No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LANDON QUINN, *Petitioner,*
v.
DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent.*

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

APPENDIX A

Caution
As of: June 16, 2019 5:44 PM Z

State v. Quinn

Supreme Court of Louisiana

March 13, 2018, Decided

No. 2016-KP-1285

Reporter
248 So. 3d 1276 *; 2018 La. LEXIS 722 **; 2016-1285 (La. 03/13/18);; 2018 WL 1281335

STATE OF LOUISIANA VERSUS LANDON D. QUINN

Subsequent History: Rehearing granted by, Clarified by *State v. Quinn, 2018 La. LEXIS 1264 (La., May 11, 2018)*

Prior History: [1]** ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS.

State v. Quinn, 123 So. 3d 320, 2013 La. App. LEXIS 1693 (La.App. 4 Cir., Aug. 21, 2013)

Disposition: REVERSED.

Core Terms

eyewitness, shooter, relator's, shootings, hair, second trial, t-shirt, nose, defense investigator, identification, ineffective, photograph, hairstyle, cheekbones, exposed, utilize, twists, neck, probability, covering, appears, booking, walking, arrest, lineup, males, shirt, hole, top, cross-examination

Case Summary

Overview
HOLDINGS: [1]-In a murder case, though defense counsel was ineffective for not using an eyewitness's affidavit to challenge his identification of defendant as the shooter, the trial court erred in granting defendant a new trial because there was no substantial likelihood of a different outcome absent counsel's deficient representation, as the affidavit did not indicate that the eyewitness said the person in the booking photo was not the shooter, but that the shooter had shorter hair than that shown in the booking photo.

Outcome
The trial court's ruling was reversed and defendant's convictions and sentences were reinstated.

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Rights > Criminal Process > Assistance of Counsel

Constitutional Law > Bill of Rights > State Application

HN1[] **Assistance of Counsel**

The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment, provides that the accused shall have the assistance of counsel in all criminal prosecutions.

Constitutional Law > ... > Fundamental Rights > Criminal Process > Assistance of Counsel

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel

HN2[] **Assistance of Counsel**

The United States Supreme Court has long recognized that the right to counsel is the right to the effective assistance of counsel.

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Tests for Ineffective Assistance of Counsel

HN3[] **Tests for Ineffective Assistance of Counsel**

Claims of ineffective assistance of counsel are generally governed by the standard set forth by the U.S. Supreme Court in Strickland v. Washington, and adopted by the Louisiana Supreme Court in State v. Washington. To prevail on such a claim, a defendant must first show that counsel's representation fell below an objective standard of reasonableness. An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error has no effect on the judgment.

Evidence > Inferences & Presumptions > Presumptions > Particular Presumptions

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Tests for Ineffective Assistance of Counsel

HN4[] **Particular Presumptions**

The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the U.S. Constitution. Thus, the defendant must also show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. In making a determination of ineffectiveness of counsel, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that America's system counts on to produce just results.

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Tests for Ineffective Assistance of Counsel

HN5[] **Tests for Ineffective Assistance of Counsel**

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Instead, Strickland asks whether it is reasonably likely the result would have been different. This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. The likelihood of a different result must be substantial, not just conceivable.

Judges: JOHNSON, C.J. dissents and assigns reasons.

Opinion

[*1276] [Pg 1] **PER CURIAM**

After the jury could not reach a verdict in relator's first trial, the jury in relator's second trial found him guilty of two counts of second degree murder in connection with the 2009 shooting deaths of Matthew Miller and Ryan McKinley. On the night of the shooting, an eyewitness told police that they would not find any shell casings because the shooter used a revolver. The following day, the eyewitness identified relator as the shooter from a photographic lineup. The eyewitness testified at both trials and unequivocally identified relator as the shooter.

The convictions were affirmed on appeal. *State v. Quinn, 12-0689 (La. App. 4 Cir. 8/21/13), 123 So.3d 320*, *writ denied*, *13-2193 (La. 3/14/14), 134 So.3d 1195*. After direct review was completed, relator sought post-conviction relief on the ground that, inter alia, counsel rendered ineffective assistance at the second trial by failing to utilize a statement obtained from the eyewitness by a defense investigator. Specifically, the eyewitness told the defense investigator that the shooter's hair was shorter than that depicted in a booking photograph taken at the [Pg 2] time of relator's arrest **[**2]** around 24-48 hours after the shootings. The defense investigator memorialized his interview with the eyewitness in **[*1277]** an affidavit that was provided to counsel, who represented relator in his second trial but did not utilize the affidavit or call the investigator to testify.

The district court granted relator a new trial after conducting an evidentiary hearing. The district court found that counsel at relator's second trial were in

possession of the affidavit and that the defense investigator would have made a compelling witness who could have challenged the strength of the eyewitness identification. The court of appeal denied the state's writ application. *State v. Quinn, 16-0150 (La. App. 4 Cir. 6/10/16), 248 So. 3d 1276, 2018 La. LEXIS 722* (unpub'd). The court of appeal found that the affidavit "strongly suggests that the defendant was mistakenly identified as the perpetrator." *Quinn, 16-0150, p. 2, 2018 La. LEXIS 722*. For the following reasons, we find that the courts below erred in those determinations.

HN1[↑] "The *Sixth Amendment*, applicable to the States by the terms of the *Fourteenth Amendment*, provides that the accused shall have the assistance of counsel in all criminal prosecutions." *Missouri v. Frye, 566 U.S. 134, 138, 132 S.Ct. 1399, 1404, 182 L.Ed.2d 379 (2012)*. ***HN2***[↑] The United States Supreme Court has long recognized that the right to counsel is the right to the effective assistance of counsel. *See McMann v. Richardson, 397 U.S. 759, 771 n.14, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970)* (citing **[**3]** *Reece v. Georgia, 350 U.S. 85, 76 S.Ct. 167, 100 L.Ed. 77 (1955)*; *Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942)*; *Avery v. Alabama, 308 U.S. 444, 60 S.Ct. 321, 84 L.Ed. 377 (1940)*; *Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932))*. ***HN3***[↑] Claims of ineffective assistance of counsel are generally governed by the standard set forth by the Supreme Court in *Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)*, and adopted by this Court in *State v. Washington, 491 So.2d 1337, 1339 (La. 7/18/86)* [Pg 3].

