No. 19-5807

IN THE

Supreme Court of the United States

THEDRICK EDWARDS,

Petitioner,

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

JOINT APPENDIX

ANDRE R. BELANGER*
YIGAL BANDER
JAMES P. MANASSEH
MANASSEH, GILL, KNIPE & BELANGER
8075 Jefferson Highway
Baton Rouge, LA
(225) 383-9703
andre@manassehandgill.com

ELIZABETH BAKER MURRILL*
Solicitor General, State of Louisiana
SHAE MCPHEE
LOUISIANA DEPARTMENT OF JUSTICE
Post Office Box 94005
Baton Rouge, LA 70804
(225) 485-4421
murrille@ag.louisiana.gov

Additional counsel on inside cover

Counsel for Petitioner

Counsel for Respondent

* Counsels of Record

July 15, 2020

PETITION FOR CERTIORARI FILED AUGUST 15, 2019
CERTIORARI GRANTED MAY 4, 2020

JEFFREY T. GREEN
NORTHWESTERN SUPREME
COURT PRACTICUM
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-0063

NAOMI A. IGRA
BENJAMIN GILLIG
MATTHEW P. HENRY
SIDLEY AUSTIN LLP
555 California Street
Suite 2000
San Francisco, CA 94104
(415) 772-1200

COLLIN P. WEDEL
ANDREW B. TALAI
SUMMER A. WALL
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013
(213) 896-6000

Counsel for Petitioner

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Videotape of Petitioner's Statement to Police* **to be provided to the Court by Respondent* ..... *

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-31095

THEDRICK EDWARDS,

v.

DARREL VANNOY, WARDEN

RELEVANT DOCKET ENTRIES

#	DOCKET TEXT	DATE
	* * *	
	SUFFICIENT MOTION for certificate of appealability [8944401-2]. Date of service: 12/20/2018. [18-31095]. REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION for certificate of appealability [8944401-2]. Date of service: 12/18/2018. Document is insufficient for the following reasons: certificate of compliance is required; brief in support must be filed separately. Motion due deadline satisfied.. Sufficient Mtn/Resp/Reply due on 12/24/2018 for Appellant Thedrick Edwards [18-31095] REVIEWED AND/ OR EDITED - The original text prior to review appeared as follows:	12/18/2018

#	DOCKET TEXT	DATE
	MOTION filed by Appellant Mr. Thedrick Edwards for certificate of appealability [8944401-2]. Date of service: 12/18/2018 via email - Attorney for Appellant: Belanger [18¬31095] (Andre' Robert Belanger) [Entered: 12/18/2018 12:08 PM]	
	BRIEF IN SUPPORT of motion for certificate of appealability [8944401-2] Brief in Support deadline satisfied. Date of Service: 12/20/2018. [8946206-1] [18-31095]REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: BRIEF IN SUPPORT filed by Appellant Mr. Thedrick Edwards in support of Motion for certificate of appealability [8944401-2]. Date of Service: 12/20/2018 via email - Attorney for Appellant: Belanger. [8946206-1] [18-31095] (Andre' Robert Belanger) [Entered: 12/20/2018 08:29 AM]	12/20/2018
	* * *	
	COURT ORDER denying Motion for certificate of appealability filed by Appellant Mr. Thedrick Edwards. [8944401-2]. [18-31095] (RLL) [Entered: 05/20/2019 02:06 PM]	05/20/2019

#	DOCKET TEXT	DATE
	SUPREME COURT NOTICE that petition for writ of certiorari [9138150-2] was filed by Appellant Mr. Thedrick Edwards on 08/15/2019. Supreme Court Number: 19-5807. [18-31095] (CAV) [Entered: 09/05/2019 02:35 PM]	09/05/2019
	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellant Mr. Thedrick Edwards in 18-31095 on 05/04/2020. [9307630-1] [18-31095] (SBS) [Entered: 05/06/2020 10:20 AM]	05/06/2020

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
(BATON ROUGE)

———

3:15-cv-00305-BAJ-RLB

———

THEDRICK EDWARDS,

v.

BURT CAIN

———

RELEVANT DOCKET ENTRIES

#	DOCKET TEXT	DATE
1	PETITION for Writ of Habeas Corpus (Filing fee $ 5 receipt number 053N-1233861.), filed by Thedrick Edwards. (Attachments: # 1 Attachment PCR Denial) (Belanger, Andre) (Entered: 05/14/2015)	05/14/2015
	* * *	
7	RESPONSE to 1 Petition for Writ of Habeas Corpus by James D. Caldwell, Jr.(Wright, Stacy) (Entered: 07/31/2015)	07/31/2015
8	MEMORANDUM in Opposition to Petition for Writ of Habeas Corpus filed by James D. Caldwell, Jr. (Wright, Stacy) Modified on 8/3/2015 to edit text (LLH). (Entered: 07/31/2015)	07/31/2015

#	DOCKET TEXT	DATE
	* * *	
16	REPORT AND RECOMMENDATIONS regarding 1 Petition for Writ of Habeas Corpus filed by Thedrick Edwards. It is the recommendation of the Magistrate Judge that the petitioner's application for habeas corpus relief be denied, with prejudice. It is further recommended that, in the event that the petitioner seeks to pursue an appeal, a certificate of appealability be denied. Objections to R&R due by 5/8/2018. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 4/24/2018. (KAH) (Entered: 04/24/2018)	04/24/2018
	* * *	
19	OBJECTION to 16 Report and Recommendations filed by Thedrick Edwards. (Belanger, Andre) (Entered: 06/05/2018)	06/05/2018
	* * *	
21	RULING AND ORDER: The 16 Report and Recommendation of the U.S. Magistrate Judge is ADOPTED. Plantiffs Petition for Writ of Habeas Corpus is	09/13/2018

#	DOCKET TEXT	DATE
	DISMISSED WITH PREJUDICE. Signed by Judge Brian A. Jackson on 9/13/2018. (KAH) (Entered: 09/13/2018)	
22	NOTICE OF APPEAL to the USCA for the 5th Circuit of 21 RULING Adopting Report and Recommendation, Order on Report and Recommendation by Thedrick Edwards. Filing fee $ 505, receipt number ALAMDC-1844624. The transcript request form for appeal cases is located at www.lamd.uscourts.gov/local-forms/all-local-forms. (Belanger, Andre) (Entered: 10/10/2018)	10/10/2018
	* * *	
25	ORDER of USCA denying Motion for certificate of appealability filed by Appellant Mr. Thedrick Edwards. (KAH) (Entered: 05/21/2019)	05/20/2019
	* * *	
27	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellant Mr. Thedrick Edwards in 18-31095 on 05/04/2020. (SWE) (Entered: 05/07/2020)	05/07/2020

JURY SELECTION

State of Louisiana vs Thedrick Edwards

Case No. 07-06-0032

PANEL # 1

Juror Name	Number	R/G	Perempts	Cause	Back-strikes
1.Avis Sompson	272	B/F			S
2.Barbara Gibson	117	W/F		D	
(1) 3.Emmett Carter	50	W/M			
4.Ester Sache	271	W/F			SD
5.Cristy Driver	89	B/F	S		
6.Richard Ross	266	W/M	S		
(2) 7.Fayth Deggs	78	W/F			
8.Leo Gable	111	B/M		S	
9.Carolyn Godso	118	W/F	D		
10.Cheryl Kirchoff	180	W/F		S	
11.Kurt Bergeron	24	W/M	D		

(3) 12.Andrea Blake	29	W/F			
(4) 13.Christian Oulman	232	W/M			
14.Sydney Eatman	94	B/M	S		

Total Challenges

6 person or (12 person)

(circle which is applicable)

State: 1 2 (3) 4 (5) 6 7 8 9 10 11 12

Defense: 1 (2) (3) 4 5 6 7 8 9 10 11 12

JURY SELECTION

State of Louisiana vs Thedrick Edwards

Case No. _____

PANEL # 2

Juror Name	Number	R/G	Perempts	Cause	Back-strikes
1.Cynthia Coleman	58	W/F	D		
2.Adrian Joseph	176	B/F	S		
(5) 3.Paul Major, Jr.	198	W/M			
4.Steven Armstrong	9	W/M	D		
(6) 5.Phillip Kerr	179	W/M			
6.Michael Roszya	268	B/M		S	
7.Loren Ansell	8	W/M	D		
(7) 8.Christina Shapiro	279	W/F			
9.Thomas Mallugi III	204	W/M	D		
10.Bonnie Banta	17	W/F			D

(8) 11.Martin Bourgeois	32	W/M			
12.Sandras Comeaux	60	B/F		S	
13.Olivia Guillory	130	B/F		S	
14.Russell Courrille	66	W/M		D	

Total Challenges

6 person or 12 person
(circle which is applicable)

State: (1) 2 3 4 5 6 7 8 9 10 11 12

Defense: 1 2 3 (4) 5 6 7 8 9 10 11 12

JURY SELECTION

State of Louisiana vs Thedrick Edwards

Case No. 07-06-0032

Panel # 3

Juror Name	Number	R/G	Perempts	Cause	Back-strikes
1.Ricky Rinando	259	W/M	D		
2.Wanda Helmer	144	W/F	D		
[Provisional 12] **(9)** 3.Lane Simmons	283	W/M			
4.Noah Williams	335	B/M		S	
5.Robert Sonnier	291	W/M		S	
6.Christopher Elliot	96	W/M	D		
7.Hattie Smith	286	B/F	S		
8.Wendy Lutgring	~~287~~ 195	W/F	D		
(10) 9.Don Vitteri	320	W/F			
(11) 10.Michelle Louvivre	193	W/F			

11.Jennifer Janét	160	W/F		S	
12 12.Jonre Taylor	303	B/F			
13.Jack Swinney	301	W/M	D/S		
+1 14.Charlane Howel Hemphill	150	W/F			

Total Challenges

6 person or 12 person
(circle which is applicable)

State: 1 2 3 4 5 6 7 8 9 10 11 12

Defense: 1 2 3 4 5 6 7 8 9 10 11 12

JURY SELECTION

State of Louisiana vs. _____

Case No. _____

Panel # 4

Juror Name	Number	R/G	Perempts	Cause	Back-strikes
1.Janet Forbes	103			D	
2.Coral Ortego	229			D/S	
3.Kelly Tujague	313				
4.Shaladra McCollough	202				

Total Challenges

6 person or 12 person
(circle which is applicable)

State: 1 2 3 4 5 6 7 8 9 10 11 12

Defense: 1 2 3 4 5 6 7 8 9 10 11 12

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STATE OF LOUISIANA VS. THEDRICK EDWARDS CASE #: 07-06-0032

DATE: Dec. 3, 2007

PANEL "A" / PANEL "B" / PANEL "C"	14. Eatmon 94 S-P Courville 66 D-C HOWE 150	13. Dulman 232 Guillory 130 SC SWINNEY 301 DP S	12. Blake 29 Comeaux 60 S-C TAYLOR 303 (P)	11. Bergeron 24 DP Bourgeois 32 JANET 160 SC	10. Kirchoff 180 (S) Banta 17 DB LOUVIERE 193	9. Godso 118 D-P McHugh 204 D-P VITTERI 320 S	8. Gable 115 (S) Shapiro 279 LUTGRING 195 DB
PANEL "A" / PANEL "B" / PANEL "C" / PANEL "D"	7. Deggs 78 Ansell 8 DP SMITH 286 SP	6. Ross 266 S-P ROSETTA 268 S-DC ELLIOTT 96 DP	5. Driver 89 S-P Kerr 179 SONNIER 291 SC	4. Sachse 271 SB DB Armstrong 9 D-P WILLIAMS 335 SC McCullough 202 (Released)	3. Carter 50 Major 198 SIMMONS 283 TUJAGUE 313	2. GIPSON 117 (D) JOSEPH 176 S-P HELMER 144 DP ORTEGO 229 DC	SB P. Sampson 272 COLEMAN 58 D-58 RINAUDO 259 FORBES 103 D-P DC

