No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TROY ARNAUD — PETITIONER

vs.

DARREL VANNOY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

TROY ARNAUD

475737, SPRUCE—1

LOUISIANA STATE PENITENTIARY

ANGOLA, LA 70712

QUESTION(S) PRESENTED

1) Whether Arnaud was denied his constitutional right to the effective assistance of counsel.

2) Whether Arnaud's trial counsel violated client autonomy.

3) Whether Arnaud was denied his constitutional right to testify on his own behalf.

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:

Troy Arnaud
Louisiana State Penitentiary
Angola, LA 70712

Paul D. Connick Jr., District Attorney
200 Derbigny, Fifth Floor
Gretna, LA 70053-5850

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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

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix F to the petition and is

[x] reported at *State v. Arnuad*, 2015-1000 (La. 03/24/16), 188 So.3d 1004; or,
[] has been designated for publication but is not yet reported; or,
[] unpublished.

The opinion of the Louisiana Fifth Circuit court of appeal court appears at Appendix E to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was August 20, 2018.

[x] 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 March 24, 2016.

A copy of that decision appears at Appendix F.

[] 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. § 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 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, § 13

> Rights of the Accused.

Louisiana Constitution Article 1, § 16

> Right to a Fair Trial.

La. C. Cr. P. art. 930. Evidentiary hearing

> A. An evidentiary hearing for the taking of testimony or other evidence shall be ordered whenever there are questions of fact which cannot properly be resolved pursuant to Articles 928 and 929.

STATEMENT OF THE CASE

On June 9, 2011, Troy Arnaud ("Arnaud") was indicted for one count of second degree murder and one count of obstruction of justice. On April 17, 2012, Arnaud was adjudged guilty as charged by a non-unanimous (ten to two) verdict of guilty for second degree murder and a unanimous verdict for obstruction of justice. On April 30, 2012, he was sentenced to serve consecutive hard labor sentences of life imprisonment and thirty years. Arnaud unsuccessfully appealed his convictions and sentences on direct appeal.

On July 3, 2014, Arnaud timely, yet unsuccessfully, filed an application for Post-Conviction Relief with Memorandum in Support. His APCR was denied February 10, 2015. On March 12, 2015, Arnaud filed an Application for Supervisory Writ of Review. His writ application was denied April 14, 2015. On May 13, 2015, Arnaud filed an Application for Certiorari and/or Supervisory Writ of Review to the Louisiana Supreme Court. His application for certiorari was denied March 24, 2016.

On April 7, 2016, Arnaud filed a timely petition for a writ of habeas corpus. On August 15, 2017, the District Court Judge adopted the recommendation of the Magistrate Judge and denied Arnaud's petition. Arnaud gave the district court timely notice of his intent to appeal the decision and on November 28, 2017, Arnaud received a forty day notice from Fifth Circuit Court of Appeals. On August 20, 2018, the Fifth Circuit Court of Appeals denied Arnaud a Certificate of Appealability. This instant petition for writ of certiorari timely follows.

REASONS FOR GRANTING THE PETITION

Under Rule 10, the Louisiana's courts and the United States Court of Appeals for the Fifth Circuit has contrarily decided an important question of federal law that has been settled by this Court and has decided an important federal question in a way that conflicts with relevant decisions of this Court as set forth below:

Arnaud's counsel rendered ineffective assistance in violation *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052 and under *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018), when she violated client autonomy when she prevented Arnaud from testifying in his defense. Under *Townsend v. Sain*,[1] Arnaud should have been granted an evidentiary hearing by the federal courts because the state courts failed to grant a hearing to resolve the factual disputes presented in his application for post-conviction relief. The legal rulings of the state courts should not have been construed as factual findings by the federal courts.