To prevail on such a claim, a defendant must first show that "counsel's representation fell below an objective standard of reasonableness." *Strickland, 466 U.S. at 687-88, 104 S.Ct. at 2064* The Supreme Court further noted that "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error has no effect on the judgment." *Id., 466 U.S. at 691, 104 S.Ct. at 2066*. Additionally, the Court reasoned ***HN4***[↑] "[t]he purpose of the *Sixth Amendment* guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." *Id., 466 U.S. at 691-92, 104 S.Ct. at 2067*. Thus, the *Strickland* court held that the "defendant must [also] show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine **[**4]** confidence in the outcome." *Id., 466 U.S. at 694, 104 S.Ct. at 2066*. The court further explained that in making a determination of ineffectiveness of counsel, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." *Id., 466 U.S. at 696, 104 S.Ct. at 2053-54*.

At the heart of the present case is a purported difference in relator's hairstyle as it appeared at the time of the shootings and 24-48 hours later at **[*1278]** the time of his arrest. Notably, a t-shirt over the shooter's head concealed his hair and the lower [Pg 4] portion of his face at the time of he shootings. The eyewitness, however, indicated that he recognized relator by his nose, eyes, and cheekbones, which were exposed through the neck hole of the shirt. He also indicated that he could perceive beneath the covering that relator's hair was short and tight to his head. In a booking photograph taken 24-48 hours after the shootings, however, relator's hair had short twists. Relator contends counsel's **[**5]** failure to use this discrepancy to impeach the eyewitness's credibility constituted ineffective assistance. Under the circumstances presented here, we disagree with relator's contention.

The first trial began on July 29, 2010. The eyewitness testified that he was in his truck talking on the phone when he saw two white males walking in the area. After the males walked past his vehicle, the eyewitness saw someone else "run up the street real quick" and point a gun at the men. He described that this person—the shooter—had a t-shirt covering his head like a mask, with the shirt covering "the top part of the head, and down, and across like the top part of his mouth." The shooter's cheeks, eyes, and nose were exposed through the neck hole, and he approached from the same direction that the two males had been walking. The eyewitness unequivocally identified relator as the shooter. In describing his lineup identification, the eyewitness stated that what stood out were relator's nose, high cheekbones, and eyes. On cross-examination, defense counsel asked the eyewitness whether relator had the same hairstyle then as he had at trial, to which he replied, "No, he did not." On redirect, the state **[**6]** asked the eyewitness what relator's hairstyle looked like during the shooting. The

eyewitness stated that he could tell relator had a short hairstyle because the t-shirt was pulled tight and the lighting was good where the incident occurred. As noted above, the jury was unable to reach a verdict in the first trial.

Relator was retried on June 14, 2011. The eyewitness testified similarly at [Pg 5] the second trial as he had at the first. He again identified relator as the shooter and described the neck part of the t-shirt as exposing his eyes, cheeks, and nose. On cross-examination, he stated that the shirt "went across the top part of [the shooter's] mouth," and he agreed with defense counsel that he would have seen "essentially above the upper lip to the forehead." Defense counsel also elicited testimony wherein the eyewitness admitted his own criminal history. On redirect, the eyewitness again stated that the distinctive characteristics of relator's face were "[h]is cheekbones, his nose, his eyes, his eyebrows." Neither the state nor defense questioned the eyewitness about the shooter's hairstyle at this trial. Before resting, the state introduced video footage and still photographs **[**7]** from a public crime camera located outside the convenience store the victims visited immediately before the shootings. The state contended this evidence showed relator lurking outside the store just before the shooting. This evidence was not presented to the jury in the first trial. Notably, the person depicted on the crime camera wore his hair in short twists.

There appears to be little dispute that counsel had received the affidavit and should have been aware of its content. Although the state speculates as to why counsel might have strategically decided not to utilize the affidavit or call the defense investigator to testify, it is clear that the affidavit was relevant to the eyewitness identification and no error is apparent in the district court's determination that counsel erred under *Strickland*'s first prong in not utilizing this information. It is **[*1279]** not as readily apparent, however, that there is a substantial likelihood of a different outcome, as required under *Strickland*'s second prong, if counsel had used this information. The United States Supreme Court cautioned in *Harrington v. Richter, 562 U.S. 86, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011)* as follows:

> [Pg 6] *HN5*[] In assessing prejudice under *Strickland*, the question is not whether a court can be certain **[**8]** counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Instead, *Strickland* asks whether it is reasonably likely the result would have been different. This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. The likelihood of a different result must be substantial, not just conceivable.

Richter, 562 U.S. at 111-12, 131 S.Ct. at 791-92 (internal citations and quotation marks omitted).

Here, the eyewitness identified relator from a photographic lineup and testified at two trials. At all times, the eyewitness was adamant that relator was the shooter. He highlighted relator's eyes, eyebrows, nose, and high cheekbones as the distinctive characteristics leading to his identification. He correctly told the police that they would find no shell casings. The surveillance footage from a nearby business also confirmed the eyewitness's account that the shooter ran up with his head and lower face obscured by a white t-shirt, leaving the neck hole to expose the portion **[**9]** of the shooter's face the eyewitness described. It is also significant that the affidavit does not indicate that the eyewitness said the person in the booking photo was not the shooter; the eyewitness simply indicated that the shooter had shorter hair.

Finally, we note that a person with short twists in his hair appears on the surveillance video, and relator had short twists in his hair when arrested 24-48 hours after the shootings. While the affidavit may call into question the eyewitness's ability to accurately discern the style of hair beneath a t-shirt worn over it, the likelihood of a different result if that information had been used at trial appears conceivable but not substantial, and is insufficient to undermine confidence in the outcome of the second trial. Therefore, we reverse the district [Pg 7] court's ruling that granted relator a new trial and we reinstate relator's convictions and sentences.

REVERSED

Dissent by: JOHNSON

Dissent

JOHNSON, C.J. dissents and assigns reasons.

