

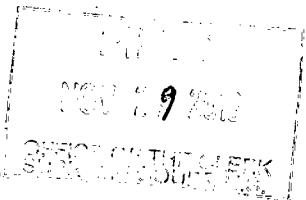
IN THE
SUPREME COURT OF THE UNITED STATES

18-8118

ALVIN DAVIS, JR — PETITIONER
(Your Name)

vs.

STATE OF LOUISIANA — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

LOUISIANA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ALVIN DAVIS, JR.
(Your Name)

LA- STATE PEN.
(Address) 1754 TUNICA TRACE

ANGOLA, LA 70712
(City, State, Zip Code)

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*— COURT DECISION TO
10 ROSS SCACCIATI ATTY
193 E. DODGE RD
S. ROSS BAPT. 32+59
504 458-5333*

QUESTIONS PRESENTED

Was the Petitioner, Alvin Davis, Jr. denied a fair trial, by violations and conflict of state and federal law, Batson v Kentucky, Brady v Maryland, and the laws of the State of Louisiana

Violations and conflict with Second Amendment, 14th Amendments rights, guaranteed by the United States Constitution, due process, the right to cross examination,

Violations of Brady v Maryland - duty to provide discovery of evidence favorable to defense.

Violations of Batson v Kentucky - racial discrimination, racial preemptory jury challenges.

Violations - Brady v Maryland, Disclosure and Prosecution Misconduct

PETITION FOR WRIT OF CERTORARI

Petitioner Alvin Davis, Jr. respectfully petitions for a writ of certiorari to the Louisiana Supreme Court in State v Davis, 2017 K 1440, affirming First Circuit Court of Appeal, 2014 KA 1524, to review the judgment of Louisiana Supreme Court, dated 5/18/2018, denying writ of review, and LAST decision of that Court for the denial of petition for Re Hearing, as per Louisiana Supreme Court Rule IX, section 6, dated September 21, 2018 (emphasis added)

1 - for failure to provide the defendant Brady material necessary for his defense (the defense fulfilling the three (3) necessities requirements of Brady) by 'hiding' of a 'state' witness petitioned for persistently as to his whereabouts, by defense in motions in limine. The presence of said witness at the trial was necessary to the defense and would have made a difference in the outcome of the trial. Brady v Maryland, 373 U.S. 783 (1963)

2 - by giving defense, the wrong date of birth of prospective witness, Angel Rivera, in a continuous effort by this and other means to 'hide' the whereabouts and identify of this witness, depriving the defense of the ability to subpoena the witness for trial, a witness necessary for the defense. R. at p 3, 412

3 - using audio only, Exhibit 24, and not video of witness, Rivera, to keep

him hidden from the defense. R at 523,529, 19-21, and R. p.560

Further prosecution misconduct -

4 - stating to the jury by the prosecution, in closing argument, that the sentence of defendant, should he be convicted, would be entirely up to the trial judge, would not necessarily be life imprisonment, knowing full well, the State would multi bill the defendant, if convicted, resulting in a mandatory life sentence, by the trial judge.

5 - failing to provide all criminal records of the victim and those of her boyfriend, said records specifically motioned for in limine by the defense. The prosecution provided one (1) minor legal conviction of the victim, but when the victim testified at trial, she admitted several other criminal convictions. R at 447

6 - Supporting throughout the trial of the case, false testimony of State witnesses, known to be false by the prosecution, relative to drug use by the defendant and the State witnesses. The State knew the defendant to be a crack cocaine user. The State knew the victim and her boyfriend went to defendant's trailer, to obtain and use crack cocaine, but presented them as simple marijuana users, R at 405,586

The State continued to support inaccurate and untrue information of drug use by the victim, throughout the trial.

The State, in its CASE IN CHIEF, over objection by the defense, continued to hide the prospective witness Angel, Rivera, by using the audio recording

only and not a video recording, using in its case in chief. The audio recording of Rivera, supported the false testimony of the victim, Hines. The State was in possession of the past and present cocaine arrests of the defendant, and of the State witnesses, but continued to present the State witnesses, as simple marijuana users. T at 600, lines 17 - 19. (emphasis added)

Law enforcement had the witness Rivera, in interview, knowing the criminal history of that witness, and knowing the cocaine histories of all the parties, including that of the defendant.