Back Strikes

STATE #272 #271 — DEF. 27 17 #95 PANEL A — 12

CHALLENGES

	STATE	DEFENSE
	1. #89	1. 24
	2. 266	2. 118
	3. 94	3.
PANEL B	4. 176	4. 58
	5.	5. 89
	6.	6. 8
	9-12 ~~0~~	9/12 ~~0~~ 209
PANEL C	St. — ~~0~~ 0 286	D-259 D-144 ~~0~~ 96

CHALLENGE FOR CAUSE

	STATE	DEFENSE
PANEL A	1. #111	1. ~~#24~~ ct. denied
	2. #180	2. #117
	3. ~~#266~~	3. #118 - ct. denied
	4. #268 (pt.)	4. 266
PANEL B	5. #130 (pt.)	5.
	6. 60	6.
PANEL C	291 335 160	~~0~~
PANEL D		103 229

VERDICT

TIME:

ALTERNATE 150

313

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[Handwritten notes in original transcribed in brackets]

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

	DOCKET NO .07-06-0032; SEC. VI
STATE OF LOUISIANA	19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
THEDRICK EDWARDS	STATE OF LOUISIANA

_____

COUNT 1: [as of] ARMED ROBBERY
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN ~~BOURGEOIS~~ [Boogway]	✓	
9.(#283) LANE SIMMONS		✓
10.(#320) DAWN VITTERI [V-Teri]	✓	
11.(3193) MICHELLE ~~LOUVIERE~~ Louvere	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

	DOCKET NO .07-06-0032; SEC. VI
STATE OF LOUISIANA	19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
THEDRICK EDWARDS	STATE OF LOUISIANA

_____

COUNT 2: [as of] ARMED ROBBERY
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN ~~BOURGEOIS~~ [Boogway]	✓	
9.(#283) LANE SIMMONS		✓
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC. VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

_____

COUNT 3: [as of] ARMED ROBBERY
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURGEOIS	✓	
9.(#283) LANE SIMMONS		✓
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC.VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

_____

COUNT 4: [as of] ARMED ROBBERY
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURGEOIS	✓	
9.(#283) LANE SIMMONS		✓
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC. VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

———

COUNT 5: [as of] ARMED ROBBERY
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURG~~EOIS~~ [WAY]	✓	
9.(#283) LANE SIMMONS	✓	
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOU~~VIERE~~ [vere]	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC. VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

_____

COUNT 6: [as of] ATTEMPTED ARMED ROBBERY
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURGEOIS	✓	
9.(#283) LANE SIMMONS	✓	
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR	✓	

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC.VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

_____

COUNT 7: [as of] AGGRAVATED KIDNAPPING
[the verdict is]

JURY POLLING

[Is this your verdict?]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURGEOIS	✓	
9.(#283) LANE SIMMONS	✓	
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC. VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

_____

COUNT 8: [as of] AGGRAVATED KIDNAPPING
[the verdict is]

JURY POLLING

[Is this your verdict? yes or no]	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURGEOIS	✓	
9.(#283) LANE SIMMONS	✓	
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR		✓

THEDRECK EDWARDS
Docket Number 07-06-0032
5 counts Armed Robbery
1 Count Attempted Armed Robbery
2 Counts Aggravated Kidnapping
1 Count Aggravated Rape

STATE OF LOUISIANA VERSUS THEDRICK EDWARDS	DOCKET NO .07-06-0032; SEC. VI 19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

_____

COUNT 9: [as of] AGGRAVATED RAPE
[the verdict is]

JURY POLLING

	YES	NO
1.(#50) EMMETT CARTER	✓	
2.(#78) FAY DEGGS	✓	
3.(#29) ANDREA BLAKE	✓	
4.(#232) CHRISTIAN OULMAN	✓	
5.(#198) PAUL MAJOR, JR	✓	
6.(#179) PHILLIP KERR	✓	
7.(#279) KRISTINA SHAPIRO	✓	
8.(#32) MARTIN BOURGEOIS	✓	
9.(#283) LANE SIMMONS	✓	
10.(#320) DAWN VITTERI	✓	
11.(3193) MICHELLE LOUVIERE	✓	
12.(#303) JONRE TAYLOR		✓

[164] MS. CUMMINGS: YES, YOUR HONOR.

THE COURT: PLEASE BRING IN THE JURY.

REPORTER'S NOTE: AT THIS TIME, THE JURORS ENTERED THE COURTROOM.

MS. CUMMINGS: STATE WAIVES POLLING, YOUR HONOR.

THE COURT: DEFENSE?

MS. HALL: WAIVED.

THE COURT: PLEASE BE SEATED. HAS THE JURY REACHED A VERDICT?

PHILLIP KERR: YES, WE HAVE, YOUR HONOR.

THE COURT: DEPUTY BOND, COULD YOU PLEASE GET THE VERDICT SHEET? MADAM CLERK, WOULD YOU READ PLEASE THE VERDICT FOR THE RECORD? WOULD THE DEFENDANT PLEASE STAND?

THE CLERK: *STATE OF LOUISIANA VERSUS THEDRICK EDWARDS*, DOCKET NUMBER 7-06-0032, SECTION SIX, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA.

AS TO COUNT ONE; ARMED ROBBERY: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT TWO; ARMED ROBBERY: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT THREE; ARMED ROBBERY: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT FOUR; ARMED ROBBERY: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT FIVE; ARMED ROBBERY: WE THE JURY [165] FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT SIX; ATTEMPTED ARMED ROBBERY: WE THE JURY FIND THE DEFENDANT NOT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT SEVEN; AGGRAVATED KIDNAPPING: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT EIGHT; AGGRAVATED KIDNAPPING: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

AS TO COUNT NINE; AGGRAVATED RAPE: WE THE JURY FIND THE DEFENDANT GUILTY, FOREPERSON, PHILLIP KERR, DECEMBER 7TH, 2007.

THE COURT: IS THIS THE VERDICT OF THE JURY? DOES THE STATE — DOES THE DEFENSE WISH TO HAVE THE JURY POLLED?

MS. HALL: YES, YOUR HONOR.

BY THE CLERK:

Q. AS OF COUNT ONE, ARMED ROBBERY, THE VERDICT IS: GUILTY. JUROR NUMBER 50, EMMITT CARTER, IS THIS YOUR VERDICT?

A. YES.

Q. JUROR NUMBER 78, FAY DEGGS, IS THAT YOUR VERDICT?

A. YES, MA'AM.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JURY NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

[166] A. YES, MA'AM.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. NO.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE VITTERI — I'M SORRY, MICHELLE LOUVIERE?

A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS OF COUNT TWO, ARMED ROBBERY, THE VERDICT IS: GUILTY. IS THIS YOUR VERDICT, JUROR NUMBER 50, EMMITT CARTER?

A. YES.

Q. JUROR NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JUROR NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR, JUNIOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER, 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

[167] A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. NO.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS OF COUNT THREE, ARMED ROBBERY, THE VERDICT IS: GUILTY. IS THIS YOUR VERDICT, NUMBER 50, EMMITT CARTER?

A. YES.

Q. NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JUROR NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. NO.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

[168] A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS OF COUNT FOUR, ARMED ROBBERY, THE VERDICT IS: GUILTY. IS THIS YOUR VERDICT, JUROR NUMBER 50, EMMITT CARTER?

A. YES.

Q. JUROR NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JURY NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR 198, PAUL MAJOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. NO.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS TO COUNT FIVE, ARMED ROBBERY, THE VERDICT IS: [169] GUILTY. IS THIS YOUR VERDICT, JUROR 50, EMMITT CARTER?

A. YES.

Q. JUROR NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JUROR NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. YES.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS OF COUNT SIX, ATTEMPTED ARMED ROBBERY, THE VERDICT IS: NOT GUILTY. IS THAT YOUR VERDICT, JUROR NUMBER 50, EMMITT CARTER?

A. YES, NOT GUILTY.

Q. JUROR NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

[170] A. YES.

Q. JUROR NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. YES.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. YES.

BY THE CLERK:

Q. AS OF COUNT SEVEN, AGGRAVATED KIDNAPPING, THE VERDICT IS: GUILTY. IS THAT YOUR VERDICT, NUMBER 50, EMMITT CARTER?

A. YES.

Q. JUROR NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JUROR NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR?

A. YES.

[171] Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. YES.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS OF COUNT EIGHT, AGGRAVATED KIDNAPPING, THE VERDICT IS: GUILTY. IS THIS YOUR VERDICT, EMMITT CARTER?

A. YES.

Q. FAY DEGGS?

A. YES.

Q. ANDREA BLAKE?

A. YES.

Q. CHRISTIAN OULMAN?

A. YES.

Q. PAUL MAJOR?

A. YES.

Q. PHILLIP KERR?

A. YES.

Q. KRISTINA SHAPIRO?

A. YES.

Q. MARTIN BOURGEOIS?

A. YES.

[172] Q. LANE SIMMONS?

A. YES.

Q. DAWN VITTERI?

A. YES.

Q. MICHELLE LOUVIERE?

A. YES.

Q. JONRE TAYLOR?

A. NO.

BY THE CLERK:

Q. AS OF COUNT NINE, AGGRAVATED RAPE, THE VERDICT IS: GUILTY. JURY NUMBER 50, EMMITT CARTER, IS THIS YOUR VERDICT?

A. YES.

Q. NUMBER 78, FAY DEGGS?

A. YES.

Q. JUROR NUMBER 29, ANDREA BLAKE?

A. YES.

Q. JUROR NUMBER 232, CHRISTIAN OULMAN?

A. YES.

Q. JUROR NUMBER 198, PAUL MAJOR?

A. YES.

Q. JUROR NUMBER 179, PHILLIP KERR?

A. YES.

Q. JUROR NUMBER 279, KRISTINA SHAPIRO?

A. YES.

Q. JUROR NUMBER 32, MARTIN BOURGEOIS?

A. YES.

Q. JUROR NUMBER 283, LANE SIMMONS?

A. YES.

Q. JUROR NUMBER 320, DAWN VITTERI?

A. YES.

Q. JUROR NUMBER 193, MICHELLE LOUVIERE?

[173] A. YES.

Q. JUROR NUMBER 303, JONRE TAYLOR?

A. NO.

THE COURT: LADIES AND GENTLEMEN OF THE JURY, THANK YOU FOR YOUR SERVICE. YOU ARE HEREBY EXCUSED. ANY OTHER MATTERS FROM THE STATE OR THE DEFENSE?

MS. HALL: NOT AT THIS TIME, YOUR HONOR.

MS. CUMMINGS: YOUR HONOR, ARE WE GOING TO ASSIGN HIM FOR SENTENCING?

THE COURT: I WILL. I'M GOING TO EXCUSE THE JURY.

MS. CUMMINGS: YES, YOUR HONOR.

THE COURT: THANK YOU FOR YOUR SERVICE. WOULD YOU PLEASE WAIT IN THE JURY ROOM I WOULD LIKE TO SPEAK TO YOU IN A FEW MINUTES.

REPORTER'S NOTE: AT THIS TIME, THE JURORS EXITED THE COURTROOM.

THE COURT: ALL RIGHT. IN THE MATTER OF *STATE OF LOUISIANA VERSUS THEDRICK EDWARDS*, PLEASE ASSIGN THE MATTER FOR SENTENCING. THE COURT ORDERS A PSI. PLEASE SET THE SENTENCING DATE IN 60 DAYS.