I cannot find the district court abused its discretion in granting the defendant's application for post-conviction

relief and ordering a new trial. In my view, defense counsel failed to investigate, research, or properly prepare **[**10]** defendant's case in light of the obvious problems with the identification of defendant as the perpetrator. Thus, I would affirm the ruling of the district court granting defendant a new trial.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LANDON QUINN, *Petitioner,*
v.
DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent.*

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

APPENDIX B

State v. Quinn

Supreme Court of Louisiana

May 11, 2018, Decided

No. 2016-KP-1285

Reporter
2018 La. LEXIS 1264 *; 2016-1285 (La. 05/11/18);; 2018 WL 2187861

STATE OF LOUISIANA VERSUS LANDON D. QUINN

Notice: THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE FOURTEEN DAY REHEARING PERIOD.

Prior History: [*1] ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS.

State v. Quinn, 2018 La. LEXIS 722 (La., Mar. 13, 2018)

Core Terms

cross-application, supervisory, clarifying, relator's, assigned, reasons, unpub'd, writs, moot

Judges: JOHNSON, C.J. would grant.

Opinion

PER CURIAM

Rehearing granted for the limited purpose of clarifying that the matter is remanded to the court of appeal to consider the claims raised in relator's cross-application for supervisory writs that were rendered moot by that court's denial of the state's writ application in *State v. Quinn*, 16-0150 (La. App. 4 Cir. 6/10/16) (unpub'd).

Dissent by: JOHNSON

Dissent

[Pg 1] **JOHNSON, C.J.** would grant rehearing for the reasons assigned in my original dissent.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LANDON QUINN, *Petitioner,*
v.
DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent.*

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

APPENDIX C

Neutral
As of: June 16, 2019 5:46 PM Z

State v. Quinn

Supreme Court of Louisiana

March 18, 2019, Decided

NO. 2018-KP-1103

Reporter
265 So. 3d 760 *; 2019 La. LEXIS 814 **; 2018-1103 (La. 03/18/19);

STATE OF LOUISIANA VS. LANDON D. QUINN

Prior History: [1]** IN RE: Landon D. Quinn; - Defendant; Applying For Supervisory and/or Remedial Writs, Parish of Orleans, Criminal District Court Div. D, No. 489-027; to the Court of Appeal, Fourth Circuit, No. 2016-K-0150. ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT, PARISH OF ORLEANS.

State v. Quinn, 123 So. 3d 320, 2013 La. App. LEXIS 1693 (La.App. 4 Cir., Aug. 21, 2013)

Core Terms

fully litigated, reasons, successive application, post-conviction, assigned, circumstances, collateral, envisions, exhausted, mandatory, applies, filings, minute

Judges: Jefferson D. Hughes, John L. Weimer, Greg G. Guidry, Marcus R. Clark, Scott J. Crichton, James T. Genovese. JOHNSON, C.J., would grant and assigns reasons. JOHNSON, C.J., would grant for reasons assigned in my previous dissent in State v. Quinn, 16-KP-1285.

Opinion

[*760] Denied.

PER CURIANI:

Denied. Relator's claims were fully litigated on direct review. *La.C.Cr.P. art. 930.4*.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, *see* *28 U.S.C. § 2244*, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in *La.C.Cr.P. art. 930.4* and within the limitations period as set out in *La.C.Cr.P. art. 930.8*. Notably, the legislature in *2013 La. Acts 251* amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with *La.C.Cr.P. art. 930.6*, and this denial is final. Hereafter, unless he can show that **[**2]** one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

JOHNSON, C.J., would grant for reasons assigned reasons.

[*761] **JOHNSON, C.J.**, would grant for reasons assigned in my previous dissent in *State v. Quinn*, 16-KP-1285.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LANDON QUINN, *Petitioner,*
v.
DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent.*

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

APPENDIX D

NO. 2016-K-0150

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

LANDON D QUINN

IN RE: STATE OF LOUISIANA

APPLYING FOR: SUPERVISORY WRIT

DIRECTED TO: HONORABLE CALVIN JOHNSON
CRIMINAL DISTRICT COURT ORLEANS PARISH
SECTION "D", 489-027

WRIT DENIED

The State seeks supervisory review of the district court judgment granting the defendant's application for post-conviction relief and ordering a new trial.

The defendant, Landon D. Quinn, was arrested less than twenty-four hours after the crime. His arrest photo shows his hair in dreadlocks or twists. Because he was charged with first degree murder, the Capital Defense Project (CDP) was appointed to defend him and a CDP investigator, Carmac Boyle, interviewed Zaid Wakil, the State's only witness in this case. Shortly thereafter, the charge was reduced to second degree murder and two Orleans Parish public defenders (whose felony caseloads far exceeded the ABA recommended maximum) were appointed to represent him. The defendant's first trial ended with the jury unable to reach a verdict; he was found guilty as charged after the second trial. Mr. Wakil testified

at both trials; no murder weapon or tangible physical evidence connecting the defendant to the crime was found or presented to the jury.

Mr. Boyle testified at the hearing on the defendant's post-conviction hearing and by sworn affidavit that when he interviewed the witness, Mr. Wakil told him that the perpetrator had "short hair, tight to his head" and "did not have twists in their hair or anything like that." Mr. Wakil insisted he could tell the perpetrator's hair was short and tight to his head "because he could see some of the hair and also because he has a wife and daughters who wear head coverings and that due to this he can tell what type or style a person's head would be . . ." As observed by the district court judge in his written reasons[1] for granting post-conviction relief, this information – in light of the defendant's arrest photo taken within 24 hours of the crime and showing the defendant's hair in dreadlocks or twists – strongly suggests that the defendant was mistakenly identified as the perpetrator. Nonetheless, although Mr. Doyle conveyed this information to one of the defendant's OPD attorneys, the attorney never forwarded that information to his co-counsel, never contacted Mr. Doyle, never called him to testify at trial, initiated no independent inquiry into the issue, and no evidence pertaining to the defendant's hair was brought to the jury's attention during the second trial either in direct or cross-examination. Similarly, although defense counsel filed a motion to suppress the identification, it was not heard until the day of the first trial and, thus, not used to develop information to support a mistaken identity defense. As the district court judge observed in his written reasons, although the defendant's identity as the perpetrator was clearly problematic in this case, defense counsel failed to investigate, research, or properly prepare the defendant's case even waiting until