Again, the State presented to the jury the 'picture' of the witnesses Darryl Hines and Angel Rivera, as simple marijuana users only, knowing that State witnesses went to the trailer home of the defendant to buy cocaine, not marijuana. 597, T at 11 - 20.

The State knew (must have known, being in possession of all records of all witnesses) and yet, supported and perpetrated throughout the trial, knowing such to be inaccurate and false.(detective) R at 536

This continuing 'hiding' of information relative to the absent Rivera, and the full criminal records of all State witnesses, was a direct violation of *Brady v Maryland*'s requirement of furnishing all information favorable to the defense. R at 529, 9 - 20.

7 - No convictions of prospective witness, Angel Rivera were provided by the State, consistent with the intention of keeping him hidden from and unavailable to the defense -

Conflict of laws

‘a defendant cannot be expected to present a proper defense, and is denied a fair trial when the prosecution withholds evidence which has been requested, and which is favorable to the defendant....although (...need to be material) ...the test of materiality is whether the suppressed evidence ‘might have affected the outcome of the trial’ United States v. Agurs, 427 U.S. 97, (1976), and State v. Marshall, 660 So. 2d 819,826

This information sought by the defense was material, and ‘would’ have been favorable to the defense, and would, it is submitted, not just ‘might’, have affected the outcome of the trial. State v. Marshall, *supra*.

Batson v Kentucky, Racial discrimination

The prosecution, in the selection of the jury members, peremptorily striking African Americans from the petit jury and NO strikes of white jurors in violation of Batson v. Kentucky, 476 U.S. 79 (1986), and the evolved law from this decision - Jabari Williams v State 579 U.S. Sup. Ct ___, and contra, State v Snyder, 227 So 2d 660 (1972),State v Perkins,, 423 So 2d 1103 (1986) .

In SUPPORT of racial discrimination, the record will reveal, other evidence of racial bias by the State, consistent with the racial bias of its preemtory strikes, of African American jurors, (emphasis added) -

1 - the witness Angel Rivera, although probably Puerto Rican, was black in skin color, and the victim white. The State sought, until compelled to do

otherwise during trial, to keep this fact unobservable, by using an audio recording of Rivera's testimony, over objection by the defense. The defense objected to the use of the audio, by the state, as to use of it. in its 'case in chief'. This objection was denied, and the objection was later withdrawn, for defense 'dilemma' reasons, including the inability to even establish the existence of Rivera, (his not being available so as to be seen at the trial, because of the actions of the State) without the audio of him.

2 - The State's 'hiding' this witness, Rivera. (also known as 'Fuller', or the 'guy from New York', the victim, Darryl Hines's boyfriend) through the entire trial was supporting evidence of racial discrimination. The State did not want the jury to see him or be examined, (such would reveal his ethnicity) because seeing him as a black man as boyfriend to the victim as white, would be a negative for the State, initially, it is submitted, to the an all white jury.

3 -The victim, in further evidence of racial discrimination, (when she testified at trial), wore an easily recognized 'southern name' on her sweater, long sleeved, to cover her arms, to promote southern bias. R at p. 458.

4 - As will be further shown, the racial discrimination evidenced by the jury selection preemptory challenges, and the supporting evidence of racial discrimination by the State, are in violation of Batson v Kentucky and its evolved jurisprudence.

Additional Conflict - the Louisiana Code of Criminal Procedure, art 795(C)

does not comply with the Batson jurisprudence.

Under James v. Boise, 577 U.S. ____ (2016), Louisiana, as is any other State, is bound to follow federal law.

Actual discrimination is the ultimate test. It is respectfully submitted, that the prosecution preemptory challenges and the discriminatory actions of the State throughout the trial, as described above, show racial discrimination, and racial prosecution tactics, preventing the defendant a fair trial, absent the 'stench of racial discrimination.' Jabari Williams v State, 579 U.S. Sup. Ct.

_____.

CONFLICT - Petitioner is aware that the concern of the United States Supreme Court is not to correct errors of lower court decisions, but respectfully submits that the lower court decisions in his case are in conflict with the current jurisprudence of this United States Supreme Court .

