

18-7445

IN THE
SUPREME COURT OF THE UNITED STATES

LENNIS A. GEORGE --- 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

LENNIS GEORGE #130696
(Petitioner)

P.O. BOX 788 U-2 D-4
(Address)

JACKSON, LA 70748-0788
(City, State, Zip Code)

225-634-1200
(Phone Number)

ORIGINAL

Supreme Court, U.S.
FILED

DEC 13 2018

OFFICE OF THE CLERK

QUESTION(S) PRESENTED

1. Whether there was sufficient evidence to convict Lennis George of attempted manslaughter?
2. Did the Fifth Circuit err in deferring to the state court findings that Mr. George 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:

Criminal District Court
Division "B"
2700 Tulane Ave., Ste. 114
New Orleans, La. 70119-2700

Hon. Leon A. Cannizzaro, Jr.
District Attorney, Orleans Parish
619 S. White Street
New Orleans, La 70119

TABLES OF CONTENTS

QUESTIONS PRESENTED.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2-3
PROCEDURAL HISTORY OF THE CASE	3-4
STATEMENT OF THE FACTS	4-7
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 AND WARRANTS THIS COURT’S ATTENTION.

1. INSUFFICIENT EVIDENCE

LAW AND ARGUMENT.....	7-11
-----------------------	------

2. DUE PROCESS RIGHTS WERE VIOLATED

LAW AND ARGUMENT.....	11-15
-----------------------	-------

3. INEFFECTIVE ASSISTANCE OF COUNSEL

LAW AND ARGUMENT.....	15-16
CONCLUSION	16
PROOF OF SERVICE.....	16

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
Chandler v. Florida, 449 U.S. 560, 570, 582-83, 101 S. Ct. 802 (1981).....	14
Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464 (1986).....	14
Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S. Ct. 1868 (1974).....	14
Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560	10, 12
State v. George, 2011 La. App. LEXIS 1131 (La.App. 4 Cir. Sept. 9, 2011).....	4
State v. Wessinger, 98-1234, p. 24 (La. 5/28/99), 736 So.2d 162, 183.....	14
Smith v. Phillips, 455 U.S. 209, 220, 71 L. Ed. 2d 78, 102 S. Ct. 940 (1982).....	14
Strickland v. Washington, 466 U.S. 668 (1984).....	15

STATUTES AND RULES

Rule 29 of the Supreme Court.....	19
28 U.S.C. 1254(1).....	2
28 U.S.C. 1257(1).....	2
28 U.S.C. 2254.....	3, 11
U.S. CONST., AMEND. VI.....	2
U.S. CONST., AMEND. XIV.....	3
Louisiana Constitution Art. I, 16, 17.....	8
La. R.S. 14:27.....	4
La. R.S. 14:30.....	9, 10, 16
La. R.S. 14:31	4
La. Rev. Stat. Ann. 15:438.....	8
La. R.S. 15:529.1.....	4
LA Code of Evidence 403 and Federal Code of Evidence 403.....	12
La. C. Cr.P. 775.1.....	14

OPINIONS BELOW

APPENDIX A The opinion of the United States Court of Appeals for the Fifth Circuit denying a certificate of Appealability

APPENDIX B Application for Certificate of Appealability to the Fifth Circuit Court of Appeals

APPENDIX C The Order of the United States District Court for the Eastern District of Louisiana adopting the United States Magistrate Judge's Report and Recommendation

APPENDIX D The Report and Recommendation of the United States Magistrate Judge for the Eastern District of Louisiana on Petitioner's Section 2254

APPENDIX E The Section 2254 Petition for Writ of Habeas Corpus and Supporting Memorandum

APPENDIX F The Louisiana Supreme Court Judgment denying Writ of Supervisory Review of post-conviction relief proceedings

APPENDIX G The Order of the Louisiana Fourth Circuit Court of Appeal denying Writs of Review

APPENDIX H Application for State Post-Conviction Relief

APPENDIX I The original judgment of conviction of Petitioner was appealed to the Louisiana Supreme Court, which denied discretionary review

APPENDIX J The Original Brief of Appellant on direct appeal to the Louisiana Fourth Circuit Court of Appeals / Decision affirming the conviction and sentence

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

The Petitioner, Lennis A. George, 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 the 25th day of September, 2018.

JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeal for the Fifth Circuit was entered on September 25, 2018. A timely Petition for Rehearing was filed and denied. The jurisdiction of this Court is invoked under 28 *U.S.C. 1254(1)*.

The Judgments of the Louisiana Supreme Court were entered on February 17, 2012 and on January 25, 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

The petition of Lennis A. George #130696 an inmate confined at the Dixon Correctional Institute, in Jackson, Louisiana.

Petitioner was charged with first degree murder (attempted), 1 count, in Orleans Criminal District Court, Parish of Orleans, in Louisiana, Case Number 490269.