[1] Because the December 14, 2015, transcript of the district court rulings clearly indicated that the judge intended to supplement his oral ruling with written reasons for judgment and the written judgment issued on January 8, 2016, reiterated that intention, this court issued a request on April 18, 2015, that the district court judge submit a *per curiam* stating his reasons for judgment. The

the day of the trial for the hearing on the pre-trial motion to suppress the identification, a crucial element in preparing a defense based on mistaken identity. Accordingly, based on the evidence and specific circumstances of this case, the district court judge found that the defendant's trial counsel failed to perform as counsel guaranteed by the Sixth Amendment and that this deficiency deprived the defendant of a fair trial.

After review of the State's writ application (with record, including trial transcript, submitted as exhibits to the writ application) in light of the applicable law, the arguments of the parties, and the district court judge's *per curiam* outlining his reasons for judgment, we do not find that the district court erred in its application of the law or abused its discretion in granting the defendant's application for post-conviction relief and ordering a new trial. *See State v. Wells,* 08-2262, p. 4 (la. 7/6/10), 45 So.3d 577, 580 (extremely heightened deference to trial court is rooted in limits of appellate jurisdiction set forth in La. Const. art. 5 §10 (B) which provides: "In criminal cases, [an appellate court's] jurisdiction extends only to questions of law); *State v. Love,* 00-3347, pp. 9-10 (La. 5/23/03), 847 So.2d 1198, 1206-1207 (setting forth that the complementary roles of trial courts and intermediate appellate courts require deference to a trial court's discretionary decisions); *see also State v. Thomas,* 13-0816, p. 8 (La. App. 4 Cir. 3/19/14), 138 So.3d 92, 97 ("If trial judge applied the proper legal principles, we then review discretionary decisions in her ruling for abuse."); *State v. Lawson,* 13-0812, p. 6 (La. App. 4 Cir. 11/20/13) 129 So.3d 792, 796-797 (2013) (citations omitted) (a trial court's exercise of its discretion is entitled to our deference unless its ruling is based on an erroneous view or application of the law). Accordingly,

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district court judge complied on May 13, 2017, detailing the facts and analysis underlying his ruling.

the State's writ application is denied. In addition, the defendant's cross-application for supervisory writ is dismissed as moot.

New Orleans, Louisiana this 10th day of June, 2016.

JUDGE EDWIN A. LOMBARD

TOBIAS, J., CONCURS AND ASSIGNS REASONS

JUDGE MAX N. TOBIAS, JR.

JUDGE MADELEINE M. LANDRIEU

STATE OF LOUISIANA	*	NO. 2016-K-0150
VERSUS	*	COURT OF APPEAL
LANDON D QUINN	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
	*	

* * * * * * *

TOBIAS, J., CONCURS AND ASSIGNS REASONS.

I respectfully concur. However, I note that the issue is exceedingly close as I explain as follows.

Notwithstanding the reasons for judgment issued by the trial court on 13 May 2016, months after its hearing and ruling, I find that a reasonable argument can be made that would support the state's position.

The defendant/respondent, Landon Quinn, stands convicted of the second degree murders of Matthew Miller and Ryan McKinley and is serving two terms of life imprisonment without benefit of parole, probation, or suspension of sentence. His conviction arises out of a second trial, his first trial having ended in a hung jury. This court affirmed his convictions and sentences. *See State v. Quinn*, 12-0689 (La. App. 4 Cir. 8/21/13), 123 So.3d 320, *writ denied*, 13-2193 (La. 3/14/14), 134 So.3d 1195.[1]

On 11 March 2015, Quinn filed an application for post-conviction relief, wherein he asserted allegations of ineffective assistance of counsel: limitation of

[1] In his original appeal, Quinn raised the following assignments of error: (1) the trial court erred by limiting defense counsel's cross-examination of state's witness Zaid Wakil; (2) the evidence was insufficient to support the verdicts; (3) the trial court erred by denying the motion to suppress the identification; (4) the trial court erred by denying the motion for new trial based upon newly-discovered evidence; (5) the non-unanimous verdicts violated Quinn's Sixth Amendment rights; and (6) his mandatory life sentences were excessive. All of his claims of error were rejected.

the cross-examination of Zaid Wakil ("Wakil"), which this court found to be harmless, was indeed not harmless; the evidence was insufficient; the identification by Wakil was unreliable; his sentences were excessive; and he was factually innocent of the murders. On 30 June 2015, Quinn, by a supplemental application, raised another allegation of ineffective assistance of counsel. The court granted an evidentiary hearing on 19 November 2015, permitting the testimony of but one witness. Following the hearing, the trial court granted post-conviction relief and ordered a new trial. The state filed its writ application and Quinn filed his response and cross-application.

In its 13 May 2016 reasons, the trial court held that it was granting relief to Quinn because of the testimony of Wakil, the sole eyewitness who identified him as the shooter, finding that Quinn's counsel was ineffective in regards to Wakil's testimony. Thus I limit my discussion.

On appeal, this court found the following regarding Wakil's testimony:

> Zaid Wakil was parked on Barracks Street around 8:30 p.m., waiting for the mosque to open on the night of the shooting. Mr. Wakil recalled seeing a white male walk past his car, and about five minutes later, he saw another white male walk past his car. About five minutes later, Mr. Wakil saw both of the men walking together. However, a man with a t-shirt pulled over his head ran towards the two men and pulled a gun on them. The two men turned around and appeared nervous. Mr. Wakil heard the perpetrator say something like "give it here," or "give it up." He heard one of the two victims tell the perpetrator to "calm down" or "be cool," but the perpetrator continued to point the gun at the victims and robbed them. Mr. Wakil could not see what was taken, but he could see the gun, a black revolver. Mr. Wakil identified the perpetrator as Mr. Quinn in court. Mr. Wakil heard Mr. Quinn fire the gun three times and then Mr. Quinn ran off. The victims checked each other and then staggered down the street. Mr. Wakil did not realize that they were injured, as he assumed that Mr. Quinn only fired shots to scare them.