Issue No. 1: Arnaud was denied the effective assistance of counsel when his trial counsel failed to: (A) Object to the prosecutor's misstatement of the law of principals during voir dire; (B) Failed to make an opening statement; (C) Failed to object to prejudicial, irrelevant hearsay; (D) Failed to properly cross-examine Gregory Ford; (E) Failed to object to the prosecutor's repeated attempts to bolster Gregory Ford's credibility through the use of expert testimony; (F) Failed to object to the prosecutor's coercive misconduct; and (G) Placed Arnaud on the scene of the murder in her closing argument.

(A) Failed to object to the prosecutor's misstatement of the law of principals during voir dire.

During voir dire, the prosecutor, Mr. Freese, gave a misleading hypothetical when he attempted to explain the law of principals to the jury. Specifically, Mr. Freese

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[1]372 U.S. 293, 83 S.Ct. 745, 9, L.Ed.2d 770 (1963).

misled the jury as to what type of conduct would make someone guilty as a principal to second degree murder.[2] In Mr. Freese's hypothetical, he and another prosecutor, Mr. Ranier, goes to the Judge's house with the intent to burglarize it. In Mr. Freese's hypothetical, neither one of them knows the Judge is home. Mr. Freese stays in the car while Mr. Ranier breaks into the Judge's house. The Judge, however, surprises Mr. Ranier and is killed in an attempt to defend his home. Mr. Freese correctly told the jury that, under those circumstances, Mr. Ranier would be guilty of second degree murder. Mr. Freese took it a step too far, however, and told the jury that he would also be guilty of second degree murder although he was in the car the whole time and thought the Judge was not home. This explanation of the law of principals is incorrect and misleading. "Only those persons who knowingly participate in the planning or execution of a crime are principals to that crime."[3] In the scenario given by Mr. Freese, he would be guilty as a principal of the crime of burglary, but he would not be guilty as a principal to second degree murder. This error was compounded by Mr. Freese when he said, "And, if I misstate anything, she will object and the Judge will call me down on it. So, it's fair to assume that if I was to say and Ms. Sheppard is saying that we're telling you—we're giving it to you accurately ..."[4] There is no objective reason for defense counsel's failure to object to such an erroneous explanation of the law of principals.

(B) Failed to make an opening statement.

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[2]Trial transcript (4/16/12), pp. 111-112.

[3]*State v. Gross*, 12-73 (La. App. 5 Cir. 2/21/13), 110 So.3d 1173, 1180; *State v. Pierre*, 93-893 (La. 2/3/94), 631 So.2d 427, 428.

[4]Trial transcripts (4/16/12), p. 111.

Arnaud's counsel began trial by waiving her opening statement; thereby depriving the jury of an explanation as to what the defense would be.[5] This left the jury in the dark as to the defense's position, making the jurors more vulnerable to prosecutorial persuasion. It also gave the impression that Arnaud did not have a good defense. Considering the importance of first impressions, there was no justifiable strategic reason for counsel to waive the opening statement.[6]

(C) Failed to object to prejudicial, irrelevant hearsay.

During the direct examination of Sergeant Spera, Mr. Ranier asked a series a questions for the sole purpose of exposing the jury to extremely prejudicial and irrelevant hearsay:

Q. Sergeant, in addition to collecting evidence, was there also a time that you went to the Waggaman area with some other members of the Jefferson Parish Sheriff's Office?

A. Yes, sir.

Q. Okay. And what were you all doing in that location?

A. We were following directions from information we had received during the investigation.

Q. And, specifically, do you remember who you retrieved that information from?

A. Evelyn Arnaud.

Q. And when you went to that location in Waggaman, what were you looking for?

A. The body of the victim.[7]

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[5]Trial transcripts (4/16/12), p. 195.

[6]*Jones v. Jones*, 988 F.Supp. 1000, 1010 (E.D. La. 1997).

[7]Trial transcripts (4/16/12), pp. 283-284.