Errors of trial judge in conflict with existing State and federal law:

It is respectfully submitted, that in addition to the errors cited in defendant's counsel assignment of errors, and motion after trial, the trial judge further erred by not permitting the jury to view a defense witness exhibit, that the jury requested to see (during deliberations) - defense exhibits, Exhibit 7, and 11, displaying nine (9) photographs, showing the defendant's trailer, the location of the victim's residence and place of work, (carnival grounds) and the distances between them. R at p.462, (referenced also as Exhibit 12, R at 419)

The exhibit was used throughout the trial, and made reference to, published, marked as a defense exhibit, but failed to be introduced into evidence at the close of trial. by defense counsel. The trial judge denied over objection of defense, on the grounds that although the exhibit was used throughout the trial, it was 'published' but not introduced into evidence at the close of the trial. State v Passman, 343 So 2d 874, 877 outlines the use of writings not being allowed to be reviewed by a deliberating jury. Nonetheless, since this was an exhibit, not a writing,(as in the Passman case). and since it was indeed 'published' and marked as a defense exhibit, counsel submits it should have be allowed to be seen by the deliberating jury.

This exhibit would further show, among other considerations, the defense allegation that no one saw the victim as injured, during the entire distance of her walk from the defendant's trailer to her trailer. This is a point addressed as to her being injured, later, after her visit with the defendant, by a blow to her face inflicted by her boyfriend, not the defendant hours earlier.

The trial court judge, it is respectfully submitted, allowed state witnesses, to express opinions, without requiring the state to qualify them as expert witnesses, over repeated objections, by the defense R at p 536,548.

The trial judge further erred by allowing, over the objection by the defense, the state to introduce the audio of Rivera, in its 'case in chief'. R at p.529, 9-20.and R p. 530,19-21.

The trial judge further erred by allowing the State to use a video of the

victim to be used to 'support' the victim's live testimony, over objection by the defense. R at p. 542,543, in effect, impeaching its own witness.

The trial judge further erred by not allowing 'speaking objections' T at 534, lines 31,32, and T at 635, lines 1-17, an impairment to the defense, not permitting the jury to hear the reasons for objections made by prosecution and defense. There was no evidence of abuse by either party's objections. This ruling, as the record reflects, the ruling was made simply at the request of the prosecution. T at 534, lines 27 - 29. The defense objected, lines 14, 15.

This ruling was a check on the prosecution, in the prosecution's continued use of repetition and statements containing the answer to its own questions, to witnesses. This ruling eliminated 'a speaking objection' to leading questions, and to basic objections to the long standing basic rule of 'not the best evidence. T at 535.

Ineffective Assistance of Counsel -

Defense counsel submits his own errors.

The surprising testimony of the victim, (and defense counsel's failure to move for a mistrial) when victim testified on cross examination, (to the complete surprise of defense counsel) contrary to information provided by the prosecution, just minutes before trial began, as to the whereabouts of victim's boyfriend, a critical witness for the defense.

Minutes before trial, defense counsel was provided with a date of birth of

prospective witness, Angel Rivera, perhaps this time, a correct date of birth, and avers that he was told that the prosecution talked to the victim, and she told them that she had broken up with Rivera, that she doesn't see him any more, and that she did not know where he was. Yet, on cross examination at trial, when asked about this information that was provided to defense counsel by the State, she responded -

'...that is not true, I speak to him every day, we did not ever breakup, he is in jail in New York.' T at p. 71, and T at 463

Though the record, may not reflect in full, defense counsel should have moved for a mistrial, at this point and failed to do so.

The testimony of the victim, Darryl Hines, clearly shows that the State gave defense counsel incorrect information, purposely or not, for - defense counsel would never have been able to ask that cross examination question, if not so given, just minutes before the trial began. (emphasis added)

Further, the testimony of the victim, also clearly shows, the intent of the State to withhold information from the defense, important to the defense, because the defense version of what happened was - it was the boyfriend that was responsible for the injury to the victim's face.

A photo of same, introduced in evidence by the state, and testified to by the

victim on trial, was so important, (as stated by the trial judge at sentence) as to evidence of the use of force - 'by the defendant'. State Exhibit 8, T at 678, lines 20 - 26.

Defense counsel, argues that, because of the artful delaying tactics, and trustful defense patience, and the court's expectation that the State would eventually fulfill its orders, never had the chance, to summon Rivera, for trial, examine him outright or impeach him (should he become a hostile witness) by cross examination. Or, impeach him by the testimony of at least two defense witnesses. These defense witnesses testified that they saw Rivera abuse the victim many times, by hitting her and in other ways physically pushing and shoving her. These witnesses could have identified Rivera had he been brought to Court. Or, they could have identified him by photographs of him, had the State not hid him or provided the wrong date of birth of Rivera.