> Mr. Wakil then went into the mosque where he encountered Mr. Ali. He spoke with Mr. Ali about the incident. Both men heard the sirens and saw the lights of emergency vehicles at the end of the street. Mr. Wakil witnessed the aid being rendered to the victims. While the NOPD was investigating the scene, Mr. Wakil indicated that an NOPD officer instructed him to leave the area while the crime scene was being cordoned off. Mr. Wakil observed a second NOPD officer with a flashlight looking for bullet casings. Mr. Wakil told the police officer that he was not going to find bullet casings because the perpetrator used a revolver.
>
> Mr. Wakil then reentered the mosque and prayed. However, when finished with the prayer service, one of the NOPD officers was waiting for him. The NOPD officer inquired whether he witnessed the shooting, and Mr. Wakil responded affirmatively. The NOPD officer asked Mr. Wakil if he wanted to speak to the detective. At that time, a bystander to Mr. Wakil's conversation with the NOPD officer warned him about talking to the police. The bystander warned Mr. Wakil that the perpetrator could come back with a change of clothes and stand in the crowd to observe who was talking to the police. Mr. Wakil then said that he would not talk to the detective at the scene. Instead, Mr. Wakil gave his number to the NOPD officer and requested that the detective phone him.
>
> Mr. Wakil stated that he met with Detective Orlando Matthews at a later date. He was presented with a photographic lineup, selected the photograph of Mr. Quinn as being the perpetrator, and signed the back of the identification.[2]

With respect to the ineffective assistance of counsel claim relating to Wakil, the trial court concentrated on defense counsel's failure to call an investigator for the Louisiana Capital Assistance Center ("LCAC"), Cormac Boyle, who the defendant argues could have impeached Wakil's identification of him as the perpetrator.

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[2] During his cross-examination Wakil's credibility was attacked. He was confronted with several prior convictions dating back to 1990, including his failure to return a rental vehicle, burglary, drug violations, receiving stolen property, and criminal conspiracy. Wakil did not dispute his past convictions.

In addressing a claim of ineffective assistance of counsel, as has been said many times by the appellate courts of this state, a reviewing court must determine if the defendant met the two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984). Under this test, a defendant must show *both* that his counsel's performance was deficient *and* that this deficiency prejudiced him. A defendant must show that counsel made errors so serious that counsel was not functioning as the counsel guaranteed to the defendant by the Sixth Amendment. In order to show prejudice, the defendant must prove that the errors were so serious that he was deprived of a fair trial. To carry his burden, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Moreover, hindsight is not the proper perspective for judging the competence of counsel's trial decisions. Neither may an attorney's level of representation be determined by whether a particular strategy is successful. If trial counsel's actions fall within the ambit of trial strategy, such does not establish ineffective assistance of counsel. Further, per La. C.Cr.P. art. 930.2, a defendant has the burden of showing that he was entitled to relief based on the claims he raises in his application for post-conviction relief. [Citations and indication of quotations omitted.]

The defendant's first allegation of ineffective assistance of counsel concerns a statement that Wakil made to Cormac Boyle, an investigator with the LCAC. Because Quinn was potentially facing the death penalty, LCAC was appointed to represent him. Boyle interviewed Wakil approximately two months after the murders. At that interview, Wakil told him that the shooter was wearing a white t-shirt pulled up over his head, but the neckline was open, and he was able to see the shooter's cheekbones, eyes, and part of his hair. Wakil described the hair as "short, and tight to his head," indicating that he knew this because his wife and daughter

wore head coverings, and he was able to tell from the way the t-shirt lay on the shooter's head that his hair must have been short, without twists. Wakil said that the police showed him a photographic lineup, and at first he told the officer that the photographs in the lineup were too light, but the officer told him that the lighting was due to the use of a flash. Wakil told Boyle that after he chose the photograph of the man whom he believed was the perpetrator, he asked the officer if he chose the right person, and the officer replied that the person he chose was who people in the neighborhood said was the murderer. Boyle then showed Wakil the defendant's booking photograph for the present case, and Wakil responded that he was not shown that photograph, and that the person in that photograph had longer hair than what he saw the night of the shooting.

At the post-conviction hearing/trial, Boyle testified to the above and identified his notes from their meeting and an affidavit that he prepared three months after the meeting and five months after the murder. He stated that he intended to contact Wakil again to get a written statement from him, but he never did so. When the defendant was indicted for second degree murder, LCAC withdrew, and the court appointed the Orleans Public Defender ("OPD") to the case. The file was sent to OPD, along with Boyle's affidavit. Boyle identified an email that he sent in September 2009 to Scott Sherman ("Sherman"), one of the defendant's co-counsel, attaching the affidavit and the booking photograph that he showed to Wakil. He stated that Sherman acknowledged getting the email, but he did not hear back from Sherman. Boyle stated that he did not send a similar email to Keith Hurtt ("Hurtt"), the defendant's other co-counsel. Boyle asserted that he would have been available to testify at trial, but neither counsel contacted him to do so.

On cross-examination, Boyle testified that he did not know why he did not take a signed statement from Wakil when he interviewed him. When asked if,

before speaking to Wakil, he had reason to believe that the defendant had changed his hairstyle around the time of the murder, Boyle replied: "It does sound like yes, if I recall correctly, but I can't say about the timing." He identified Quinn's booking photograph from his arrest for the murders, dated 16 April 2009, and the booking photograph, dated 13 March 2009, used in the photographic lineup; while the defendant's hair was in twists in the later photograph, it was not in the earlier photograph. After Boyle admitted that Wakil described the shooter as slim and about six feet tall, the state introduced the arrest register from this case, which showed the defendant's weight as 160 pounds and his height as 6'0". Boyle admitted that Wakil was close enough to the shooting to see that the weapon was a revolver, and he admitted that Wakil never told him the photograph he showed him was not that of the shooter.