THE CLERK: YES, SIR. FEBRUARY 7TH, 2008.

THE COURT: IS THAT DATE AVAILABLE?

MS. HALL: THAT'S FINE, YOUR HONOR.

THE COURT: MS. CUMMINGS?

MS. CUMMINGS: I'M ALWAYS HERE, YOUR HONOR.

THE COURT: ALL RIGHT. THE COURT WILL BE ADJOURNED.

MS. HALL: DOES HE NEED TO SIGN NOTICE? THE COURT: HE NEEDS TO SIGN NOTICE. I'LL [174] SEE YOU BACK ON THE DATE OF SENTENCING.

(END OF TRANSCRIPT)

[175] CERTIFICATE

I, PANSY M. ALLEN, C.C.R., R.P.R. OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING 174 PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE AFORESAID MATTER AS TAKEN BY ME ON THE STENOTYPE MACHINE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 8TH DAY OF SEPTEMBER, 2008.

/s/ Pansy M. Allen
PANSY M. ALLEN
OFFICIAL COURT
REPORTER
19TH JUDICIAL DISTRICT
COURT
C.C.R., R.P.R. #24024

[OFFICIAL SEAL]
PANSY M. ALLEN
Certified Court Reporter In
and for the State of Louisiana
Certificate Number 24024
Certificate expires 12-31-08

19th JUDICIAL DISTRICT COURT

* * *

[1023] EXAMINATION BY MS. CUMMINGS:

Q. MR. EDWARDS, LET'S START WITH THE SECOND NIGHT OF TERRORIZING, THAT WOULD BE THE EARLY MORNING HOURS OF MAY 15TH, YOU WITH ME? JULY STREET?

A. YES, MA'AM.

Q. WHO COMMITTED THE ARMED ROBBERY AND THE AGGRAVATED KIDNAPPING OF MARC VERRET?

A. I'M NOT SURE. I COULDN'T TELL YOU.

Q. YOU CAN'T TELL ME?

A. NO, MA'AM.

Q. WELL, WASN'T JOSHUA JOHNSON THERE?

A. YES, MA'AM, HE WAS THERE.

Q. AND REMEMBER, YOU'RE UNDER OATH.

A. YES, MA'AM.

Q. AND WASN'T – DIDN'T JACQUIN JAMES DRIVE?

A. YES, MA'AM.

Q. WEREN'T YOU IN THE CAR?

A. YES, MA'AM.

Q. AND DIDN'T YOU GO TO JULY STREET?

A. YES, MA'AM.

Q. AND DIDN'T JOSHUA JOHNSON GET OUT WITH A GUN IN HIS HAND?

A. WELL, I'M NOT GOING TO SAY – I CAN'T LIE AND SAY I SAW A GUN BUT, YES, HE DID EXIT THE VEHICLE.

Q. AND WAS IT IN THAT PARKING LOT AT JULY STREET?

A. IN THE ENTRANCE.

Q. DID ANYBODY GO WITH HIM?

A. EXCELL, ERIC AND HORACE ALL WAS PULLING IN THE SAME ENTRANCE AND IT GOT – IT'S A TWO-WAY. YOU COULD EITHER GO TO THE LEFT OR YOU CAN GO TO THE RIGHT. I REMEMBER JOSH GOING TO THE LEFT AND THEY PULLED AROUND TO THE RIGHT [1024] BECAUSE IT'S MORE PARKING AREAS.

Q. OKAY. DID JOSHUA ATTACK THE MAN BY HIMSELF?

A. I CAN'T SAY I SAW HIM ATTACK NOBODY. I NEVER MAKE IT THAT FAR.

Q. YOU NEVER MADE IT THAT FAR?

A. NO, MA'AM.

Q. DID YOU SEE A MAN IN AN INTREPID, A SILVER INTREPID?

A. NO, MA'AM.

Q. YOU NEVER SAW THAT CAR?

A. NO, MA'AM.

Q. SO, WHAT DID YOU THINK WAS GOING ON AT THAT POINT?

A. STEALING A CAR.

Q. YOU THOUGHT THEY WERE STEALING A CAR?

A. YES, MA'AM.

Q. SO, WHAT DID YOU DO?

A. I HESITATED.

Q. HOW DID YOU HESITATE?

A. I WAS GOING TOWARDS THE SAME WAY JOSHUA HAD WENT BUT I NEVER MADE IT BACK THERE BECAUSE IT'S, LIKE, A NICE LITTLE DISTANCE. I STOPPED BEFORE I MADE IT THERE AND I NOTICED THAT JACQUIN WAS BACKING OUT AND ERIC AND THEM HAD WENT AROUND THE OTHER WAY SO I TURNED AROUND AND WENT BACK TOWARDS THE ENTRANCE WHERE JACQUIN WAS BACKING OUT AT.

Q. OKAY. SO, YOU JUST TURNED AROUND AND CHANGED YOUR MIND AND –

A. YES, MA'AM.

Q. – AND DIDN'T PARTICIPATE AT ALL?

A. YES, MA'AM.

Q. BUT YOU'RE TESTIFYING UNDER OATH AND IT'S GOING TO BE RECORDED, IT'S ALL RECORDED HERE, EXCELL WRIGHT PARTICIPATED IN THIS ARMED ROBBERY; IS THAT CORRECT?

A. I CAN'T SAY WHO PARTICIPATED.

[1025] Q. HE WAS THERE AT THE SCENE –

A. YES, MA'AM?

Q. – IS THAT CORRECT? DID HE END UP WITH THE IPOD FROM THAT ARMED ROBBERY?

A. YES, MA'AM.

Q. OKAY. HORACE WELLS WAS THERE AT THE SCENE OF THIS ARMED ROBBERY?

A. YES, MA'AM.

Q. HE'S A GOOD FRIEND OF YOURS; ISN'T IT?

A. ALL OF THEM, NOT REALLY. I'M MOSTLY CLOSE TO JOSHUA.

Q. OKAY. AND IN ADDITION TO THAT, ERIC WALKER WAS THERE AT THE SCENE –

A. YES, MA'AM.

Q. – OF THIS ARMED ROBBERY? OKAY. SO, YOU'RE IMPLICATING, UNDER OATH, ALL THREE OF THOSE GUYS; IS THAT RIGHT?

A. YES, MA'AM.

Q. OKAY.

A. IT HAD SOMEBODY ELSE –

Q. – JOSHUA JOHNSON, YOU'RE TELLING THIS COURT THAT YOU SAW HIM GET OUT OF THE CAR AND GO AT THAT – AT JULY STREET, YOU'RE TELLING THE MEMBERS OF THIS JURY THAT YOU SAW HIM GET OUT OF THE CAR AND GO TOWARD –

A. THE APARTMENT COMPLEX.

Q. – WHERE YOU KNOW THIS OCCURRED; IS THAT RIGHT?

A. YES, MA'AM.

Q. AND AFTER Y'ALL MET BACK UP A LITTLE WHILE LATER, THE MONEY WAS THERE; RIGHT?

A. YES, MA'AM.

Q. THE IPOD WAS THERE?

A. YES, MA'AM.

Q. WERE THERE GUNS THERE?

[1026] A. YES, MA'AM.

Q. BUT YOU DIDN'T PARTICIPATE?

A. NO, MA'AM.

Q. YOU'RE WILLING TO COME TESTIFY AGAINST ALL YOUR FRIENDS, EVERY FRIEND THAT WAS INVOLVED IN THIS, BUT YOU DIDN'T PARTICIPATE?

A. YES, MA'AM.

Q. ON THE FIRST NIGHT OF TERRORIZING, YOU KNOW, THE NIGHT WITH THE AGGRAVATED RAPES AND THE AGGRAVATED KIDNAPPING AND THE ARMED ROBBERY, YOU KNOW THAT NIGHT –

A. WELL, I –

Q. – ARE YOU FAMILIAR WITH THAT?

A. YES, MA'AM.

Q. WHO COMMITTED THOSE CRIMES?

A. I DON'T KNOW.

Q. YOU DON'T HAVE A CLUE?

A. NO, MA'AM.

Q. WAS IT ANYBODY YOU KNOW?

A. NO, MA'AM.

Q. NOBODY YOU KNOW AT ALL?

A. NO, MA'AM.

Q. NOT ANY OF YOUR FRIENDS? ALL YOUR FRIENDS THAT YOU JUST IMPLICATED UNDER OATH ON THE OTHER CRIME WERE NOT INVOLVED IN THIS ONE?

A. NO, MA'AM.

Q. SO, WHEN DETECTIVE FAIRBANKS CALLS YOU IN – WHEN YOU GO TO TALK TO HIM –

A. WHEN THEY – THEY CAME PICKED ME UP.

Q. RIGHT. AT PARISH PRISON.

A. YES, MA'AM.

Q. YOU DECIDE TO CONFESS TO A CRIME THAT YOU HAD NOTHING TO DO WITH; IS THAT CORRECT?

[1027] A. IT WASN'T I DECIDED TO CONFESS. I WAS GOING ALONG WITH IT.

Q. I'M SORRY?

A. I WENT ALONG WITH THEM.

Q. YOU WENT ALONG WITH THEM?

A. YES, MA'AM.

Q. AND WHY DID YOU DO THAT?

A. BECAUSE I WAS – I WAS INFORMED THAT NO MATTER WHAT I DO, THEY WAS GOING TO MAKE SURE THAT IT STICK TO ME.

Q. I'M SORRY? THEY SAID –

A. THEY WAS GOING TO MAKE SURE THAT THE CHARGES PEND – THAT WAS PENDING ON ME STICK TO ME.

Q. OKAY. SO, THEY TOLD YOU NO MATTER WHAT YOU DO, YOU'RE GOING TO BE CHARGED

WITH AGGRAVATED RAPE, AGGRAVATED KIDNAPPING, ARMED ROBBERY –

A. YES, MA'AM.

Q. – FOR THAT NIGHT? AND AGGRAVATED KIDNAPPING, AGGRAVATED RAPE FOR THE NEXT NIGHT?

A. YES, MA'AM.

Q. AND ATTEMPTED ARMED ROBBERY, THEY TOLD YOU ALL THAT, NO MATTER WHAT YOU DO –

A. YES, MA'AM.

Q. – THAT'S WHAT YOU'RE GOING TO BE CHARGED WITH?

A. YES, MA'AM.

Q. SO, WHY WOULD YOU TELL THEM ANYTHING?

A. THAT WAS ALL A PART OF COOPERATING. IF I HELPED THEM, THEN IT WOULD BE HELP ME. WHAT THEY CALLED KILLING TWO BIRDS WITH ONE STONE.

Q. WHAT DID THEY TELL YOU THEY WOULD DO FOR YOU?

A. TOLD ME THAT IF I COOPERATE WITH THEM, BY ME HAVING NO RECORD, THAT HE WOULD HELP ME GET OFF WITH BASICALLY NOTHING, PROBABLY, PROBATION OR SOMETHING, BUT HE DIDN'T SAY [1028] EXACTLY HOW LONG ON PROBATION.

Q. OKAY. SO, HE TOLD YOU, YOU WERE GOING TO GET OFF WITH PROBATION?

A. AND I WOULD BE ABLE TO GO TO COLLEGE.

Q. HE DIDN'T SAY THAT ON THE TAPE; DID HE?

A. NO, MA'AM.

Q. AND YOU DIDN'T SAY THAT HE HAD EVER TOLD YOU, YOU WERE GOING TO GET PROBATION, YOU DIDN'T SAY THAT ON THE TAPE; DID YOU?