Defense counsel, ran the date of birth of Angel Rivera, given by the State, and such produced several photos of a person, with that date of birth. When defense witnesses were shown these photos, telling the truth, they all said, 'no, that's not him'. That testimony was indeed, true, since the photos shown, were not of the real Angel Rivera, boyfriend of the victim. T at 597, lines 29 -32

Subsequent to trial, the date of birth given to defense by the State was run on

the computer, resulting in information that this date of birth, indicates Angel Luis Rivera, among other information, was convicted of Conspiracy to Distribute 5 kilograms of Cocaine. This information of course, is a very significant difference than the Angel Rivera, portrayed by the State, as a simple marijuana smoker. It is submitted, that this information ‘would’ have made a difference in the trial, surpassing ‘might have made a difference in the trial’ requirement as stated in *United States v Agurs*, *supra* .

Through the trial the State continually ‘painted’ an incorrect version of the victim and her boyfriend, Rivera, as simple, ‘not serious’, marijuana users only. Defendant was a cocaine user, as evidenced by his past criminal record, and never used marijuana. The victim and her boyfriend lied about being simple marijuana users, and the State proffered, ‘went along’ with such. R at p. 405/

It is respectfully submitted that the transcript, taken in full, overwhelmingly shows that the victim and her boyfriend went to defendant’s trailer to have a ‘party’ and to use and obtain crack cocaine by pre designed means and intentions. T at 595, line 17 - 20.

Further, that the defendant himself, through the at - its- fingertips, State capability to go to criminal records, would easily show that defendant was a crack cocaine user, and never used marijuana.

- For these reasons, because of errors made in defendant's trial, in conflict with state laws and state and federal law, defendant respectfully requests granting of the writ of certiorari, reversal and remand in this case.

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OPINIONS BELOW -

LOUISIANA SUPREME COURT

217 K1440 Writ Application Denied 5-18-18no written reasons given,, in effect affirming First Circuit Court of Appeal – 2016 KA 1524, and application for Rehearing denied 9-21-18 - - - **LAST ACTION**

COURT OF APPEAL, FIRST CIRCUIT

2016 K a 1524 Rehearing Denied - July 31, 2017

TWENTY SECOND JUDICIAL DISTRICT COURT

563 155 G and 572 397 G

Date of offense 1-18-2014, of conviction 6-23-16, of sentence 8-1-16

JURISDICTIONAL STATEMENT -

This Court's jurisdiction is invoked pursuant to
28 U.S.C. SEC 1257 (a)

CONSTITUTIONAL PROVISIONS INVOLVED

5th and 6TH Amendment, 14th Amendment

STATEMENT OF FACTS

Prosecution version:

The State alleges that on the early morning hours of Jan 18, 2016, at about 5:00 a. m. , the victim, Daryl Hines, a young lady of age ...traveled with her boyfriend, Angel Rivera to the trailer home of the defendant, Alvin Davis, Jr., to purchase marijuana. After arriving at that location, a brief time later, the boyfriend left, leaving the victim alone, with defendant, Davis. The defendant had sex with the victim. The victim alleged that she was forced to do so, when she resisted, and was struck on the left side of her face by the defendant. After the incident she left the defendant's house, and walked to her mobile trailer home, arriving there at about 7:00 a.m. where she waited for the return of her boyfriend. When he returned to their home, later in the day, about 5:00 p.m. after a discussion with him, about the incident at the defendant's trailer home, and because of the boyfriend being wanted by the police, she was taken to the nearby hospital, by a nearby neighbor, where she was examined. A procedure was done at the hospital, wherein was found the seminal fluid of defendant and her boyfriend.

The local police were summoned, and after investigation, the defendant was charged with Rape, later charged after last minute prosecution change, as Forcible Rape. (This last minute change was a prosecution abuse of the legal process, circumventing the court's order to proceed with trial, of have dismissal of the case).

The First Circuit Court of Appeal, in its review of the case, adopted the State's version of the Statement of Facts. And in addition that Court denied the defense Batson challenge. The Court accepted the race neutral reasons for the State challenges, pages 10 to 14.)