On July 21, 2010, Petitioner was convicted of attempted manslaughter under Louisiana law pursuant to La. R.S. 14:31 and La. R.S. 14:27.

On August 27, 2010, Petitioner was found to be a fourth felony offender, pursuant to La. R.S. 15:529.1 and was sentenced as such to a term of thirty-five (35) years of imprisonment.

Petitioner was sentenced to serve (35) years at hard labor for this offense of attempted manslaughter, to be served in the Department of Corrections, with credit for time served.

STATEMENT OF THE FACTS¹

On direct appeal, the Louisiana Fourth Circuit Court of Appeal summarized the facts of this case as follows:

The testimony at trial revealed that on August 25, 2007, Natasha Martin, the victim, borrowed a Ford Expedition to drive to the Franklin Avenue Baptist Church to get canned goods that were being given away. Her three children were in the vehicle. As the family drove along I-10, Martin noticed the defendant, Lennis George, driving near her in traffic. Martin

¹ State v. George, 2011 La. App. LEXIS 1131 (La.App. 4 Cir. Sept. 9, 2011).

testified that she and the defendant had dated for seven or eight years, but the relationship had been over for several months. However, Martin admitted on cross-examination that George had slept at her home just two days before this incident.

The defendant began to follow Martin along I-10 and tried to get her to pull over, which she refused to do. Martin exited I-10 at Franklin Avenue. The defendant continued to try to get Martin to pull over, and she eventually complied. However, when George got out of his vehicle, Martin drove off. The defendant returned to his vehicle and began to follow Martin again, stopping briefly to allow his sister and nephew to get out of his truck. George continued to follow Martin. At the corner of Franklin Avenue and North Dorgenois Street, the defendant rammed the side and back of Martin's vehicle, shoving it into the traffic. Fearing that the defendant would continue to ram her vehicle, Martin got out and began to dial 911 to report the incident. The defendant exited his truck and ran towards Martin screaming, "B, you want to play with me." The defendant then stabbed Martin on the side of her face and neck with a small knife that Martin described as looking like a steak knife. Martin's 16-year-old son intervened in an attempt to stop the defendant from stabbing his mother. The young man managed to pull the defendant off of Martin, which allowed Martin to briefly get away.

However, the defendant broke free and stabbed Martin in the ear and across her face. Several bystanders came to Martin's aid and pulled the defendant off of her. Again, he broke free and stabbed Martin in the hand and chest. The bystanders pulled the defendant off of Martin a second time, but he continued his pursuit of Martin and tried to attack her again. George finally stopped the attack and fled in his truck after some of the bystanders approached him with bricks and sticks.

Martin's son corroborated his mother's testimony. He stated that the defendant and his mother argued during their relationship, but they never fought with "...knives and stuff like that...."

Officer Karriem Jefferson responded to the scene, where he found Martin bleeding from the head and neck. Her shirt was covered with blood, and she was screaming and very upset. He observed several wounds on her body which he noted on the domestic violence sheet attached to the police report. He also observed debris from an automobile collision. Martin explained to Officer Jefferson what had transpired and told him that the defendant repeatedly stabbed her. Officer Jefferson also interviewed the defendant's sister at the scene. She corroborated what Martin told him. Martin was transported to the hospital by ambulance. The crime lab

processed the scene, but no knife was recovered. Officer Jefferson prepared an arrest warrant for George and entered it into the system.

Approximately two years later, Officer Borgius Guient, in response to an anonymous tip, went to a home where the defendant was alleged to be hiding. The owner of the house denied that George was there. When Guient and his partner, Officer Joshua Carthon, returned a second time, the homeowner consented to a search of the house. The officers heard a noise coming from the attic, searched and found the defendant. Officer Carthon recovered a loaded .45 caliber handgun and holster where the defendant was hiding.

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.

1. INSUFFICIENCY OF THE EVIDENCE

Petitioner’s Fourteenth Amendment Right to Due Process of Law, as guaranteed by both the Louisiana Constitution and the United States Constitution, were violated.

The petitioner avers that the State did not prove the elements of attempted manslaughter enough for a trier of fact to convict him of the said charges. The “repeatedly stabbed” after ramming her car off the road was

not sufficient evidence to prove beyond a reasonable doubt that petitioner specifically intended to kill the victim. The State failed to prove that George's intent was to kill. An attempt occurs when a person "having the specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object.

LA R.S .14:27 B. (1)

Mere preparation to commit a crime shall not be sufficient to constitute an attempt; **but lying in wait with a dangerous weapon with the intent to commit a crime, or searching for the intended victim with a dangerous weapon with the intent to commit a crime, shall be sufficient to constitute an attempt to commit the offense intended.**

La. Rev. Stat. Ann. 15:438 provides: The rule as to circumstantial evidence is: assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence. This provides greater protection against erroneous convictions based on circumstantial evidence than is provided by the Fourteenth Amendment. There is a possibility that the quality of evidence supporting a conviction would satisfy Jackson, but would not satisfy the requirement of 15:438.