A. NO, MA'AM.

Q. NEVER ON THE TAPE; DID YOU?

A. NO, MA'AM.

Q. IN FACT, AT ONE POINT, HE ASKED YOU IF HE HAD THREATENED YOU WITH ANYTHING?

A. YES, MA'AM.

Q. AND YOU SAID, NO; DIDN'T YOU?

A. YES, MA'AM.

Q. ON THE TAPE; RIGHT?

A. YES, MA'AM.

Q. SO, YOU DIDN'T SAY ANYTHING OF THAT ON THE TAPE, IN FACT, AND ON THE TAPE, DON'T YOU LOOK PRETTY RELAXED WITH FAIRBANKS?

A. YES, MA'AM. WE HAD GOT – DURING THE TIME WE WAS GOING OVER EVERYTHING, WE HAD GOT KIND OF CLOSE. I WAS SUPPOSED TO BE TRUSTING HIM AND HE WAS SUPPOSED TO BE TRUSTING ME.

Q. OKAY. THIS IS A MAN THAT THREATENED YOU WITH SOMETHING – IN FACT, HE ASKED YOU –

A. NO, MA'AM.

Q. – DID I EVER THREATEN YOU –

A. IT WASN'T HIM.

Q. LET ME FINISH MY QUESTION. HE SAID, DID HE NOT: DID I EVER THREATEN YOU WITH A CRIME THAT YOU DIDN'T COMMIT? WHAT [1029] DID YOU SAY?

A. I DON'T BELIEVE I ANSWERED.

Q. AND I BELIEVE YOU DID. DO YOU WANT TO SEE IT?

A. YES, MA'AM.

MS. CUMMINGS: YOUR HONOR, IT'S GOING TO TAKE A MINUTE TO FIND THIS.

REPORTER'S NOTE: AT THIS TIME, STATE'S EXHIBIT 53 WAS BEING PLAYED AND SEARCHED THROUGH.

TAPE WAS STOPPED AT THIS TIME.

MS. CUMMINGS: OKAY. I GIVE UP. IT'S SOMEWHERE ON THE TAPES AND I'M NOT SURE – I CAN'T PUT MY HAND ON IT RIGHT NOW. I'M SURE WE'RE HEAR IT IN CLOSING ARGUMENTS.

BY MS. CUMMINGS:

Q. MR. EDWARDS, SO, THAT THE JURY UNDERSTANDS WHAT YOU'RE SAYING, YOU'RE SAYING THAT ON MAY THE 15TH, YOU WERE NOT INVOLVED IN THE ARMED ROBBERY OR THE AGGRAVATED KIDNAPPING OF MARC

VERRET; IS THAT WHAT YOU'RE TELLING THE MEMBERS OF THE JURY?

A. YES, MA'AM.

Q. YOU WERE NOT INVOLVED IN THE ATTEMPTED ARMED ROBBERY OF DILLAN LAVENE; IS THAT WHAT YOU'RE TELLING THE MEMBERS OF THE JURY?

A. THAT WAS THE PIZZA GUY?

Q. RIGHT.

A. I WAS IN THE CAR.

Q. YOU WERE IN THE CAR BUT YOU DID NOT GO UP AND BEAT ON HIS WINDOW WITH A GUN IN YOUR HAND?

A. NO, MA'AM.

Q. AND YOU'RE TELLING THE MEMBERS OF THE JURY THAT YOU CONFESSED TO THE ARMED ROBBERY THAT OCCURRED AND THE AGGRAVATED KIDNAPPING ON MAY 15, WHY?

[1030] A. BECAUSE I WAS – I WAS NERVOUS AT THE TIME AND I THOUGHT THE WAY HE WAS PUTTING IT, I WAS – IT WASN'T GOING TO BE NO WAY OUT OF IT. THAT PROBLEM – I WAS ALREADY NERVOUS BECAUSE I WAS AROUND THE AREA AND I FELT LIKE I GO – THAT'S GOING TO MAKE A WAY OF ME BEING INVOLVED.

Q. I'M SORRY. I CAN'T UNDERSTAND YOU. SLOW DOWN. WHAT?

A. THAT'S GOING TO HAVE A – MAKE A WAY OF ME BEING INVOLVED WITH IT.

Q. OKAY. SO, YOU DECIDED TO GO AHEAD AND CONFESS TO THESE VERY SERIOUS CRIMES EVEN THOUGH YOU DIDN'T DO THEM. DID THE OFFICERS HIT YOU BEFORE THAT VIDEO WAS PLAYED?

A. JUST, IT WASN'T FAIRBANKS, IT WAS THE OTHER ONE. HE WAS JUST REALLY TWISTING THE COLLAR OF MY JUMPER.

Q. OKAY. BUT YOU DON'T INDICATE THAT ON THE VIDEO?

A. NO, MA'AM.

Q. AND YOU SAID YOU AND FAIRBANKS Y'ALL HAD A KIND OF RAPPORT GOING, YOU LIKED FAIRBANKS, YOU TRUSTED HIM; HUH?

A. YEAH. HE HAD ASKED THE OTHER ONE TO LEAVE OUT THE ROOM AT THE – DURING THE PART THAT WASN'T RECORDED.

Q. I'M SORRY?

A. HE HAD ASKED THE OTHER DETECTIVE TO LEAVE OUT THE ROOM IN THE PART – THE PART THAT WASN'T RECORDED.

Q. OH, HE DID. WHAT DID HE DO WHEN HE HAD THE OTHER DETECTIVE LEAVE THE ROOM?

A. THAT'S WHEN ME AND HIM HAD THE DISCUSSION.

Q. AND WHAT WERE THOSE SPECIFIC DISCUSSIONS? WHAT DID HE SAY TO YOU?

A. THAT IF I HELP HIM, HE'LL HELP ME. AND THAT'S WHEN WE GOT TO GOING OVER STUFF AND.

Q. OKAY. AND TO HELP HIM, YOU IMPLICATED ALL YOUR FRIENDS?

A. YES, MA'AM.

[1031] Q. YOU TOLD ON – IS JOSHUA, LIKE, ONE OF YOUR BEST FRIENDS?

A. YES, MA'AM.

Q. SO, TO HELP YOURSELF OUT, YOU LIED EVEN THOUGH YOU DIDN'T KNOW FOR SURE THAT JOSHUA DID THIS ARMED ROBBERY AND THIS AGGRAVATED KIDNAPPING, YOU TOLD THEM THAT JOSHUA DID THIS TO SAVE YOURSELF?

A. I AIN'T GOING TO SAY TO SAVE MYSELF BUT I KNEW ONCE EVERYTHING GOT DOWN THE LINE, IT WASN'T GOING TO ADD UP.

Q. WHAT WASN'T GOING TO ADD UP?

A. WELL, I KNEW PROBABLY – I AIN'T SEE WHO DONE WHAT BUT I'M JUST EXPECTING HE DIDN'T DO IT.

Q. OH, SO, YOU DIDN'T –

A. – THAT WAS MY ASSUMPTION.

Q. YOU DIDN'T MIND GIVING UP JOSHUA, TELLING THEM THAT JOSHUA DID IT BECAUSE YOU THOUGHT, DOWN THE ROAD, IT WOULDN'T ADD UP?

A. YES, MA'AM.

Q. YOU DIDN'T MIND TELLING HIM THAT HORACE WAS INVOLVED AND EXCELL WAS INVOLVED AND ERIC WALKER WAS INVOLVED?

A. WELL, THAT WAS ALL A PART OF OUR AGREEMENT.

Q. THAT WAS ALL A PART OF YOUR AGREEMENT?

A. YES, MA'AM.

Q. AND YOU MADE IT CLEAR TO FAIRBANKS THAT YOU REALLY DIDN'T – YOU WERE JUST MAKING THIS UP?

A. YEAH. I EXAGGERATED AT SOME PARTS.

Q. I'M SORRY?

A. I EXAGGERATED AT SOME PARTS.

Q. OKAY. DID HE GIVE YOU SOME INFORMATION TO TELL HIM BACK ON TAPE?

A. YES, MA'AM.

Q. OKAY. DID HE, LIKE, WRITE IT DOWN FOR YOU?

[1032] A. IT WAS ALREADY WRITTEN DOWN.

Q. WHERE WAS IT WRITTEN?

A. ON THE TABLET.

Q. SO, WHEN WE'RE WATCHING YOU ON TAPE AND YOU VOLUNTEER THAT $300 WAS TAKEN DURING THE ROBBERY OF MARC VERRET, THAT'S BECAUSE YOU'RE, WHAT, LOOKING AT A TABLET?

A. NO, MA'AM. I HAD BEEN TOLD BEFORE THEN.

Q. YOU REMEMBERED THAT?

A. YES, MA'AM.

Q. WHEN YOU VOLUNTEERED – WHEN FAIRBANKS COULDN'T REMEMBER MARC VERRET'S NAME, WHEN YOU VOLUNTEERED MARC –

A. YES, MA'AM.

Q. – IS THAT BECAUSE FAIRBANKS –

A. – ALL THAT WAS – ALL THIS WAS – ALL THIS WAS IN THE NOTES THAT WE WENT OVER.

Q. WHERE WERE THE NOTES WHEN YOU SAID MARC? I DIDN'T SEE YOU LOOKING AT NOTES?

A. I KNOW THAT PART – ON THE RECORDED PART, HE AIN'T HAVE – HE AIN'T HAVE NOTHING IN HIS HAND. NOTHING. HE JUST HAD THE PART WHERE WE WAS GOING TO GO OVER.

Q. AGAIN, YOU COMMITTED THAT TO MEMORY?

A. YES, MA'AM.

Q. OKAY. SO, YOU CREATED THIS WHOLE STORY TO MAKE FAIRBANKS HAPPY?

A. NO, MA'AM. HE HAD IT ALREADY WRITTEN AND WE JUST, BASICALLY, REPLACED THE PEOPLE WHO DONE IT WITH ME AND JOSHUA.

Q. YOU REPLACED THE PEOPLE WHO DID IT WITH YOU AND JOSHUA?

A. YES, MA'AM.

Q. AND FAIRBANKS KNEW THAT YOU JOSHUA DIDN'T DO IT AND HE SAID JUST SUBSTITUTE YOU AND –

A. NO. HE SAID HE KNEW ONE OF US DONE IT.

[1033] Q. HE SAID ONE OF Y'ALL DID IT? SO, HE WANTED TO TAKE YOU BOTH DOWN?

A. NO, HE KNEW, OUT OF THE SIX OF US WHO WAS ALL CHARGED WITH IT, HE KNEW SOME OF US DONE IT.

Q. OKAY. LET'S GO TO MAY 14TH. ON THE VIDEO, YOU GO INTO DETAIL ABOUT THE WHOLE NIGHT?

A. YES, MA'AM.

Q. YOU'VE GOT A LOT OF DETAILS ABOUT THAT NIGHT?

A. YES, MA'AM.

Q. YOU'VE GOT DETAILS OF WHERE Y'ALL FIRST SAW MARC VERRET?

A. YES, MA'AM.

Q. YOU GOT DETAILS OF HOW THE GUNS WERE PULLED AND – WELL, USUALLY, IT'S JOSH YOU'RE TALKING ABOUT. AND YOU GO THROUGH ALL THE DETAIL, LET'S SEE, Y'ALL WENT TO THE MONEY MACHINE AND YOU BACKED IN AND YOU TELL THAT ON BOTH OF THE THINGS, I THINK. YOU KNOW THE DETAILS OF GOING TO RYAN'S APARTMENT. YOU KNOW RYAN'S NAME?