As to that court's view of the facts, that the defendant 'punched the victim in the face,' counsel urges the transcript would reveal this to be incorrect. The transcript and all references to the injury to the victim's face show that victim was allegedly struck on the side of her face, a point material as to who struck her, the defendant or the boyfriend.

Defense version (defense version)

Although the defendant did not testify at his trial, he sought to show through witnesses that he did have sex with the victim, but that it was consensual.

See T at 507, line 11, DNA results, showing victim's swabs containing seminal fluid of both defendant AND of her boyfriend, Riv3era.T at 510, lines 19-25. Also, showing which fluid was obtained NOT before or after the alleged encounter with the defendant, line 30,31.

Additionally DNA results, showing no blood on defendants closes tested.
(emphasis added)

Further, he did not hit the victim in the face or force her in any way, claiming it was the boyfriend who hit her, when she returned home, and that it was the boyfriend, Angel Rivera who hit her when she failed to bring

home drugs for them, after having sex for drugs with the defendant. Testimony pf defense witness, Jerry Banks, at T at 597, lines 1 - 32. and T at 598 lines 1- 6.

Evidence of the victim's questionable and false testimony is her reluctance to appear in court, the State having to motion for her arrest as a material witness. T at p. 17.

FURTHER PROCEEDINGS BELOW

ARGUMENT AND INCLUDED MEMORADUM OF LAW

Trial Court -

TWENTY SECOND JUDICIAL DISTRICT COURT, STATE OF
LOUISIANA

After waiting from his arrest on Jan 18, 2014, more than two and a half years for his trial, the matter proceeded to trial on June 20, 2016, and the defendant was convicted on June 23, 2016.

The defense had filed multiple motions for discovery pursuant to Brady versus Maryland, 373 U.S. 83 (1963) and in lieu of written responses allowed, was permitted 'open file discovery', by the State. However, on repeated motions in limine,

(referenced, Court of Appeal docket sheet, notation of filing on 8-3-2016)

to learn the whereabouts of the victim's boyfriend, Angel Rivera, that information was not provided, for various vague, and not understandable reasons by the prosecution, although, all along the prosecution had him as a prospective witness. The police had him on audio tape, they had interviewed him, recorded his statement, yet his whereabouts were consistently hidden from the defense, in violation of its duty to disclose. *Giglio v U.S.* 414 U.S.W. 150 (1972). On the day of trial, the defense repeated its demands for his location, but was told by the state, that they had talked to the victim about him, but that 'she did not know where he was, that they had broken up, and she did not know where he was.'

As previously indicated herein, this turned out to be totally untrue, when the victim took the witness stand, and on cross examination, when asked by the defense that she had broken up with her boyfriend, and did not know where she was, she responded -

'that is not true, I speak to him every day, he is in jail in New York.'

The defense asserts that it was totally surprised at this response of the victim, and that it should have moved for a mistrial at this point. Perhaps, the defense should have, but choose to proceed, with the trial, defendant being incarcerated for so long, awaiting trial. T at p. 71, and T at 463.

STATE LAW IN CONFLICT WITH FEDERAL LAW

The jurisprudence involved here, as refers to reversible error, under Brady v Maryland, in part, requires, that even though error occurred, would the absence of the error have made a difference. The prosecution painted Angel Rivera, as a simple marijuana user, yet it turns out Rivera was convicted. if the last minute date of birth given by the State is correct, of Conspiracy to Distribute Five (5) Kilograms of Cocaine, a fact, among many others, that would certainly have been of interest, and would have made a difference, to the jury. It is submitted that Cocaine, in that large amount has a huge street value, and Rivera's conviction for same, would have certainly made him out as not a simple marijuana user, as portrayed by the State. Additionally, the jury should have has the opportunity to see him, as well as, the defense witnesses who knew him. Brady v Maryland, State v. Hollins, supra, State v Johnson, 544 So. 2d 767 (La. App. 3 Cir. 1989).T at 597, line 32. Defense witness Jerry Banks, further evidences this at T. at 597, lines 9,10,11.

The right to cross examination, is a long established legal right.

Defense counsel should have had the right to examine Angel Rivera, directly, or if hostile, move to have him declared as a hostile witness, and cross examine him, or cross examine him as a right, given that he gave an audio version of what the State presented as pertinent testimony of what occurred in the case as to him and the victim. Crawford v Washington, 541

U.S. 36 (2004), and Davis v Alaska, *supra*.