The purpose of Mr. Freese's questioning was to inform the jury that Arnaud had to have talked with his wife about the murder and, therefore, involved in the murder. This prejudicial and irrelevant hearsay was inadmissible. "Admission of information received by a police officer in the investigation of a crime, on the basis that such information explains the officer's presence and conduct and therefore does not constitute hearsay evidence, is an area of widespread abuse."[8] "The fact that an officer acted on information received in an out-of-court assertion may be relevant to explain his conduct, but this fact should not become a passkey to bring before the jury the substance of the out-of-court information that would otherwise be barred by the hearsay rule."[9]

Mr. Freese set the stage for this line of questioning during voir dire when he told the jury, "You can't be forced to testify against your spouse."[10] The sole purpose of this line of questioning was to give the jury the distinct impression that Arnaud told his wife about the murder, and she in turn, told the police what she knew; and, the only reason she did not testify was because of the marital privilege.

The issue of why Sgt. Spera went to the area was completely irrelevant. "Indeed, an investigating officer's testimony at trial (as opposed to testimony at a motion to suppress), explaining his conduct after an investigation, almost always has only

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[8]*State v. Wille*, 559 So.2d 1321, 1331 (La. 1990); McCormick on Evidence § 249 (E. Cleary 3d ed. 1984).

[9]*State v. Wille*, supra; George W. Pugh, et al, *Handbook on Louisiana Evidence Law*, (St. Paul, Minn: West Group, 1974), 429-431.

[10]Trial transcripts (4/16/12), p. 77.

marginal relevance at best."[11] The only reason Mr. Freese mentioned that Sgt. Spera went to Waggaman was to expose the jury to inadmissible evidence.

Furthermore, Arnaud's right of confrontation was also violated by Sgt. Spera's *explanation* of his actions. "Out-of-court statements by a witness that are testimonial are barred, under the Confrontation Clause, unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness."[12] "Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard."[13] There exists no justifiable reason why defense counsel would allow her client to be prejudiced by such irrelevant hearsay.

Because of defense counsel's deficient performance, Mr. Ranier brought up the above referenced colloquy again in closing argument, "Dave Spera tells you he went to Waggaman with Ms....Evelyn Arnaud, looking for a body, and they couldn't find it."[14]

(D) Failed to properly cross-examine Gregory Ford.

Two weeks before the murder, Gregory Ford called the police because someone had shot his mother's house several times and made threatening phone calls. Arnaud told his counsel that Mr. Ford had told him that some Hispanic people had shot up his mother's home and made the phone calls. Considering the ethnicity of the victim, the multiple shootings of Mr Ford's mother's house, the threatening calls made by Hispanic

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[11] *Wille*, supra, at 1331.

[12] *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 157 L.Ed.2d 177 (2004).

[13] *Id.*, at 52.

[14] Trial transcripts (4/16/12), p. 185.

people, and the proximity of the events with the death of the Hispanic victim in this case; counsel's performance fell below prevailing professional norms when she failed to cross-examine Mr. Ford on this subject.

(E) Failed to object to the prosecutor's repeated attempts to bolster Gregory Ford's credibility through the use of expert testimony.

The prosecutors repeatedly attempted to bolster the credibility of their primary witness, Gregory Ford, through the use of expert testimony offered by Dr. Dana Troxclair:

Q. Doctor, prior to coming to court today, did I ask you to take a look at a factual basis for a guilty plea of a man named Gregory Ford?

A. Yes.

Q. And did you find the content of that factual basis to be consistent with the physical evidence that you have found during the course of your autopsy?

A. Yes.[15]

But that was not enough. When Col. Tim Scanlan was testifying, Mr. Freese asked repetitive questions for no reason other than to bolster the damaged credibility of the prosecution's star witness:

Q. And you were actually present when Mr. Ford was debriefed by me prior to entering the guilty plea, correct?

A. Yes, sir.

Q. And for what reason did I ask you to participate in the meeting with me?

A. I was asked to listen to his final statement that he's doing for his plea agreement to make sure it fit the physical evidence, to see if there were any inconsistencies with his statement and the physical evidence that we saw, and very concisely, especially with this impact spatter, that it was obviously missed in the cleanup. His statement was very consistent with the actions that occurred from the physical evidence in the vehicle.