Quinn produced an affidavit from Sherman, who acknowledged therein that he had received the email and its attachments from Boyle, but he did not use them, nor did he inform Hurtt about the email. He attributed his failure to call Boyle at either the first or second trial to unintentional oversights due to his heavy caseload at the time that he represented the defendant. The defendant also produced an affidavit from Hurtt, mostly identical to that of Sherman, wherein he stated that he did not become aware of Boyle's affidavit until December 2014, and he never spoke with Boyle.

Obviously, the state now argues that the trial court erred by granting relief upon this basis. It points out that Quinn did not present evidence to show that counsel would have called Boyle to the stand. Indeed, it points to the first trial, when counsel strenuously objected to Wakil's reference to his conversation with somebody who worked with "a non-profit organization," which he called the Indigent Defender Program, while testifying about the perpetrator's hairstyle. After a bench conference, Wakil testified that the investigator tried to show him a

photograph of a person with a different hairstyle, apparently the booking photograph that Boyle showed him. The state further asserts that had Boyle been allowed to testify concerning his conversation with Wakil, his testimony could have revealed that the defendant had been booked for an unrelated crime prior to the murders; others in the neighborhood believed the defendant was the shooter; the defendant changed his hairstyle at some point near the time of the murders; and Wakil's statement to Boyle corroborated his account of the murders and his opportunity to view the murders that he gave to the police and at both trials. The state also asserts that Wakil's statement to Boyle was not inconsistent with Wakil's testimony at trial, and thus Boyle's testimony could not be used to "impeach" him.

In my view, the state's arguments are significant. Wakil consistently described the perpetrator in his statement to the police, his statement to Boyle, and his testimony at both trials. The only "inconsistency" to which Boyle could have testified was as to the perpetrator's hairstyle. Wakil testified that although the shooter's hair was covered with the t-shirt, he believed that it was "tight to his head" because he could see a little of it protruding from the opening near the shooter's face, and he knew what hair looked like under a head covering because his wife and daughter wore coverings. However, even though Wakil told Boyle that the police never showed him the booking photograph depicting Quinn with twists in his hair, Wakil did not tell him that the man in the photograph that Boyle showed him was not the perpetrator. Instead, Wakil told Boyle that he was able to identify the defendant because of his eyes, nose, and cheekbones. Moreover, the fact that the lineup shown to Wakil did not contain his booking photograph from this case is immaterial because the lineup could not have contained that photograph, as Wakil saw the lineup before the defendant was arrested and booked. Therefore, at most Boyle could have only testified that Wakil told him

that the shooter did not have hair in the same style as the defendant's was when he was booked two days after the murder.

As noted by the state at the second trial, it was able to introduce footage from the city's crime cameras showing the front of the convenience store where the victims had picked up food just prior to the murders. The footage shows the defendant standing outside the store and one of the victims exiting just prior to the murders. Unlike the first trial where this footage was unavailable, the jury at the second trial was able to see the defendant in the area of the murders just prior to the shooting.

In his response in this court, Quinn reiterates the inconsistency of the hair length and style. He also points to Wakil's statement to Boyle that he told the officer that the skin tones of the men in the lineup were too light, and the officer told him to ignore the skin tones. However, what Boyle testified to was that Wakil told him was that when he made this statement, the officer told him that all of the skin tones could have been light due to the use of a flash when the photographs were taken. The fact remains that Wakil told Boyle that he recognized the shooter from his eyes, nose, and cheekbones, which he was able to see through the neck opening in the t-shirt.

I find that the defendant met his burden of showing that any "error" in not calling Boyle at trial cast doubt on the jury's verdict, *but just barely*, and then by giving deference to the trier of fact who heard the testimony of a live witness. That is, I cannot say to a certainty that the trial judge abused his discretion. At most, Boyle could have shown that at the time of booking, Quinn's hair was in short twists, a hairstyle that he did not have a month previously when the photograph used in the lineup was taken. Boyle admitted that he "probably" knew that the defendant had changed his hairstyle at some time around the murder. Despite this "inconsistency," Wakil's description of the perpetrator remained consistent, and it

is somewhat questionable to see how any "impeachment" of Wakil's testimony with Boyle's account of their conversation would have rendered his identification unreliable. Thus, one can reasonably argue that Quinn failed to show the requisite prejudice from counsel's failure to call Boyle, and therefore has failed to show that counsel was ineffective.

In his supplemental post-conviction application, Quinn alleged that counsel was ineffective for failing to impeach Wakil with evidence of his (Wakil's) charges in Arizona that occurred between the defendant's first and second trials and that resulted in convictions a few weeks before the defendant's second trial for transportation of narcotic drugs for sale and possession of narcotics drugs for sale.[3] Quinn asserted that had counsel questioned Wakil about these Arizona convictions, he could have used these convictions to impeach Wakil at the second trial.

I do not find this evidence would have so damaged Wakil's credibility that the jury would have disbelieved his identification of Quinn as the shooter. The transcript of the defendant's second trial shows that while the parties were aware that Wakil had pending charges in Arizona, no one was sure if there had been a disposition of these charges. Nonetheless, defense counsel elicited Wakil's admission that he had several earlier felony convictions: a 2009 conviction in North Carolina for the failure to return a rental vehicle; a 1995 Pennsylvania drug conviction; 1991 Pennsylvania convictions for receiving stolen property, burglary, and criminal conspiracy; and a 1990 Pennsylvania conviction for burglary. I find it unlikely that two more drug convictions would have so tipped the scale that the jury would have discounted Wakil's identification of Quinn. In addition, because the "pending" charges were from Arizona, I find no indication that the disposition of these cases was due to any promises made by the state in this case. Indeed, the

[3] The defendant also pointed out that Wakil was convicted in 2015 in federal court for conspiracy to possess with the intent to distribute cocaine and for possession with the intent to distribute

documents produced by the defendant show that the court found Wakil guilty of both counts; there is no indication of a plea agreement in that case.

Moreover, the defendant raised a similar issue on appeal, that being the trial court's failure to allow counsel to question Wakil about the "pending" drug charges in Arizona and about his 2007 Virginia misdemeanor obstruction of justice. The state conceded that counsel should have been allowed to question him about these charges; this court agreed, but found that the error was harmless.