In this case there is no direct evidence of any element of the crime charged in La. R.S. 14:30 other than the fact that a crime was committed. Therefore, the court need not consider whether any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the necessary elements of the crime beyond a reasonable doubt. Rather, the circumstantial evidence must be analyzed to determine whether it excludes every reasonable hypothesis other than innocence.

Petitioner was neither lying in wait nor searching for the victim. He was traveling down a public interstate when he saw Ms. Martin and sought only to speak with her. His intent was not to harm her but, upon being “jilted” by Ms. Martin, the petitioner, being human, acted in the heat of passion when this incident took place. This does not take away the severity of the offense; it merely shows that this was not a premeditated act. The State failed to produce any medical records to corroborate that the wounds sustained by the victim were deadly. The record reflects that the victim spent only a brief time at the hospital with non life threatening injuries. The victim at trial was allowed to show the jury scars she claimed to have sustained as a result of the attack. These scars were not determined by an expert witness to be made by a knife that the petitioner supposedly used and surely did not determine whether petitioner had the intent to kill the victim. The

petitioner's argument of the sufficiency of the evidence relates to the fact that no rational trier of fact could reasonably find a verdict of guilty beyond a reasonable doubt when the petitioner was not perpetrating any crime listed in La. R.S. 14:30. See *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560. If the offender was charged with the wrong statute how can a jury find him guilty beyond a reasonable doubt?

Petitioner was not engaged in the perpetration or attempted perpetration of any crime listed in La. R.S. 14:30 which the legislature requires in order to convict him of this offense. The State charged the petitioner with La. R.S. 14:30, attempted first degree murder which does not apply to the case at bar. The jury elected to find that the petitioner was guilty of the lesser included offense because had the State charged the petitioner with correct statute in the first place the jury would have had a different list of lesser included offenses to convict. The insufficiency of the evidence claim has been presented and proved and this claim is not without merit. The State failed to prove Mr. George's intent was to kill the victim. The ramming of the vehicle was merely a way to stop the victim not to kill her. The petitioner "repeatedly stabbed" the victim with non-life threatening injuries which proves his intent was not to kill. The petitioner should be protected by the Louisiana Constitution Fourteenth Amendment and the

United States Constitution Fifth Amendment that both serve to protect the citizens of the United States. This Court should grant petitioner's Certificate of Appealability and grant petitioner 2254 Habeas Corpus Relief.

2. DUE PROCESS RIGHTS WERE VIOLATED

Trial Counsel provided ineffective assistance by failing to pursue mistrial in the Supreme Court.

In the instant claim, the petitioner argues that he received ineffective assistance of trial counsel when counsel failed to object to statement induced from the victim by the prosecutor and failing to pursue the mistrial that was granted by the trial judge to the Louisiana Supreme Court. The following trial testimony of Natasha Martin is at issue:

Q. And were you all dating at the time of this incident, or still together, August 25, 2007?

A. No. We had broken up.

Q. And about how long before, had you all broken up?

A. I'll say, about two or three months before that.

Q. And tell the jury why you all broke up.

A. Because I just didn't want to be with him anymore.

Q. And was there an [sic] particular reason you didn't want to be with him anymore?

A. Because of the abuse.

This was an induced answer that the prosecutor elicited from the witness by continuing to ask the same question that was already asked and answered. The trial judge is in a better position than anyone to weigh the impact of this statement and the judge in this instant case thought that this would no doubt prejudice the defendant from receiving a fair trial. In the subsequent denial of the mistrial the Fourth Circuit Court of Appeal ruled as follows:

“Although the witness stated that she split up with the defendant because of the abuse, it is unclear whether the abuse was physical or psychological. We do not find that the proverbial “bell” cannot be “un-rung” in this case. Further, the matter can be corrected on appeal in the event of the defendant’s conviction”.

The petitioner was given no prior notice that this other crimes evidence would be used. There are no medical records or police reports to confirm the alleged abuse Ms. Martin said she suffered at the hands of the petitioner. Even if it were somehow relevant, it would still have to go through an adversarial hearing before it could be introduced. This is governed by both LA Code of Evidence 403 and Federal Code of Evidence 403.

There is no way to gauge the impact this comment had on the jury. The reasonable doubt standard of *Jackson* may have been met absent this comment. But the bell had rung and without proper curative instructions the

jury could not come to their own conclusion, based on the evidence, absent this comment. This comment so infected the trial with prejudice that the petitioner could not receive a fair trial as guaranteed in the Sixth Amendment of the United States Constitution. The Trial Court's decision to grant the mistrial should have been up-held.