Fifth Amendment Due Process clause

Sixth Amendment U.S. Constitution. Right to confront and the
Fourteenth Amendment, making such mandatory on the states
Crawford v Washington 541 U.S. 36 (2004) cross examination
Giglio v United States 415 U.S.150 (1972) disclosure of evidence
State v Perkins, 423 So 2d 1103 duty to disclose evidence favorable to
defendant, for fair trial.

The defense filed multiple motions, for relief from the guilty verdict,
including a Motion for a New Trial, Motion Acquittal Not Withstanding the
Verdict. All motions, except the Motion for Appeal, were denied by the Trial
Court judge. T at p. 76.

FIRST CIRCUIT COURT OF APPEAL

The appeal to the First Circuit Court of Appeal, was denied as to all
allegations. reported as case 2016 KA 1524

Racial Discrimination - lower court rulings in conflict with federal law -
Batson v Kentucky, 476 U.S.79, 186 S. Ct.1712 (1986) , and

La C Cr P art 79 (©), Chatman v California. Supra. , and State v Perkins, supra., State of La.. v Johnson, 544 So 2d 767 (La. App 3 Cir. 1989)

The defense objected to the preemptor challenges of the State as to African American jurors, alleging racial discrimination.

The defendant was convicted by an all white 12 person jury, where all African American jurors, but one, were peremptorily struck by the State, (though one black juror, may have been a person of AA descent) was challenged by the defense.

The State only used TWO (2) preemptory challenges, to challenge TWO African Americans, and challenged NO white jurors .R at p. 331, 398.(emphasis added)

The defense challenge of what appeared to be this African American, juror Scott Baham, was made for the reason that he was immediately accepted by the State, giving rise to a defense interpretation, based on previous trial experience, that such a quick acceptance usually means that such a juror has recently and persistently voted for the State (a personal assumption made as a result of counsel's previous trial experiences) .

The defense objected to the State's preemptory challenges of African Americans from the petit jury and to the make up of the entire panel, for having just 3 African American jurors, as the trial judge notes -

'the district court noted thatof the total of44 venire persons that we

occasioned, that 3 appeared tp be of African American descent.

(3 of 44, ...! ...emphasis added by counsel) but again, (the trial judge continues) I did not have themselves identify which would have been helpful in the process also' , page 13, of First Circuit Court of Appeal decision., and R at p.397.

The State challenged juror Dupuy because 'he was an unwed father of two children, and it 'just (did not) like that on 'a jury of this type', having an unwed father.(no race neutral was given, regarding this challenge of this AA juror)

As to juror Rollins, the State struck her because she believed that half of all rape allegations are false, yet accepted juror, Livingston as an alternate, even though she stated she believed half of all rape allegations were false, negating the reason given for the challenge of juror Rollins.

The defense did strike juror Scott Baham, an African American, as previously indicated.

The State had little problem is securing an all white jury, as can be easily seen, by the make up of the entire panel of 44 jurors, that between two petit panels, there were only 3 African American jurors. T at 675, lines 13 – 27; As the district Court noted - 'thee jury process is random

Counsel submits that the preemptory challenges of African Americans were not made on 'race neutral reasons', and also urges other actions cited, by the State, during the entire trial process, that showed racial discrimination, not referred to by the First Circuit Court.

EVIDENCE IN FURTHER SUPPORT OF RACIAL DISCRIMINATION -

As previously indicated - Support of racial discrimination by the State -

- 1- 'hiding' prospective witness Rivera, from the view of the jury by audio testimony, knowing the victim was white and the boyfriend black, giving the wrong date of birth of Rivera, in a continuing effort to keep him hidden from the defense and the jury.
- 2- keeping Rivera hidden. throughout the trial having the victim appear at trial in a long sleeved sweater with a southern identification
- 3 - discreetly taking advantage of the requirement of only a 10 vote for any verdict, and ensuring an all white, or only 1 African American juror, petit jury. T at 675.
- 4 - the prosecution's continual disrespect for the judicial process, and of the trial judge's orders, is evidenced by its not pressing the case against the defendant. the day the case was set for trial, and then re opening the case one day later, to circumvent the trial judge's order to proceed to trial or face dismissal.