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[15]Trial transcripts (4/16/12), pp. 237-238.

Q. Is that because we would not want to enter a plea agreement with someone whose testimony would be refuted by the physical evidence?

A. Correct. We wanted to make sure that what he said was fitting the physical evidence before they went into that plea agreement.

Q. And with respect to this particular piece of evidence as represented in State's Exhibit 103, is that consistent with his statement regarding the positioning of the victim's body at the time Mr. Romero Pineda was shot and killed?

A. It is.[16]

Q. Okay. Given the placement of the wound, the fact that it's a contact wound and the positioning that Mr. Ford describes, is that entirely consistent with the physical evidence that you found on the scene of the murder?

A. Yes, sir, it is.[17]

Q. Does that evidence right there tend to corroborate the statement that the victim was subjected to a physical attack over and above the gunshot wound in that car?

A. It does.[18]

Q. When looking at those scenes collectively, did you find any information, any evidence, whatsoever, that is inconsistent with the factual basis he provided to Judge Molaison at the time of his guilty plea?

A. No, sir.

Q. Were there things that you found that tended to corroborate his statement regarding how the crime occurred?

A. Yes, sir.[19]

Considering the importance of Mr. Ford's credibility to the prosecution's case, defense counsel's failure to object to the repeated, improper bolstering of the prosecution's star witness was unreasonable.

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[16]Trial transcripts (4/17/12), pp. 157-158.

[17]Trial transcripts (4/17/12), p. 159.

[18]Trial transcripts (4/17/12), p. 160.

[19]Trial transcripts (4/17/12), p. 163.

(F) Failed to object to the prosecutor's coercive misconduct.

Arnaud told his trial counsel that he wanted to testify. Counsel informed Arnaud that the prosecutor told her that if he testified the State was going to charge his wife with accessory after the fact to second degree murder. Counsel also told Arnaud that the prosecutor said he would leave his wife alone if he did not take the stand. Instead of alerting the court and objecting to the prosecutor's misconduct, counsel communicated the threat to Arnaud. The only reason Arnaud did not testify was because of the prosecutor's threat. The jury was deprived of hearing Arnaud's side of the story. The prosecutor's actions, as well as Arnaud's trial counsel's, deprived Arnaud of his important and fundamental right to present a defense. A reasonably competent attorney, bound by ethics, would have objected to the prosecutor's misconduct without acquiescence.

(G) Placed Arnaud on the scene of the murder in her closing argument.

During closing argument, counsel told the jury that Arnaud was in the car when the murder happened. "Troy doesn't have a choice. He's in Gregory's car. He's in Gregory's car."[20] This contradicted the only two statements Arnaud gave to the police. Moreover, counsel failed to consult with Arnaud before she essentially conceded guilt when she told the jury that he was in the car at the time of the murder. If counsel would have discussed the matter with Arnaud, like a reasonably competent attorney would have done, he would have told her to not tell the jury he was in that vehicle. It was

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[20]Trial transcripts (4/17/12), p. 194.

objectively unreasonable for counsel to place Arnaud on the scene of a murder without even discussing the matter with him.

Prejudicial Effect of Counsel's Deficient Performance

Defense counsel allowed the prosecutor to mislead the jury during voir dire on, what was perhaps, the most important legal principle in this case. Counsel also: waived her opening statement; allowed extremely prejudicial hearsay evidence to be introduced; failed to impeach the prosecution's star witness with information that may have exposed the witness' motive for killing the victim; allowed the prosecutor to bolster the credibility of Gregory Ford through expert testimony; allowed the prosecutor to coerce Arnaud into not testifying; and placed Arnaud on the scene of the murder in her closing argument. It cannot be said that counsel's repeated shortcomings did not prejudice Arnaud. Especially after considering that the evidence in this case is far from overwhelming as indicated by the 10-2 verdict.[21] Considering the frequency and severity of counsel's errors, there can be no confidence in the outcome and reliability of Arnaud's trial. Had his counsel functioned as counsel guaranteed by the Sixth Amendment, there is a reasonable probability of a different outcome.