A. YES, MA'AM. IT WAS TOLD TO ME.

Q. ALL THIS INFORMATION WAS GIVEN TO YOU?

A. YES, MA'AM.

Q. AGAIN, I DON'T SEE YOU USING A CHEAT SHEET. IT'S ALL UP HERE IN THAT BIG BRAIN OF YOURS?

A. YES, MA'AM. IT'S EASY TO REMEMBER A NAME.

Q. YOU ALSO KNEW DETAILS, THERE WAS A CAMPING BAG THAT I THINK WAS TAKEN FROM RYAN EATON'S APARTMENT AND YOU MENTIONED THAT ON THE VIDEO TAPE. IS THAT SOMETHING THAT WAS PROVIDED TO YOU BY FAIRBANKS?

A. WELL, YEAH, IT WAS A PART – HE SAID A BAG WAS INVOLVED BUT WHAT ELSE WOULD YOU USE? SOMETHING KIND OF BIG. A CAMPING BAG.

Q. OKAY. YOU ALSO, LET'S SEE WHAT ELSE DID YOU KNOW [1034] ABOUT. THE DRILL, THE DRILL, DO YOU REMEMBER YOU TALKED ABOUT THE DRILL ON THE VIDEO? THAT WAS VERY SPECIFIC. YOU MENTIONED THAT.

A. YES, MA'AM.

Q. AGAIN, FAIRBANKS TOLD YOU TO MENTION THAT?

A. NO, MA'AM.

Q. HOW DID YOU COME UP WITH THE DRILL?

A. JUST SOMETHING TO SAY.

Q. OH, IT JUST HAPPENED TO MATCH WHAT WAS TAKEN FROM THE VICTIMS – AND THE VICTIM IN THE ARMED ROBBERY? IT JUST HAPPENED TO MATCH?

A. NO. THAT WAS ALL ON THE SEARCH WARRANT.

Q. AND YOU HAD A COPY OF THE SEARCH WARRANT?

A. NO. I SAW THE SEARCH WARRANT AT MY HOUSE.

Q. AND YOU REMEMBERED THAT?

A. YES, MA'AM.

Q. AND YOU THOUGHT YOU WOULD USE THAT INFORMATION TO IMPLICATE YOURSELF ON MAY 14TH?

A. NO. I USED IT TO HELP.

Q. TO HELP? WHO WERE YOU HELPING?

A. I WAS HELPING FAIRBANKS.

Q. WHY WERE YOU HELPING – WHY WERE YOU WORRIED ABOUT HELPING FAIRBANKS?

A. BECAUSE IT WAS, I HELP HIM AND HE HELP ME.

Q. OKAY.

A. HE TOLD ME THAT, THAT WAS THE ONLY WAY OF GETTING OUT OF IT BECAUSE THE OTHER DETECTIVE, I DON'T REMEMBER HIS NAME, HE WAS MAKE – LETTING ME KNOW THAT HE WAS GOING TO MAKE SURE THAT IT STICK TO ME. HE TOLD ME THAT HE WAS GOOD FRIENDS WITH THE D.A. AND WHATEVER HE WANTED TO HAPPEN WAS GOING TO HAPPEN.

Q. YOU ALSO KNEW DETAILS ABOUT GOING INTO THE APARTMENT OF [1035] THE YOUNG LADIES.

A. YES, MA'AM.

Q. YOU KNEW A LOT OF DETAILS. YOU KNEW WHO WAS THERE.

A. YES, MA'AM.

Q. YOU KNEW HOW THEY WERE MADE TO LAY DOWN.

A. YES, MA'AM.

Q. YOU KNEW ALL – YOU KNEW THAT, THAT [redacted] WAS FORCED TO PERFORM ORAL SEX.

A. YES, MA'AM.

Q. AND THEN SHE WAS FORCED – SHE WAS RAPED VAGINALLY.

A. YES, MA'AM.

Q. AND THEN SHE WAS RAPED ANALLY.

A. YES, MA'AM.

Q. AND YOU KNEW ALL THAT?

A. YES, MA'AM.

Q. HOW DID YOU KNOW ALL THAT?

A. ALL THAT WAS PART OF THE NOTES. HE TOLD ME EVERYTHING THAT HAD HAPPENED. WE WENT OVER IT SEVERAL TIMES.

Q. LIKE A SCRIPT?

A. BASICALLY.

Q. LIKE, I'LL SAY THIS AND YOU SAY THAT? IS THAT THE WAY IT WAS? LIKE, FAIRBANKS SAID: WHEN I ASK YOU THIS, YOU SAY THAT?

A. BASICALLY, SOMETHING LIKE THAT.

Q. A MINUTE AGO –

A. – PLAY ALONG.

Q. – I THINK ON DIRECT, YOU SAID THAT YOU WERE SOFT-HEARTED; IS THAT WHAT YOU SAID?

A. YES, MA'AM.

Q. AND –

A. – THAT WAS PART – THAT PLAYED A PART OF MY ROLE AS WHY I DID WHAT I DID.

[1036] Q. OKAY. EXPLAIN THAT TO THE MEMBERS OF THE JURY?

A. WELL, I GOT A NIECE, I GOT A NIECE OF MY OWN AND I GOT A MOTHER. JUST LIKE ANY OF Y'ALL FEEL FEELINGS FOR SOMEBODY ELSE, HEARING ABOUT WHAT HAPPENED, ALSO MADE – HURT ME, TOO, BECAUSE I GOT – HAD A SISTER-IN-LAW WHO ALSO GOT KILLED, AND SHE HAD BEEN RAPED BEFORE AND I GOT A SOFT HEART. ANY TIME I SEE SOMEBODY ELSE CRY, I'M PROBABLE GOING TO CRY WITH THEM. SO, HE TOLD ME THAT TO PARTICIPATE ALONG WITH HIM WOULD EASE THE PAIN ON THE VICTIMS BECAUSE THEY WOULDN'T – IT WOULDN'T BE – THEY WOULDN'T HAVE TO WORRY ABOUT SEARCHING FOR WHO DONE ALL THIS AND HAVE TO LIVE THE REST OF THEY LIFE NOT KNOWING WHO DONE WHAT. SO, I SAID THAT I HELP ALONG – I'LL HELP – GO ALONG WITH HIM. AND BY ME HAVING NO CRIMINAL RECORD AND NEVER BEEN ARRESTED OR NOTHING, HE WAS TELLING ME THAT HE'LL MAKE SURE THAT THERE'S A WAY THAT I WOULD BE OUT OF IT SO I TOLD HIM THAT I WOULD PARTICIPATE WITH HIM.

Q. OKAY. AND SO THAT'S ALL DONE OFF TAPE?

A. YES, MA'AM.

Q. AND YOU AGREE TO CONFESS TO THIS, I MEAN, THIS IS A HORRIBLE, HORRIBLE CRIME; ISN'T IT?

A. YES, MA'AM.

Q. WHOEVER DID THIS HORRIBLE THING TO [redacted] [redacted] DESERVES TO SPEND THE REST OF THEIR IN JAIL; DON'T THEY?

A. IT WAS SOMETHING NASTY, YES, MA'AM.

Q. NO, ANSWER MY QUESTION. THEY DESERVE TO SPEND THE REST OF THEIR LIFE IN JAIL; DON'T THEY?

A. I WOULD SAY SO.

Q. AND THE PERSON THAT DID THIS TO RYAN EATON, THE PEOPLE THAT TERRORIZED HIM FOR THREE HOURS, THEY DESERVE THE SPEND THE REST OF THEIR LIFE IN JAIL; DON'T THEY?

A. YES, MA'AM.

[1037] Q. BUT YOU CONFESSED TO THESE THINGS PARTIALLY BECAUSE YOUR SOFT-HEARTED AND YOU WANTED TO GIVE THESE VICTIMS, WHAT? CLOSURE?

A. NO. AT THE TIME, I DIDN'T KNOW THE ACTUAL PUNISHMENT OF THE CRIMES. THEY NEVER TOLD ME WHAT I'D GET. THEY AIN'T NEVER SAY, WELL, IF YOU DO – SAY THIS, THIS IS WHAT YOU'LL BE FACING. I ALSO WAS TOLD THAT I – THERE WOULD BE A WAY I'M GOING TO

GO TO COLLEGE AND, YOU KNOW, IT WOULD A WAY – IT WOULD MAKE A WAY FOR ME.

Q. SO, IT WOULD –

A. – BUT IF I DIDN'T, I COULD PLAY – IT COULD BE THE EASY WAY OR THE HARD WAY. THE HARD WAY WAS NOT COOPERATE AT ALL AND KEEP SAYING I DON'T KNOW NOTHING ABOUT IT AND GET PINNED FOR IT ANYWAY BECAUSE, LIKE I SAID, THE OTHER DETECTIVE KEPT ON TELLING ME HOW HE WAS GOOD FRIENDS WITH THE D.A.

Q. OKAY. AND THEY GUARANTEED YOU THAT WERE, LIKE, GOING TO GET PROBATION OR SOMETHING OFF TAPE; RIGHT?

A. YES, MA'AM, SOMETHING LIGHT.

Q. WELL, THEN, WHY DID YOU ASK NO LESS THAN 10 TO 20 TIMES –

A. BECAUSE –

Q. – WAIT, WAIT UNTIL I FINISH MY QUESTION. WHY DID YOU ASK THEM ALL THOSE TIMES: AM I GOING TO DO LIFE? HOW MUCH TIME AM I GOING TO DO?

A. BECAUSE THAT'S WHEN I NOTICED THAT – YOU'RE TALKING ABOUT I WAS TALKING TO COX THEN.

Q. I'M TALKING –

A. – I'M TALKING ABOUT DETECTIVE COX.

Q. – YOU SAID THAT TO FAIRBANKS. YOU SAID TO THAT TO COX. YOU SAID THAT ALL THE WAY THROUGH THESE TWO TAPES OF VIDEO.

[1038] A. YES, MA'AM.

Q. WHY, IF YOU WERE GUARANTEED PROBATION OFF TAPE?

A. BECAUSE I KNEW WE WERE BEING RECORDED AND WHAT ME AND HIM DISCUSSED WAS SUPPOSED TO BE BETWEEN ME AND HIM.

Q. OH, SO THIS WAS PART OF THE SCRIPT, YOU WERE SUPPOSED TO PRETEND AND ALL OF THAT WAS PRETENDING, PRETENDING THAT YOU WERE WORRIED ABOUT WHAT SENTENCE YOU WERE GOING TO GET?

A. NO. I WAS REALLY WORRIED ABOUT WHAT SENTENCE I WAS GOING TO GET.

Q. WELL, YOU TOLD ME THEY JUST GUARANTEED PROBATION. DID THEY TELL YOU THAT WAS OFF THE TABLE OR SOMETHING?

A. YES, MA'AM.

Q. WHEN DID THEY TELL YOU IT WAS OFF THE TABLE?

A. WHEN IT WASN"T BEING RECORDED.

Q. I'M SORRY?

A. WHEN IT WASN"T BEING RECORDED.

Q. THEY TOLD YOU BEFORE THEY STARTED RECORDING IT THAT THE DEAL WAS OFF?

A. NO, MA'AM. THEY AIN'T NEVER SAY NOTHING ABOUT NO DEAL OFF.

Q. OKAY. SO, WHEN THIS WAS BEING RECORDED, YOU STILL HAD A DEAL WITH FAIRBANKS THAT YOU WERE GOING TO GET PROBATION?

A. YES, MA'AM.

Q. OKAY. THEN BACK TO MY QUESTION, BECAUSE I DON'T THINK YOU'VE ANSWERED IT.

A. I PROBABLY MISUNDERSTOOD.

Q. I THINK SO. SO, DURING THESE TAPES, YOU ASKED SO MANY TIMES: WHAT AM I GOING TO GET? AM I GOING TO SPEND THE REST OF MY LIFE IN JAIL? OVER AND OVER AND OVER AGAIN. WHY DID YOU ASK THAT?