The State Court's denial of a mistrial violated the petitioner's Federal Constitutional rights. Petitioner received an unfair trial because of the improper comment by the witness of another crime that was supposedly committed prior to the instant offense. The State claims that this was a fleeting remark by a witness, never used or highlighted, and had no impact on the conviction. The record reflects that this question was asked by the prosecutor and answered by the witness but the prosecutor was not satisfied with the answer he received. The prosecutor finally received the answer that he wanted, and in doing so deprived the petitioner of a fair trial. The "fleeting remark" was found by the trial judge to be improper and a mistrial was granted.

Mistrial is indeed a drastic remedy which should only be declared upon a clear showing of prejudice to the defendant. The actual determination of whether prejudice has occurred, and thus whether a mistrial is warranted, lies within the sound discretion of the trial judge, and this decision will not

be overturned on appeal absent an abuse of that discretion. See *State v. Wessinger*, 98-1234, p. 24 (La. 5/28/99), 736 So.2d 162,183. The trial judge did not abuse his discretion when granting the mistrial. A federally issued writ of habeas corpus reaches only convictions obtained in violation of a provision of the United States Constitution. *Smith v. Phillips*, 455 U.S. 209, 220, 71 L. Ed. 2d 78, 102 S. Ct. 940 (1982). The standard for granting habeas corpus relief because of prosecutorial misconduct is limited to due process violations and does not encompass the broad exercise of supervisory power. *Darden v. Wainwright*, 477 U.S. 168, 181, 91 L. Ed. 2d 144, 106 S. Ct. 2464 (1986). Before a federal court may overturn a conviction that results from a state trial, a petitioner must establish, not merely that the State's action is undesirable, erroneous, or even universally condemned, but that it violated some right guaranteed by the fourteenth amendment. *Chandler v. Florida*, 449 U.S. 560, 570, 582-83, 66 L. Ed. 2d 740, 101 S. Ct. 802 (1981). The relevant inquiry is whether the alleged error so infected the trial with unfairness that the resulting conviction was a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 40 L. Ed. 2d 431, 94 S. Ct. 1868 (1974).

The State filed an emergency writ as defined in La.C.Cr.P.Art.775.1, which was granted by the Fourth Circuit Court of Appeals. La. C.Cr.P. 775.1

has no language indicating the State may seek certiorari to an adverse ruling from the reviewing court. Furthermore, the witness changed her answer to the question of why they broke up from “abuse” to “she met someone else” clearly does not cure the fact that the proverbial bell has been rung. The mistrial was granted by the trial judge and the State violated George’s Constitutional right to a fair trial when it failed to uphold the trial judge’s discretion. The State did not prove that the trial judge abused his discretion.

The record does not prove that this was a fleeting remark by the witness; in fact, the record reflects that this remark was induced by the prosecutor once the witness answered the question that was asked.

3. Ineffective Assistance of Counsel

According to *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court established a two-prong test to evaluate ineffective assistance claims. To obtain reversal of a conviction, the defendant must prove: (1) That Counsel’s performance fell below an objective standard of reasonableness, and (2) That Counsel’s deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding.

Defense counsel was deficient in that he failed to challenge the indictment charging petitioner with attempted first degree murder.LA R.S.

14:30 First Degree Murder states the offender has specific intent to kill or inflict great bodily harm and is engaged in the perpetration or attempted perpetration of an aggravated offense.

Petitioner was not charged with the commission of any felony, which is a requisite of first degree murder. Had petitioner been charged with attempted manslaughter and found guilty, the jury would have had a separate list of responsive verdicts.

None of the injuries to the victim were or would be considered life threatening. Although petitioner may have had intent to inflict bodily harm, the wounds were not to any vital area or major organ, which would tend to indicate he did not have the intent to kill. The indictment was defective and defense counsel was ineffective by failing to challenge this prior to trial. A careful review of the state court record will prove that the State violated the petitioner's Constitutional rights to effective assistance of counsel when counsel failed to object to the charging instrument.

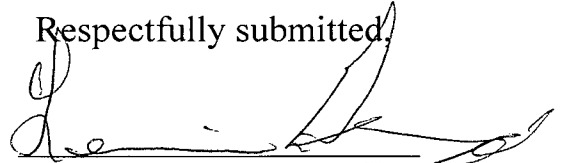
As referenced and argued above, Mr. George has indeed shown ample evidence that his trial counsel was indeed ineffective during the proceedings. Trial counsel acted unreasonably by not filing a Motion to Quash based on an invalid bill of indictment. Had he done so, this case would have been dismissed based upon the defective indictment.

CONCLUSION

For all the foregoing reasons, Mr. George 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 12 day of Dec, 2018, in Jackson, Louisiana.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lennis A. George', written over a horizontal line.

Lennis A. George #130696
Unit 2 Dorm 4 DCI
P.O. Box 788
Jackson, La 70748-0788