State Court Ruling

The state court reasoning for denying this claim is both contrary to, and an unreasonable application of, clearly established federal law.

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[21] *See State v. Lewis*, 12-1021 (La. 3/19/13), 112 So.2d 796, 805 (noting that non-unanimous verdicts "suggest[] that the evidence, and the jury's belief that the state had proved defendant's culpability beyond a reasonable doubt, were not overwhelming.").

"A state-court decision is 'contrary to' [this Court's] clearly established precedents if it applies a rule that contradicts the governing law set forth in [this Court's] cases...."[22]

A proper application of the standard, enunciated in *Strickland*, requires a reviewing court to assess the cumulative effect of counsel's errors.[23] However, both the state district court and court of appeal's rulings on this claim clearly failed to follow this mandate and instead employed the "divide and conquer" technique, wherein the courts isolated each of counsel's errors and determined them to be individually harmless. This failure of the state courts renders the decisions "contrary to ... clearly established federal law" and entitled Arnaud to *de novo* review.[24]

Nonetheless, the state-court decisions denying Arnaud's ineffective assistance of counsel claim was also an unreasonable application of *Strickland v. Washington, supra.*

Regarding counsel's failure to object to the prosecutor's misstatement of the law of principals, the state courts held that the prosecutor did not misstate the law. This holding is objectively unreasonable. Louisiana law is clearly established, in that "[o]nly those persons who knowingly participate in the planning or execution of a crime are principals to that crime."[25]

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[22]*Early v. Packer*, 537 U.S. 3, 8 (2002).

[23]*Strickland v. Washington*, 466 U.S., at 690; *Koon v. Cain*, 277 Fed. Appx. 381, 386 (5th Cir.2008).

[24]See *Heard v. Addison*, 728 F.3d 1170, 1178 (10th Cir.2013).

[25]*State v. Gross*, supra; *State v. Pierre*, supra.

The problem with Mr. Freese's hypothetical is that it conveys the message that a defendant could be convicted as principal for a crime he had no involvement in; it could have easily made the jury believe Arnaud was a principal to second degree murder, only because he assisted in the cleaning of his co-defendant's car.

The state court's assumption that the trial court's jury instructions on the law of principals cleared up any potential misunderstanding is also unreasonable. Jurors are not lawyers. Even a proper instruction on the law of principals would not have made it clear that Mr. Freese's hypothetical was erroneous.

Likewise, the state-court holding that Arnaud failed to establish that his counsel was deficient in waiving her opening statement is incredulous. There is no plausible reason for counsel's failure to make an opening statement—the state court certainly did not offer any. The state-court unreasonably applied *Strickland* when it fabricated tactical decisions on behalf of counsel when the record strongly suggests that counsel made no strategic decisions at all.[26]

Regarding counsel's failure to object to Sgt. Spera testifying to inadmissible hearsay, the state-court held that Sgt. Spera's statements were not hearsay. This holding is not even subject to reasonable debate. *Crawford v. Washington, supra,* makes clear, and removes any possibility for good-faith misunderstanding, that what Arnaud's wife told Sgt. Spera during the interrogation was inadmissible hearsay and barred by the Confrontation Clause.

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[26]*See Moore v. Johnson*, 185 F.3d 244, 261 (5th Cir.1999).

Regarding counsel's failure to impeach the State's star witness, Gregory Ford, with the fact that his residence was recently shot up by Hispanic males, and that he had been receiving threatening phone calls, the state district court held that this claim is based "purely on speculation." The claim was not speculation because Arnaud submitted a copy of Ford's police report to support the claim and an affidavit. Incredibly, the state appellate court held that "counsel's choice was within the ambit of trial strategy." A choice not to pursue a line of questioning which would have exposed a motive of the chief prosecution witness to commit the murder himself was not reasonable trial strategy. The state court's ruling is objectively unreasonable.