A. BECAUSE –

Q. WHY WERE YOU SO WORRIED ABOUT THAT?

[1039] A. – I WANT – THAT'S WHAT I WAS WORRIED ABOUT, MY FUTURE.

Q. WELL, THEY HAD ALREADY GUARANTEED YOU PROBATION, THAT'S WHY YOU WERE LYING; RIGHT?

A. YES, MA'AM. AND IT WAS EASING ME TO HEAR IT AGAIN.

Q. I'M SORRY?

A. IT WAS EASING, LIKE, IF SOMEBODY TELL YOU SOMETHING YOU ALREADY KNOW THE ANSWER TO IT BUT YOU STEADY ANSWERING – YOU STEADY ASKING THEM, I WANTED TO KEEP HEARING IT.

Q. WELL, THEY DIDN'T TELL YOU THAT ON TAPE, THOUGH?

A. NO, MA'AM.

Q. WHAT THEY TOLD YOU WAS: WE CAN'T TELL YOU WHAT YOU'RE GOING TO GET?

A. YES, MA'AM. AND I KNEW THAT WAS PART OF BEING RECORDED BECAUSE HE TOLD ME I WAS GOING TO BE RECORDED.

Q. AND HE TOLD YOU TO, LIKE, SAY THAT, TO ASK THAT QUESTION ALONG OR SOMETHING?

A. NO, MA'AM.

Q. OR HE TOLD YOU HE WOULDN'T SAY IT ON TAPE OR WHAT?

A. I NOTICED HE WASN'T SAYING IT.

Q. OKAY. LET'S GO BACK TO THE SOFT-HEARTED THING. YOU WERE GOING TO SOFT – YOU FEEL FOR THESE VICTIMS?

A. I FEEL, YES, MA'AM.

Q. YOU FEEL FOR THEM. SO, YOU WERE GOING TO MAKE IT EASY AND GET PROBATION AND MAKE IT EASIER ON THEM BECAUSE, WHAT, THEY WOULDN'T HAVE TO GO THROUGH –

A. THEY WOULDN'T –

Q. – THIS PROCESS?

A. NO, THEY WOULDN'T HAVE TO WORRY ABOUT TRYING TO SPEND THE REST OF THEIR LIFE NOT KNOWING WHO DONE WHAT.

Q. YOU CONFESSED BECAUSE YOU DIDN'T WANT [redacted] TO SPEND THE REST OF HER LIFE WONDERING WHO DID WHAT? THAT'S [1040] WHAT YOU JUST SAID.

A. WELL, YEAH.

Q. I'M SORRY?

A. I GOT, LIKE I SAID, I GOT A NIECE. IF SOMEONE IN YOUR FAMILY WAS TO GET

RAPED, HOW WOULD YOU THINK THEY'RE GOING TO FEEL IF THEY GOING TO NEVER FIND OUT? IT'S LIKE YOU GOING THE REST OF YOUR LIFE NOT KNOWING NOTHING. I KNEW FROM BASICALLY WHAT THEY WAS TELLING ME, THAT THEY DIDN'T HAVE NOTHING TO FIND NOBODY SO I'M GOING TO HELP THEM. THAT WAS PART OF MY AGREEMENT. FIRST, IT WAS JUST SUPPOSED TO BE – I THOUGHT IT WAS GOING TO BE FOR THE OF – THE NIGHT WITH MARC.

Q. OKAY. SO, YOU HELPED THEM WITH THE NIGHT WITH MARC BY CONFESSING AND IMPLICATING YOUR FRIEND AND THEN YOU DECIDED THAT YOU WOULD ALSO CONFESS TO THE RAPES?

A. THAT WAS MAINLY WHAT HE WAS TALKING ABOUT THE WHOLE TIME, THAT WHAT WE WAS GOING OVER.

Q. WHAT?

A. THE RAPES.

Q. AND DID YOU CONFESS BECAUSE YOU WANTED [redacted] TO KNOW THE TRUTH ABOUT WHO RAPED HER?

A. NO. I DIDN'T CONFESS. I WENT ALONG WITH IT BECAUSE I WANTED TO HELP THEM.

Q. HOW WOULD LYING ABOUT BEING THE OFFENDER HELP SOMEONE THAT HAS BEEN RAPED?

A. MENTALLY.

Q. THAT'S A QUESTION.

A. IT WOULD HELP THEM MENTALLY. THEY WOULDN'T –

Q. WHY WOULD IT HELP THEM MENTALLY?

A. BECAUSE THEY WOULD FEEL LIKE AT LEAST THEY KNOW WHO DONE IT.

Q. EVEN IF IT WAS A LIE?

[1041] A. YES, MA'AM.

Q. OKAY. SO, BACK TO THE NIGHT OF THE RAPES, YOU DID THAT BECAUSE YOU'RE SOFT-HEARTED AND BECAUSE YOU WERE HELPING FAIRBANKS, BUT YOU KNOW WHAT, THERE WASN'T ANY EVIDENCE TO IMPLICATE JOSHUA JOHNSON; WAS THERE?

A. NO, MA'AM.

Q. BUT YOU – YOU TOLD DETECTIVES THAT YOUR GOOD FRIEND, JOSHUA JOHNSON RAPED [redacted] AND PARTICIPATED IN THIS WHOLE CRIME WITH YOU?

A. YES, MA'AM.

Q. WHY WOULD YOU DO THAT?

A. BECAUSE I KNOW THAT PART OF PROCEDURES, LIKE, ANYTHING ELSE LIKE, WHEN Y'ALL WAS BEING QUESTIONED BEFORE Y'ALL CAME ON THE STAND, LIKE THE CSI THING, I KNOW THEY HAVE DNA, I KNOW OUR DNA WASN'T GOING TO MATCH AND THAT WAS PART OF REALLY PLANNING ON WINNING. I KNEW ONCE WE GOT – I THOUGHT ONCE WE GOT IN FRONT OF THE VICTIMS, YOU KNOW, EVERYTHING WOULD WORK OUT.

Q. OKAY. SO, YOU WANTED TO HELP THE VICTIMS BUT YOU THOUGHT THAT ONCE THE DNA GOT INVOLVED, YOU'D BE CLEAR –

A. YEAH.

Q. SO – HOW WOULD THAT BE HELPING –

A. NO. THE DNA WOULD CLEAR US BUT ONCE WE WAS IN FRONT THE VICTIMS, HE SAID WE WAS FITTING THE DESCRIPTION. SO, THEY WOULD BELIEVE IT WAS US AND THAT WAY WE WOULD BE ABLE TO GET THE DEAL AND EVERYTHING WORK OUT RIGHT.

Q. MR. EDWARDS, JUST A COUPLE OF MORE QUESTIONS. ON THE TAPE, YOU DESCRIBED – YOU DESCRIBED THE APARTMENT FOR THE DETECTIVE –

A. YES, MA'AM?

Q. – DON'T YOU?

A. YES, MA'AM.

[1042] Q. HOW DID YOU KNOW HOW TO DESCRIBE THE APARTMENT?

A. WE DREW IT OUT.

Q. OH, Y'ALL DREW IT OUT BEFORE YOU DID THIS, TOO?

A. YES, MA'AM.

Q. WHO DREW IT?

A. PROFESSOR – I MEAN, DETECTIVE FAIRBANKS.

Q. HE DREW A DRAWING OF THE APARTMENT?

A. YES, MA'AM.

Q. IS THAT SO THAT HE COULD FORGET WHERE THE KITCHEN AND THE BATHROOM WERE LOCATED SO YOU COULD CORRECT HIM?

A. BECAUSE IT HAD BEEN SHOWN TO ME. WE DREW IT UP ON THE PAPER AND WE WENT OVER. HE SHOWED ME EVERYTHING WHAT WAS WHAT AND I KNEW THAT THE KITCHEN WAS STRAIGHT AHEAD BECAUSE JUST LIKE IN MY HOUSE, THE KITCHEN STRAIGHT AHEAD.

Q. OKAY. AND YOU TOLD HIM WHERE THE BATHROOM WAS?

A. YES, MA'AM.

Q. WHEN HE DIDN'T KNOW ON TAPE, YOU TOLD HIM THAT THE BATHROOM – THE KITCHEN – THE BATHROOM IS RIGHT ACROSS FROM KITCHEN RIGHT THERE; DIDN'T YOU?

A. I DON'T REMEMBER.

Q. BUT YOU DID THAT BECAUSE HE DREW A MAP OF THE APARTMENT SO THAT YOU WOULD BE ABLE TO TESTIFY TO THAT EFFECT?

A. HE DREW THE MAP TO HELP ME.

Q. SO, FAIRBANKS KNEW THAT HE WAS TALKING TO AN INNOCENT GUY; IS THAT WHAT YOU'RE TELLING THE MEMBERS OF THE JURY?

A. I WOULD SAY SO.

Q. AND HE JUST GOT YOU TO CONFESS SO THAT – WHY?

A. BASICALLY, MAKE HIS JOB EASIER.

Q. WHAT SHIRT DID YOU WEAR TO THE BOWLING ALLEY?

A. THAT WAS MINE.

Q. WHY DID YOU TELL HIM IT WAS THE SHIRT THAT YOU TOOK FROM RYAN IN THE ARMED ROBBERY THE NIGHT BEFORE?

[1043] A. BECAUSE THEY TOLD ME THAT I HAD ON A SHIRT THAT MATCHED THE SHIRT FROM – THAT WAS TOOKEN. I WAS, LIKE, YEAH, I GOT ONE THAT COLOR.

Q. OKAY. SO, YOU DECIDED THAT WOULD FIT WELL?

A. YES, MA'AM.

Q. OH, OKAY. SO, YOU LIED ABOUT THAT, TOO? IT WAS ACTUALLY YOUR SHIRT BUT YOU SAID –

A. YES, MA'AM.

Q. OKAY. AND Y'ALL WORKED IT OUT IN ADVANCE AS WELL?

A. YES, MA'AM.

Q. DID YOU SEE, DURING THE TRIAL, THE VIDEO OF JOSHUA JOHNSON?

A. YES, MA'AM.

Q. DID YOU SEE HIM FOLLOW RYAN INTO THE STORE?

A. YES, MA'AM.

Q. AND FOLLOW RYAN OUT OF THE STORE?

A. YES, MA'AM.

Q. ISN'T THAT A FUNNY COINCIDENCE?

A. YES, MA'AM.

Q. CAN YOU JUST BELIEVE? AND IT WAS RIGHT BEFORE HE WAS KIDNAPPED?

A. WE –

Q. GO AHEAD.

A. WE KNEW – HE KEPT ON TELLING ME THAT SOMEBODY – WELL, SOMEBODY WAS INVOLVED IN THIS.

Q. WHO WAS INVOLVED? WHO SAID THAT?

A. DETECTIVE FAIRBANKS KNEW THAT. HE SAID JOSH WAS PROBABLY INVOLVED IN IT SO I HELPED AND WENT ALONG WITH IT.

Q. OKAY.

A. AND JOSHUA STAYED OUT IN THAT AREA.

Q. OKAY.

A. SO –

[1044] Q. SO, JOSHUA JUST HAPPENED TO BE AT THE CIRCLE K WHEN RYAN EATON WAS AT THE CIRCLE K THE DAY BEFORE – THE DAY HE WAS –

A. I SAW HIM ON IT – I SAW ON THE TV SCREEN THAT HAD.

Q. THAT JUST REALLY WORKED INTO YOUR STORY WELL; DIDN'T IT?

A. COULD YOU EXPLAIN THAT?

Q. SO, JOSHUA IS GOING TO HAVE TO STAND TRIAL FOR AGGRAVATED RAPE, TWO COUNTS OF AGGRAVATED KIDNAPPING, FIVE COUNTS OF ARMED – NO, SIX COUNTS OF ARMED ROBBERY BECAUSE HE DID THE CHELSEA'S

ONE. HE'S GOING TO HAVE TO STAND TRIAL FOR ALL OF THOSE CRIMES; ISN'T HE?