Thus Quinn failed to show prejudice from counsel's failure to question Wakil about the Arizona drug convictions.

Ultimately, I am not absolutely convinced that the trial judge abused his discretion. And so, I concur.

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cocaine. However, because these convictions arose long after trial, it is difficult to see how counsel was ineffective for failing to question him about them.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LANDON QUINN, *Petitioner,*
v.
DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent.*

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

APPENDIX E

APPENDIX E

NO. 489-027

LANDON D. QUINN

VERSUS

STATE OF LOUISIANA

WRITTEN REASONS FOR THE COURT'S RULING

La. Code of Professional Conduct 1.1(a) states;

> **A lawyer shall provide competent representation to a client. Competent representation requires the legal skill, thoroughness and preparation reasonably necessary for the representation.**

What this case comes down to is whether Quinn received what our code of conduct demands; simply stated did Quinn have a lawyer equal to the strictures of La. Code of Professional Conduct 1.1.?

The Answer is no.

For the reasons cited herein this Court grants the Application for Post-Conviction Relief (APR).

FACTS:

At approximately 8:30 p.m. on April 14, 2009, Matthew Miller and Eyan McKinley were robbed and shot in the 2000 block of Barracks St. after purchasing a sandwich and soda at a nearby convenience store. Both succumbed to their wounds. The following afternoon, April 15, 2009, eyewitness Zaid Wakil identified the defendant in a six-person photographic lineup as the perpetrator. The defendant was arrested at 7:40 p.m. that night at his home at 2917 General Taylor...[1]

Landon Quinn was tried twice. He was represented in both trials by Keith Hurtt and Scott Sherman. At the first trial the jury could not reach a verdict. At the second trial, a less than unanimous jury returned a verdict of guilty as charged.[2]

In the first trial the State did not offer certain evidence including a video purportedly showing Landon Quinn at the scene of the crime. The video was fuzzy black and white and about three seconds in length. In both the first and second trial the State called a single eye witness Zaid Wakil. In fact the State called eleven witnesses. The other evidence produced by the State was either evidence that a crime happened or pictures and video of African American males in white tee shirts. In the State's response to the APR the State discussed the

[1] STATE'S RESPONSE ON THE MERITS TO DEFENDANT'APPLICATION FOR POST CONVICTION RELIEF

[2] There is some debate as to whether the verdict was non-unanimous. However counsel for Quinn stated in an affidavit...App., Exh. 5 and 6 that the verdict was 10-2, which was verified by Quinn's trial lawyers.. In an affidavit Mr. David Pipes, who tried the case, for the State couldn't remember if it was a 10-2 verdict but stated that "I do recall being surprised by how fast the jury returned the guilty verdict" Pipes affidavit State's PCR Exh 5. See discussion infra.

testimony of each of its witnesses. Two witnesses, Detective McCleary[3] and Zaid Wakil testified directly as regards Landon Quinn.[4]

Available to counsel for Mr. Quinn in the first trial was evidence that could have been used to Impeach Mr. Wakil. It was not used at the first trial nor was it used in the second trial.[5]

The evidence consisted of Carmac Boyle an investigator hired by the Capital Defense Project as Landon Quinn originally was charged with first degree murder. Mr. Boyle interviewed Zaid Wakil, Zaid is spelled Said in the affidavit. In Mr. Boyle's affidavit he states that Wakil said the perpetrator, a black male, ran up to the victims with a white t-shirt around his shoulders and over his head. He did not have twist[6] or anything like that and he was around 6 feet tall. His clothing consisted of a white t-shirt, a black t-shirt under the white one and loose black jogging pants with a white stripe down the side. Wakil's hair description was short hair tight to the head.[7]

Quinn's PCR Attorneys focused on the description of the style of hair and the difference between defendant's hair style at the time of arrest and the description given by Wakil.

In the affidavit Carmac Boyle writes,

> ***When asked further about what the person who did the shooting looked like, Said (Wakil) stated that he could tell the person had short hair, tight to their head. He stated that the person did not have twists in their hair or anything like that[8]. He said, he could tell this because he could see some of the hair and also because he has a wife and daughters who wear head coverings and that due to this he can tell what type or style a person's hair would be...[9]***

At the photo lineup Officer McCleary showed Wakil six photos. Wakil expressed concern as regards the skin color of the guys in the lineup, they were light. Det. McCleary told him to ignore that. In the affidavit Wakil states he knew he picked the right one out because the Detective told him that everyone in the neighborhood said he did it.[10]

Carmac Boyle testified at the October 15, 2015 Post Conviction Review Hearing. Mr. Boyle's testimony included his qualifications. He had graduate law degrees from the University of Law England and Wales and Loyola Law School New Orleans. His experience as an investigator included more than 15 preliminary investigations ten or more case investigations and three or four consults.[11]

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[3] Det. McCLeary was not crossed examined in either the first or second trial. First trial transcript July 10, 2010 P. 61. Second trial transcript June 14 , 2011 p.117

[4] STATE'S RESPONSE ON THE MERITS TO DEFENDANT'S APLLIATION FOR POST CONVICTION RELIEF

[5] Ibid...There is no issue as regards whether Quinn's trial lawyers were in possession of the available evidence.

[6] When Quinn was arrested his hair was in dreadlocks or twist.

[7] In the first trial Wakil testified that shooter **had a short hair style** Trial transcript 7/29/10 p. 104. **In the second trial Wakil did not testify about the shooter's hair**...Trial transcript 6/14/11

[9] Defense Exhibit 2 Affidavit Carmac Boyle dated September 15, 2009...p 2 second paragraph

[10] Ibid...p 2 third paragraph

[11] In

short before a jury Mr. Boyle would make a compelling witness.

He was a witness never called. Mr. Sherman Quinn's attorney by way of an affidavit affirmed that although he received Boyle's email and responded to it, he did not forward it to Keith Hurtt[12] nor did he utilize the information provided by Boyle in any way.[13] The State has never questioned whether in fact Mr. Sherman and Mr. Hurtt had Carmac Boyle's affidavit.[14]

Let's review. These are the things we know.