Finally, the state-court's holding that Arnaud failed to establish that his counsel's performance was deficient by placing him on the scene of the murder (without so much as even consulting with him) during her closing argument is yet another instance of fabricating a tactical decision on behalf of counsel even though the record strongly suggest counsel made no strategic decision at all. There can be no question that counsel was deficient for failing to consult with Arnaud when making this decision.

The state court's disposition of this claim is both contrary to, and an unreasonable application of, clearly established federal law.

Issue No. 2: Arnaud was denied the right to testify at his trial in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

This Court has recognized that a criminal defendant's right to testify is fundamental and personal to the defendant. "Only such basic decisions as to whether to plead guilty, waive a jury, or testify in one's own behalf are ultimately for the accused

to make."[27] Accordingly, this Court has held that "there is no rational justification for prohibiting the sworn testimony of the accused, who above all others may be in a position to meet the prosecution's case."[28]

Moreover, this Court has been unequivocal in holding that a defendant's right to testify is guaranteed by: (1) the Fifth Amendment's privilege against self-incrimination; the Sixth Amendment's Compulsory Process Clause; and the Fourteenth Amendment's Due Process Clause.[29]

The Fifth Amendment to the United States Constitution encompasses the right to remain silent as well as the right to not do so. "Every criminal defendant is privileged to testify in his own defense, or to refuse to do so."[30] "A defendant's opportunity to conduct his own defense by calling witnesses is incomplete if he may not present himself as a witness. The opportunity to testify is also a necessary corollary to the Fifth Amendment's guarantee against compelled testimony.

Furthermore, the denial of an accused's right to testify is not amenable to harmless-error analysis. The right "is either respected or denied; its deprivation cannot be harmless."[31]

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[27] *Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977) (Burger, C.J., concurring) (emphasis added); *see also Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983); *Brooks v. Tennessee*, 406 U.S. 605, 612, 92 S.Ct. 1891, 158 L.Ed.2d 177 (1972).

[28] *Ferguson v. Georgia*, 365 U.S. 570, 582 (1961).

[29] *See Rock v. Arkansas*, 483 U.S. 44 (1987).

[30] *Harris v. New York*, 401 U.S. 222, 225 (1971) (citations omitted).

[31] *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944 (1984).

As previously stated, Arnaud told his counsel that he wanted to testify. Counsel then informed Arnaud that the prosecutor told her that, if he testified, the State was going to charge his wife with accessory after the fact to second degree murder. Counsel further told Arnaud that the prosecutor said he would leave his wife alone if Arnaud did not take the stand. Counsel, instead of alerting the court and objecting to the prosecutor's misconduct, simply communicated the threat. The only reason Arnaud did not testify was because of the prosecutor's threat. Again, the jury was deprived of hearing Arnaud's side of the story. The prosecutor's and defense counsel's actions deprived Arnaud of his most important and fundamental right—the right to present his defense.

State Court Ruling

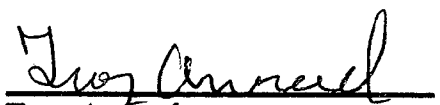
The state court ruling's that this claim is "purely speculative," and that "nothing in the record or in petitioner's application supports these allegations," is objectively unreasonable. Arnaud submitted an affidavit, from himself, attesting to the facts surrounding this claim. While not much, this was the only evidence he could gather in support of this claim while he was confined behind prison walls. Arnaud sent several letters to his trial counsel regarding this matter. Counsel, however, never responded to any of Arnaud's letters. Arnaud also repeatedly asked his wife to execute an affidavit concerning this matter; however, Mrs. Arnaud was scared to do so because she felt intimidated by the prosecutor. In any event, Arnaud's Affidavit was sufficient to highlight the existence of a factual dispute which could only be resolved with the benefit of an evidentiary hearing. By the express terms of *La. C. Cr. P. art.* 930, the

state district court was required to conduct an evidentiary hearing to resolve the factual dispute underlying this claim.

CONCLUSION

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

Respectfully submitted,



Troy Arnaud

Date: September 27, 2018