link in the chain. There was nothing submitted at trial to show Corporal Duck checked any evidence in at the patrol desk and neither is there proof that Corporal Duck checked any evidence out. Even more troubling though is the fact that Corporal Duck failed to photograph the alleged crime scene depicting the location of the alleged blood. On cross-examination, Corporal Duck admitted that there were no pictures taken of the alleged crime scene. Corporal Duck also admitted that there was no damage to the steering column or the ignition switch of the vehicle.[63]

The Testimony of Michelle Vrana

Michelle Vrana testified that she is the DNA section supervisor for the North Louisiana Criminalistics Laboratory. Vrana said she has worked there since February of 2008.[64] Vrana identified State's Exhibit 2 as her Item Number 3, which is what Vrana used to write her report on in this case. Vrana's Report is State's Exhibit 1. Vrana testified that her Item Number 3, State's Exhibit 2, is a "sealed plastic bag containing a sealed paper bag

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[60]R. p. 254.

[61]R. p. 254.

[62]See R. p. 254.

[63]See R. pp. 256-257.

[64]See R. p. 268.

containing the reference samples from Joe Bailey." This item/exhibit was recovered by Detective C. Thompson.[65]

However, in discussing the unknown sample that was tested as suspected blood, Vrana said that it "was submitted by Kevin Duck on June 25, 2013." Again, there are missing links in the chain of custody. Corporal Duck testified that he checked the alleged blood in at the patrol desk, and that he also delivered it to crime lab.[66] Again, no proof of this was ever presented at trial. Just to reiterate; State's Exhibit 1 is the DNA Report written by Vrana; and State's Exhibit 2 is the reference sample taken from Joe Bailey.[67]

The Testimony of Bill Sample

Bill Sample testified that there was nothing missing from his vehicle. In fact, Sample told the jury that "nothing was in it but [he] had to call [his] wife to see if she had left some packages or electronics or anything in there, but she said she did not."[68] When asked if he noticed any blood in his vehicle, Sample replied that he did not. The State then asked Sample if he was looking for blood in his vehicle, Sample said, "No, [he] was just looking for things that might have been in there. But there was, as [he] said, nothing, no packages, but [he] wasn't looking for anything else."[69] In this case, it would be unreasonable to believe that Sample would not have noticed any blood in his vehicle when he was checking to see if there was anything missing. Sample would have been

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[65]See R. pp. 273-274.

[66]Cf. R. p. 12 (Corporal Duck wrote in his report that a DNA swab kit was checked out by him and turned into evidence for further testing).

[67]R. p. 223.

[68]R. p. 288.

[69]R. p. 288.

very attentive to his surroundings, especially when considering that there is supposed to be glass in his vehicle. Sample, or any other rational minded individual would be extremely careful and alert to where they place their hands. Any visible blood would have been readily and easily recognized.

On cross-examination, Sample testified that his vehicle was still in the same location he parked it and that he did not detect any damage to the ignition or the steering column.[70]

In its closing argument, the State claimed that it had met its burden of proving the essential elements of simple burglary of a vehicle. The State said:

> Unauthorized. You heard from Mr. Sample. He owned the vehicle. It was his vehicle. And he did not know the defendant. He had not given anybody permission to be in the vehicle....He does not know the defendant, had not given permission. It's unauthorized. That element has been met ...
>
> The next element, entering. We talked about did the defendant enter the vehicle. Broken glass. The driver's side door is broken. There is blood in the actual vehicle. But most importantly, there is blood in the center console. The center console is not right next to the window. I mean, it's on the other side of the seat. For blood to get all the way over there, as indicated by corporal Duck, as indicated by the crime lab report where the blood was taken from, it was found in the center console. Someone had to reach over the seat. And either they reached over with their hand and was bleeding from their hand, which was the indicator from Mr. Hambleton, that he was bleeding on his hand, or his whole body was in there and something else, at some point, bled in there. Either way, there is an entering of the vehicle. The defendant had to get in for the blood to get where that was. And so we have some proof there. You heard about the blood evidence, and the blood evidence where it was found. Entering has been met.[71]

Contrary to the State's assertion, it did not even provide proof to the jury that Sample owned a vehicle. The State failed to submit any evidence supporting its contention that blood was found in the vehicle. In fact, the State even failed to submit photographs of the

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[70]R. p. 289.

[71]R. pp. 297-298.

alleged crime scene. For insurance purposes alone there should have been photographs of the vehicle and of the window alleged to have been busted completely out. Again, the State's evidence is lacking.

The State's contention that the jury "heard about the blood evidence" is misleading.[72] The jury did hear about blood evidence; however, the State did not produce any evidence to prove that there was actually any blood evidence. The DNA report, without proof of submitted blood, is not enough. The State's assertion that the jury heard about the blood evidence is a lie and entering has not been met. Not one person testified to seeing anyone in the car. Moreover, Hambleton said that he did not see anyone in the car.[73]

Again, the State relied on the impermissible hearsay statement of Roberto Monsivaise. The State said:

> He [Bailey] reached into the car, putting his blood on that center console, a place where things are kept in a car, and he was seen at that time, remember, by Roberto [Monsivaise] who was a part-time worker for the valet service owned by Paul Hambleton. And Mr. [Monsivaise] says, Hey, look over there. That man is breaking into a car.[74]

The State also claimed to have proven the identity of the person who allegedly broke the window and burglarized Sample's vehicle; however, it did not. The State said:

> There is one other thing that does not appear in the statute but it's something that you have to find, also. It's like another element that would be added on in this case or in any case. And that other element is identity. Did somebody do all of these other elements in the statute? Yes. But who did those things, or how do we prove that the person on trial is the person who committed the other elements for this offense? And here the identity question is very solidly resolved because you heard from Michelle Vrana,

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[72]R. pp. 297-298.

[73]Cf. R. pp. 244, 250.

[74]R. p. 310.

> and what were the odds, 1 in 37.6 quadrillion. And you've been able to look over State's Exhibit 1 when the evidence was published. That was the DNA analysis report. And I have a copy of that here, and I'll read you the relevant wording from it. The DNA profile obtained from the swab of suspected blood, Item 1, was consistent with the DNA profile obtained from the reference swab of Joe Bailey in Item 3. The probability of finding the same DNA profile if the DNA had come from a randomly selected individual other than Joe Bailey was approximately 1 in 37.6 quadrillion.[75]

For all of its posturing, the State's alleged evidence is not sufficient. The State did not produce the swab of suspected blood allegedly collected from the vehicle. It did, however, produce a "sealed plastic bag containing a sealed paper bag containing the reference samples from Joe Bailey."[76] Moreover, the State did not produce any evidence in support of a vehicle being broken into or of the window being broken out of the vehicle. Most importantly, the State did not produce any photographs to reflect that there was blood in the vehicle. For the foregoing reasons, Bailey respectfully requests that this honorable Supreme Court would vacate his conviction and sentence for simple burglary due to insufficient evidence.

CONCLUSION

For the foregoing reasons Bailey's petition for a writ of certiorari should be granted.

Respectfully submitted,

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[75]R. pp. 313-314.

[76]Cf. R. pp. 273-274; R. p. 314.