We know that Matthew Miller and Eyan McKinley were robbed and killed.

We know no murder weapon was found, no tangible evidence of guilt was found and one witness testified directly as to the guilt of Quinn.

We know Quinn was arrested less than 24 hours after the crime.

We know that Quinn's hair was in dreadlocks or twists.

We know an arrest photo was taken of Quinn.

We know that the State submitted evidence that showed a crime happened and evidence the State depicts as showing Quinn in the area where the crime happened.

We know that Carmac Boyle interviewed the State's only witness.

We know that Quinn's Lawyers didn't call Carmac Boyle as a witness for Quinn.

We know that Quinn was tried twice.

We know the first trial ended without a Verdict.

We know the second trial ended with a guilty verdict.

We know the State's only witness described a man with short hair.[15]

We know the jury was presented no evidence as regards hair in the second trial.[16]

We know Carmac Boyle would have testified that the State's only witness stated that not only did the perpetrator have short hair but because of his ethnicity Wakil had a unique ability to detect hair length.[17]

What didn't Quinn's Lawyers do? They did not prepare their case. Based on what was known; the defense is obviously mistaken identification. That defense can include alibi but the known facts dictate the *defense*.[18]

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[12] In Quinn's exhibit C was a copy of an email dated Sept 17, 2009, to Mr. Sherman...attached was Boyle's affidavit

[13]

[14] State's Response on the merits to Defendant's application for post-conviction relief

[15] Trial transcript from the first trial July 10, 2010 at p. 104.

[16] The State did not ask Wakil anything about hair. Quinn's attorneys did not ask Wakil anything about hair. Neither the State nor Quinn's attorneys ask Det. McCleary anything about hair. Det. McCleary was not cross examined at either trial.

[17] Ibid fn 6.

[18] In a criminal defense you should be able to tell what the defense is from Jury selection forward. At that early stage the potential jurors can be informed that the judge will read a special jury instruction that will include the **accuracy of the prior description**...that is the law. Therefore Jurors you will be told that as a matter of law you are to consider the accuracy of the prior description. The opening statement is structured around the same...the ethnicity of the only state witness...**the opportunity to view**...**the degree of attention** and **any corrupting influences**...However this court understands and recognize that there are instances in a criminal defense case because of facts presented there is no viable defense. This was not one of those instances.

How do you go forward with the defense of mistaken identification? The starting point is *Neil vs. Biggers 93 S. Ct. 375* and *Manson vs. Brathwaite 97 S.Ct. 2243.*

The lynch pin is the accuracy of the prior description.

The State in its response to the PCR points out that the defendant changed his hairstyle. He changed his hairstyle from the hair style of the black male in the fence post video. The State argues that he changed his hairstyle within the 23 hours between the murder and his arrest. He changed his hairstyle to conceal his identity. The problem with that is their witness described a perpetrator with short hair and their witness was an expert in hair length. But it gets better. The one thing the perpetrator knew is that his hair style was undetectable because his head was covered. In the 23 hours following the crime the one thing he would not have to do is change his hairstyle.

Quinn's lawyers did not prepare their case.

Quinn was arrested April 15 2009. On July 29, 2010, the day of the first trial, Quinn's a hearing held was on the motion to suppress the identification.[19] Quinn's lawyers asked no questions of Wakil as regards his degree of attention at the time of the crime.[20] Had the Lawyers prepared their case they would have known at the first trial the fact that he was on the phone talking to a friend in Delaware.

Q. And, while you were waiting in your truck what were you doing?
A. Talking on the phone.
Q. Okay. And who were you talking to?
A. A friend of mine.
Q. Okay.
A. In Delaware[21]

Clearly Quinn's lawyers did not prepare their case. They did not research, they did not investigate and most importantly they did not take the time to think about their case. They never performed as the ***Counsel guaranteed by the Sixth Amendment,*** their ***deficiency prejudiced him such that he was deprived of a fair trial.[22]***

When you look closely at this case you are struck with a level of ineptness that leaves you breathless.

Criminal Defense Lawyers use pretrial motions to prepare their case. When the defense is mistaken identification the pretrial motion to suppress the identification is critical in shaping the defense. Quinn's Lawyers conducted the hearing eleven months after his arrest on the day of his trial. At neither the motion hearing nor trial did Quinn's Lawyers question Wakil as regards his degree of attention at the time of the crime. That fact exist regardless of Carmac Boyle's

[19] July 10, 2010 trial transcript pp 4-11
[20] Ibid p 7 and p 11
[21] Ibid p. 90.
[22] Strickland v. Washington, 466 U.S. 668

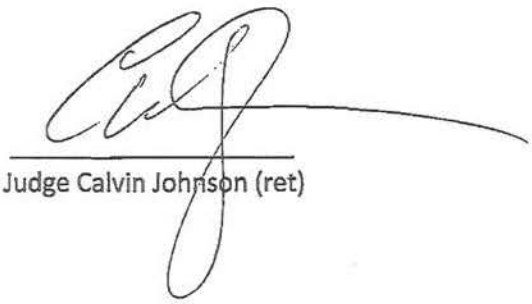
evidence. But when you couple Carmac Boyle's evidence with Quinn's Lawyer's failures it's clear that Quinn never had the kind of lawyer the constitution requires nor did he have the lawyer our Code of professional Conduct guarantees.

In a criminal defense you should be able to tell what the defense is from Jury selection forward. At that early stage the potential jurors can be informed that the judge will read a special jury instruction that will include the accuracy of the prior description...that is the law. Therefore Jurors will be told that as a matter of law you are to consider the accuracy of the prior description. The opening statement is structured around the same...the ethnicity of the only state witness...the opportunity to view...the degree of attention and any corrupting influences...fn 18

The amount of evidence that Quinn's lawyers had and did not present couple with the law that provides a vehicle is what is absent from this case.

Therefore this Court grants the Defendant's Application for Post-Conviction Relief.

Respectfully submitted



Judge Calvin Johnson (ret)