Additionally, the continued disrespect of defendant's rights, and indeed disrespect of the court's orders, is also shown throughout the proceedings, from the time of defendant's arrest, to the trial of his case, more than two years later. The original case "563 155 G Twenty Second

Judicial District Court, was not pressed the day of trial, and reopened a day later under case #572 397 G

The trial judge dutifully asked (at a side bar, out of the hearing of the jury) the prosecution why the African American jurors were challenged.

The prosecution gave, vague, flimsy, superficial reasons for these challenges. One reason was that one of the African American jurors was not married, and was an unwed father and the prosecutor 'did not want a non married juror on the panel, because the victim was unmarried (and apparently) not a mother) showing, it is submitted, not 'a race neutral reason', for this strike.

The trial judge heard all prosecution reasons for their strikes and decided that there was no race racial discrimination. R at 396.

The trial judge made no inquiries and no finding as to 'actual' race discrimination. This decision by the trial judge, without inquiry or statement as to whether 'actual race discrimination infected this jury, defense asserts, violates the Batson case rulings, and its evolved jurisprudence, requiring 'actual non discriminatory reasons' for strikes. *Jabari Williams v State, State v Agurs.* supra.

The defense submits that the 'actual reason' for the elimination of the African American jurors, was racial discrimination, as evidenced by the

vague, flimsy, non plausible reasons given by the State, and the supporting conduct of the State in other race oriented actions it used throughout the trial.

Further the use of its preemptory strikes to strike ONLY African Americans, and no white jurors, is clear evidence of race discrimination, (emphasis added)

Additionally, for overall consideration, under Louisiana law the State needs only 10 votes for a guilty verdict (now, 2018, just amended). The State proceeded to strike ALL African American jurors with the possible exception of one, (later struck by the defense for reasons previously given) since even if one juror was an African American, under Louisiana law such would make no difference. One dissenting vote to a guilty verdict would not matter, under Louisiana law. T at 675, lines 24 - 27.(emphasis added) State v Perkins, *supra*.

The verdict was unanimous for guilty, of the charge of Forcible Rape, by the all white 'petit' jury.

CONCLUSION

FURTHER ARGUMENT

AND REASONS THE WRIT SHOULD BE GRANTED

As the Brady v Maryland decision involves the requirement of disclosure of all evidence favorable to the defense, it certainly holds that, for the State to withhold from the defense, the location of an essential witness, the correct information as to the State's knowledge of, date of birth, and location of a witness, moved for repeatedly by the defense, in limine, in writing, is a denial of defendant's right to a fair trial, to due process of law, to the right of cross examination.' U.S. v. Bagley.473 U.S. 667, 676.(1985) State v Agurs. Supra, and in conflict to establish state and federal law.

As to Batson, (by the Court) - ' the racial discrimination is not only harmful to the defendant, but is also harmful to the challenged, excluded juror. Such a 'followed' ... procedures undermine public confidence in the fairness of the judicial system'. - Jabari Williams v State, supra

The record of this case shows the race discrimination by the State, is in violation the Batson holding, and the Constitution, that 'forbids the striking of even a single juror for a discriminatory purpose.' Foster v Chatman, 578 U.S, ____ (2016) .

The prosecution did not show creditable, believable, 'plausible' race neutral reasons for its strikes of African Americans, but 'it does not matter that the

prosecution might have had good reasons; what matters is the real reason (jurors) were stricken...Johnson v California, 545 U.S. 162, 172 (2005). The reasons given by the prosecution for the strikes, were flimsy, vague, superficial and not plausible, and further, it is improper 'to rely on judicial speculation to resolve plausible claims of discrimination. Id. 172, the process used by the trial judge in this case.'

FURTHER CONFLICT OF LAWS

The Louisiana law interpretation as to improper racial discrimination, La Code of Criminal Procedure, article 795(C) and accompanying case law, State v Snyder. *supra*, is contrary to the now established federal law of the 'three step process' of *Batson v Kentucky*, and the evolved law from that case. *Jabari Williams v State*, 579 U.S. Supreme Court ___.(2016), *Miller-el v U.S.*, 546 U.S. 251 (2015).

For these and all foregoing reason, the petition for writ of certiorari should be granted, verdict reversed, and remanded.

Respectfully submitted,



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Mailing - notifications and decisions

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