A. I WOULD BELIEVE SO.

Q. AND HE'S IN JAIL; ISN'T HE?

A. YES, MA'AM.

Q. AND HE'S BEEN IN JAIL SINCE THIS HAPPENED; HASN'T HE?

A. YES, MA'AM.

Q. AND THAT'S ALL BECAUSE YOU WANTED TO MAKE FAIRBANKS HAPPY AND GET PROBATION?

A. I DIDN'T KNOW THAT OUR BOND WOULD BE SET SO HIGH AND IT WOULD BE AS SERIOUS AS IT CAME OUT. THE WAY I WAS – IT WAS EXPLAINED TO ME THAT EVERYTHING WAS GOING TO WORK OUT WITHIN A MONTH'S TIME.

Q. ANOTHER THING ON THE VIDEO. FIRST, AT THE END OF THE FIRST VIDEO, OR THE FIRST TIME THAT FAIRBANKS WALKS OUT OF THE ROOM, YOU STAND UP AND YOU'RE AGITATED AND YOU SAY – AND EXCUSE MY LANGUAGE, YOUR HONOR. THIS IS A QUOTE, YOU SAY: I JUST FUCKED MYSELF?

A. YES, MA'AM.

Q. YOU SAID THAT ON THE VIDEO; DIDN'T YOU?

A. YES, MA'AM.

Q. WHEN NOBODY WAS IN THE ROOM, YOU'RE JUST THERE ALL BY [1045] YOURSELF. WHY DID YOU SAY THAT?

A. BECAUSE THAT'S WHEN I FELT THAT IT WASN'T GOING TO WORK OUT LIKE IT WAS TOLD TO ME.

Q. OH, YOU FELT THEY WERE TURNING ON YOU?

A. YES, MA'AM.

Q. WHY DIDN'T YOU GO, WHEN YOU GOT BACK ON VIDEO, WHY DIDN'T YOU SAY: YOU KNOW, Y'ALL ARE FORCING ME THROUGH THIS WHOLE THING; THIS IS NOT TRUE; I CAN TELL Y'ALL ARE RENEGING ON WHAT WE SAID? WHY DIDN'T YOU DO THAT BECAUSE YOU – WELL, YOU TESTIFIED A LONG TIME AFTER THAT. YOU TALKED TO HIM A LONG TIME AFTER THAT; DIDN'T YOU?

A. YES, MA'AM.

Q. WHY DIDN'T YOU SAY THAT?

A. BECAUSE THAT WASN'T PART OF WHAT WE WENT OVER.

Q. I'M SORRY?

A. THAT WASN'T WHAT WE WENT OVER.

Q. THAT WASN'T ON THE SCRIPT?

A. THAT WASN'T WHAT WE WENT OVER. AND, LIKE I SAY, I KNOW WE WAS BEING RECORDED. I WAS ADVISED BEFOREHAND THAT WE WAS GOING TO BE RECORDED. I DON'T KNOW IF ANYBODY WAS PAYING ATTENTION BUT I REMEMBER ASKING WAS – HE HAD SAID, COULD I SPEAK UP. I ASKED HIM – I TOLD – THAT'S WHEN HE TOLD ME RIGHT BEFORE, WHY COULDN'T THEY JUST TURN THE SPEAKERS UP SOME, BECAUSE THAT'S WHEN

HE HAD ADVISED ME THAT WE WERE GOING TO BE RECORDED BUT HE DIDN'T SAY EXACTLY WHEN AND I KNEW WHEN HE WAS TELLING ME TO SPEAK UP THAT MUST BE MY CUE.

Q. WELL, YOU ASKED HIM – WHY DID YOU SAY IT ON VIDEO BECAUSE WHEN HE SAYS SPEAK UP, A FEW SECONDS LATER, YOU SAY, WELL, I KNOW I'M BEING RECORDED.?

A. I ACTUALLY –

Q. AND THEN Y'ALL HAVE THIS DISCUSSION ABOUT WHETHER OR NOT YOU WERE BEING RECORDED. WHY WOULD YOU HAVE THAT [1046] DISCUSSION? WASN'T THAT VIOLATING YOUR AGREEMENT?

A. NO, MA'AM. HE HAD TOLD ME TO SPEAK UP AND I ASKED HIM, WHY DON'T Y'ALL JUST TURN THE SPEAKERS UP? I DON'T USUALLY TALK LOUD.

Q. WHEN DID YOU SAY, WHY DON'T Y'ALL JUST TURN THE SPEAKERS UP?

A. ON THE VIDEO.

Q. OH, YOU SAID THAT ON THE VIDEO?

A. YES, MA'AM. I REMEMBER SEEING IT AND I REMEMBER SEEING, TOO. YOU WANT TO PLAY IT AGAIN?

Q. OH, YOU'LL BE SEEING IT AGAIN, AT LEAST PARTS OF IT.

A. YES, MA'AM.

MS. CUMMINGS: YOUR HONOR, I DON'T HAVE ANY OTHER QUESTIONS OF THIS WITNESS AT THIS TIME.

THE COURT: REDIRECT?

MS. HALL: YES, YOUR HONOR.

[1047] EXAMINATION BY

MS. HALL:

Q. WERE YOU WITH JOSHUA JOHNSON ON THE NIGHT OF SATURDAY, MAY 13TH, 2006 THE EARLY MORNING OF SUNDAY, MAY 14TH, 2006?

A. NO, MA'AM.

Q. DO YOU KNOW IF HE WOULD HAVE COMMITTED A ROBBERY OR A RAPE OF ANYONE?

A. NO, MA'AM.

Q. DO YOU HAVE ANY FIRST HAND KNOWLEDGE OF THAT?

A. NO, MA'AM.

Q. IS YOUR TESTIMONY HERE TODAY MEANT TO IMPLICATE HIM IN ANY RAPE OR ROBBERY ON MAY 13TH –

A. NO, MA'AM.

Q. – 2006 OR MAY 14TH, EARLY MORNING MAY 14TH, 2006?

A. NO, MA'AM.

Q. GOING BACK TO SUNDAY NIGHT, MAY 14TH, 2006 EARLY MORNING, MONDAY, MAY 15TH, WERE YOU WITH JOSHUA JOHNSON THAT NIGHT?

A. YES, MA'AM.

Q. WAS ANYONE ELSE WITH YOU?

A. YES, MA'AM.

Q. WHO?

A. JACQUIN.

Q. IS THAT THE NIGHT THAT THOSE PICTURES WERE TAKEN THAT I SHOWED YOU?

A. YES, MA'AM.

Q. AT ALL TIMES DURING YOUR CONFESSION, DID YOU BELIEVE THAT YOU WERE GOING TO BE GETTING PROBATION FOR THESE OFFENSES?

A. NO, MA'AM.

Q. WHEN DID YOU BELIEVE YOU WOULD GET SOMETHING ELSE?

A. FURTHER ALONG IN THE INTERVIEW –

* * *

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Docket No. 07-06-0032, Sec. VI

THEDRICK EDWARDS

Doc # 533192

versus

BURL CAIN, WARDEN

FILED: _____ DEPUTY CLERK: _____

PLEASE SERVE BURL CAIN, WARDEN, LOUISIANA STATE PRISON AND HONORABLE HILLAR MOORE, DISTRICT ATTORNEY, NINETEENTH JUDICIAL DISTRICT.

APPLICATION FOR POST-CONVICTION RELIEF

1. Name and location of court which entered the judgment of conviction challenged.

   The Nineteenth Judicial District Court in the Parish of East Baton Rouge.

2. Date of judgment of conviction.

   December 7, 2007 (guilty verdicts).

3. Length of sentence.

   Count I: Armed Robbery– Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

   Count II: Armed Robbery– Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count III: Armed Robbery– Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count IV: Armed Robbery– Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count V: Armed Robbery– Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count VI: Attempted Armed Robbery– Not Guilty

Count VII: Aggravated Kidnapping– Life at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count VIII: Aggravated Kidnapping– Life at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count IX: Aggravated Rape– Life at hard labor, to be served without benefit of probation, parole or suspension of sentence.

ALL SENTENCES TO RUN CONSECUTIVE

4. Nature of offense involved (all counts).

Count I: Armed Robbery

Count II: Armed Robbery

Count III: Armed Robbery

Count IV: Armed Robbery

Count V: Armed Robbery

Count VI: Attempted Armed Robbery

Count VII: Aggravated Kidnapping

Count VIII: Aggravated Kidnapping

Count IX: Aggravated Rape

5. What was your plea?

   Not guilty.

6. Kind of trial:

   Jury.

7. (a) Name and address of the lawyer representing you at trial:

   Sonya Hall
   658 St. Charles
   Baton Rouge, La 70802

   (b) Was the lawyer appointed or hired?

   Hired.

8. Did you testify at the trial?

   Yes.

9. (a) Give the name and address of the lawyer who represented you at sentencing for the conviction being attached herein.

   Sonya Hall
   658 St. Charles
   Baton Rouge, La 70802

   (b) Was the lawyer appointed or hired?

   Hired.

10. Did you appeal from the judgment of conviction?

    Yes.

11. If you did appeal, give the filing information:

    a. Citation, docket number, and date of written opinion.

       State v. Edwards, 2008-KA-2011 (La. App. 1 Cir. 6/12/09), 11 So.3d 1242, writ denied, 2009-K-1612 (La. 12/17/10), 51 So. 3d 27.

b. Name and address of lawyer representing you on appeal:

First Circuit:
Frank Sloan
948 Winona
Mandeville, La 70471

Supreme Court:
Andre Belanger
8075 Jefferson Highway
Baton Rouge, La 70809

c. Was the lawyer appointed or hired?

Frank Sloan was appointed to handle the appeal to the First Circuit Court of Appeal and the law firm of Manasseh, Gill, Knipe and Belanger was hired to handle the writ to the Supreme Court.

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any application for post-conviction relief with respect to this judgment in any state or federal court?

No.

CLAIM

1. Claims: The claims are categorized into 3 categories: issues raised on appeal; constitutional issues and ineffective assistance of counsel. The claims not raised on appeal are either part of the ineffective assistance claim or are egregious violations worthy of consideration here; see attached brief.

A. Supporting facts: see attached brief.

B. Names and addresses of witnesses who could testify in support of your claim.

See attached brief.

C. If you failed to raise this ground in the trial court prior to conviction, on appeal or in a prior application, explain why: Some claims not raised on appeal form part of the ineffective assistance claim while others are matters of federal constitutional law– of course there is some overlap as well; see attached brief.

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST FELICIANA

A. Do you have in a state or federal court any petition or appeal now pending as to the judgment challenged?

Yes [ ] No [X]. If "yes", name the court.

B. Do you have any future sentence to serve after you complete the sentence imposed by the judgment challenged?

Yes [ ] No [X]

(1) If so, give name and location of court which imposed sentence to he served in the future:

n/a

(2) Give date and length of sentence to be served in the future:

n/a

(3) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes [X] No [ ]

The petitioner has not filed any other petitions but reserves any rights that he has to seek Habeas relief in any state or federal court at the appropriate time.

C. If a copy of the court order sentencing you to custody is not attached, explain why.

A copy of the criminal commitment is attached.

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled.

/s/ Thedrick Edwards
THEDRICK EDWARDS

THEDRICK EDWARDS, being first duly sworn, says that he has read the foregoing application for post-conviction relief and swears or affirms that all of the information therein is true and correct.

/s/ Thedrick Edwards
THEDRICK EDWARDS

SWORN TO AND SUBSCRIBED before me this [illegible] day of [illegible], 2011.

[illegible]
NOTARY PUBLIC

* * *

[illegible page]

* * *

FACTS

The police develop Edwards as a suspect for multiple robberies and a rape occurring from May 13, 2006 through May 15, 2006. The police obtain a warrant to search the defendant's residence that was executed on May 15, 2006 around midnight[1]. The defendant was not present during the execution of the warrant.

The defendant surrendered himself the following day at the First District Police station. At that time, he was interrogated by Detective Tillman Cox and denied committing the rape and robberies[2]. This statement is not recorded.

The following day, detectives Gregory Fairbanks and John Attuso, of the Baton Rouge Police Department Sex Crimes Division, obtain a search warrant that authorizes their taking a DNA sample from Edwards. These detectives obtain Edwards' custody from the parish prison and transport him to the First District Police station to collect the DNA sample[3]. Once at the station, the defendant is placed into an interview room equipped with audio and visual recording capabilities[4]. He is chained to its wall[5]. The two detectives proceed to interrogate Edwards, without counsel, for forty-five (45) minutes in an unrecorded. interview[6]. The defendant testified that he wanted an attorney but ultimately agreed to give a statement as a result of the pressures and promises of

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[1] Record Page 965

[2] Record Pages 733-734

[3] Record Pages 945-946

[4] Record Page 968

[5] Record Page 1018

[6] Record Page 945

the police[7]. According to Edwards, he was advised that he did not need a lawyer and was going to go down for the crimes unless he cooperated.[8] However, if he cooperated, the police would talk to the district attorney, and he could get probation and then go to college someday[9]. He further advised that the police provided him details of the crimes, which he would later confess as part of his cooperation.

Detective Fairbanks testified at motions and trial regarding this unrecorded interrogation. At motions, he denied that the defendant requested counsel and advised that a sudden "free flow" of information from the defendant was unexpected and prevented his taping the interrogation[10]. At trial, the detective elaborated on his interrogation technique by providing more details of the unrecorded interrogation suggesting that Edwards did not engage in a sudden "free flow" of information.

Fairbanks testified that Edwards denied committing the charged crimes but after they "got past the denial," the defendant began his "free flow" of information[11]. Fairbanks admits he talked with the defendant about attending college, the beneficial aspects of cooperating and how Edwards' clean criminal history would be a factor considered in any pre-sentence investigation[12]. He denied making specific promises of an outcome. Regrettably, Fairbanks testified to his

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[7] Record Page 1018

[8] Record Pages 1019-1021

[9] Record Page 1028

[10] Record Page 462

[11] Record Page 976

[12] Record Pages 978-982

willingness to lie and manipulate facts in an effort to extract an admission from a suspect[13].

At trial, the defendant testified that he agreed to the recorded interrogation in an effort to cooperate with the police. Fairbanks testified that he advised Edwards that it was "senseless" to hire an attorney and that he could conserve his family's resources by not feigning innocence[14].

Absent the defendant's inculpatory statements, this is not a "clear cut case." The perpetrators of these crimes were young black males wearing black caps, gloves and bandannas covering their faces from the nose down to the chin[15]. The police dusted for prints and collected DNA samples from the various crime scene locations[16] and none of that forensic evidence implicated the accused[17]. The police executed a search warrant at the residences of the accused and his codefendant but did not recover any stolen properly, weapons or clothing involved in these crimes[18]. In fact, the alleged weapons and bandannas were found in a vehicle driven by three black male acquaintances of the defendant, none of whom testified at trial[19]. The defendant's photo lineup was presented to five witnesses and only one was able to make a positive ID[20]. This identification is best described as a "cross-racial"

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[13] Record Page 974

[14] Record Page 972

[15] Record Pages 492, 662, 678-679, 750, 755 and 775-776

[16] Record Pages 739-745 and 881-885

[17] Record Pages 897 and 942

[18] Record Page 475

[19] Record Pages 805-812

[20] Record Pages 519, 668, 759, 782 and 791

identification made by a victim that had only a few seconds to view his assailant's face[21]. Another witness made a tentative cross-racial ID of the accused[22]. Regrettably, the three individuals in possession of the weapons and bandannas were not placed into a photo lineup for viewing, although one of the victims did participate in a show up ID of these three, but that procedure failed to produce an identification[23].

Edwards' trial was problematic in that numerous constitutional violations were noted. Edwards' trial begins with the State using its peremptory and cause challenges to exclude all but one African American from the jury. Edwards' trial concludes with the prosecutor vouching for the credibility of Detective Fairbanks- by referencing his status as a chaplain- and also asserts to the jury that they represent the community when no such function exists. In between, other errors are noted.

The State's case presented two witnesses whose testimony is inherently flawed and was admitted in violation of constitutional safeguards. One of the witnesses, Wanda Pezant, testified regarding the "Rape Kit." Her testimony included commenting on the victim's demeanor and experiences with such victims. However, Pezant did not perform the actual examination of the victim and her testimony regarding the victim's demeanor and forensic findings of the examination violated Edwards' confrontation rights.

The State also presented a co-defendant charged with armed robbery and kidnapping. This witness

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[21] Record Pages 522 and 543

[22] Record Pages 682-684 and 688

[23] Record Page 853

advised the jury that he was testifying just to do so—even though he had a lawyer. No formal deal was made—at that time. Once Edwards and another co-defendant were convicted, this witness, Mr. James, was allowed to plead to an expugnable felony offense. This "after the fact" plea bargaining is customary in the judicial district and deprives those standing trial from a full cross-examination of their motives and biases and, as such, jurors are not able to fully assess their testimony.

This case also presents certain constitutional issues stressing the impropriety of certain jurisprudential rules in Louisiana. The first challenge concerns Louisiana's established jurisprudence prohibiting the use of identification experts. This prohibition is made because it is feared that the jury will substitute the expert's opinion for their own common sense but such testimony is common place when used by the State in other prosecutions. This issue is currently before the United States Supreme Court and a favorable ruling will benefit Edwards as his sole identification as a rapist is a cross-racial identification in which the perpetrator's face was only exposed for a few seconds[24].

This case also challenges the constitutionality of Louisiana's non-unanimous jury scheme in light of the Supreme Court's comments that the Bill of Rights are fully incorporated and applied to the States in the same manner as they are applied to the Federal Government. In this case, at least one person voted to acquit Edwards on every count. If Edwards' case was

[24] There is also a tentative cross racial identification made and the context of that testimony would be better assessed with expert testimony.

prosecuted in one of 48 other states or by the federal government he would not have been convicted.

This case also challenges the State's use of its cause and peremptory challenges. As noted above, the State was able to exclude all but one African American from the jury. Interestingly, this juror voted to acquit Edwards on each count.

To the extent that trial counsel failed to litigate these issues or raise the necessary objections, she was ineffective.

As such, it can not be said, beyond a reasonable doubt, that Edwards would have been Convicted if the above mentioned defects were addressed.

STATEMENT OF THE CASE

The defendant was indicted for five counts of armed robbery, one count of rape, two counts of aggravated kidnapping and one count of attempted armed robbery. The defense filed a Motion to Suppress Statements which was litigated unsuccessfully. The defendant was convicted of all counts except the count for attempted armed robbery. The defendant was sentenced to 30 years on each armed robbery count and, life imprisonment on the aggravated kidnapping and aggravated rape. These sentences are without the benefit of probation, parole or the suspension of sentence and all are consecutive to each other. An appeal was taken and the First Circuit affirmed the defendant's conviction and sentence. A writ was taken to the Louisiana Supreme Court and was denied on December 17, 2010. According to La. C.Cr.P. Art. 930.8 the defense has two years to file for post conviction relief from the date his sentence and conviction become final.

ASSIGNMENTS OF ERROR

1. Edwards' Confrontation Rights were violated when testimony concerning the "Rape Kit" consisting of forensic findings and victim analysis were admitted because the actual examiner did not testify. Rather, the State relied upon the testimony of a supervisor lacking any first hand knowledge to comment upon the kit.

2. The prosecutor's comments during closing argument prevented Edwards from receiving a fair trial. During argument, the prosecutor vouched for the credibility of Detective Fairbanks and also commented that the jury represented the people who were "out for justice" knowing full well that the jury does not have a representative function and that plebiscites on crime are improper.

3. Louisiana's jurisprudence allowing for criminal convictions to occur without an unanimous jury violates Edwards' federal Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Edwards would not have been convicted of any offense if prosecuted in 48 other States or by the Federal Government.

4. Louisiana's jurisprudence prohibiting the use of identification experts violates the defendant's federal due process rights. In this case, an expert would have been useful since the sole identification of Edwards as the rapist was a cross racial identification made by a person who viewed Edwards for a few seconds.

5. The prosecutor deprived Edwards of his right to adequately confront his accusers when they failed to advise trial counsel of an informal plea deal made with one of his testifying witnesses. This is

also considered a *Brady* violation and implicates due process concerns.

6. The trial court erred by allowing the admission of the defendant's confession when these inculpatory statements were the product of coercive police techniques and made without the presence of counsel despite the defendant's request for an attorney.

7. The State intentionally excluded African Americans from the jury. Through its use of cause and peremptory challenges, all but one African American was excluded by the State. Interestingly, this person consistently voted to acquit Edwards.

8. Trial counsel was ineffective for failing to address the confrontation and due process violations noted above.

SUMMARY OF ARGUMENTS

1. Rape Kit Testimony

The United States Supreme Court's holding in *Bullcoming v. New Mexico* requires the prosecution to provide testimony of the forensic examiner actually performing the examination in order for the accused to fully confront the witnesses against him. In this case, the supervisor of the examiner performing the rape kit testified as to that examiner's forensic findings, interview with the victim and demeanor of the victim. Since the supervisor lacked first hand knowledge of the examination, such testimony was hearsay. Edwards' inability to cross examine the actual examiner is a Confrontation Clause violation mandating a new trial.

2. Prosecutor's Comments

The prosecution is given wide latitude when making its final argument to the jury. Nevertheless, the prosecutor is not given unbridled discretion and courts have reversed convictions when prosecutors made their arguments a plebiscite on crime; vouched for the credibility of witnesses; and requested the jury view itself as representatives of the community. In this case, all three violations were made. First, the prosecutor vouched for the credibility of the detective whose credibility concerning Edwards' statement is at issue when she referenced his status as a pastor in an effort to bolster his integrity. Secondly, the prosecutor's comments that the detective was "out for justice like the rest of us" made Edwards' case a plebiscite on crime and also served to align the State's interest with the jury and make the jury representatives of the community. None of that is permissible. The jury serves no representative function.

3. Non-Unanimous Jury

Louisiana's jurisprudence allowing for criminal convictions to occur without a unanimous jury violates Edward's federal Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Louisiana's Supreme Court has repeatedly upheld this provision but those cases must be viewed in light of the United States Supreme Court's decision in *McDonald v. Chicago*, in which the Court noted that the Bills of Rights are not selectively incorporated to the States with differing standards than those binding upon the federal government. The Court further noted that those legal decisions used to justify the non-unanimous jury provisions in Oregon and Louisiana do not establish a multi-track approach to the incorporation doctrine. As such, the unanimous

jury issue is again proper for inquiry. Edwards is the proper person to raise the issue because he would not be serving the rest of his life in jail if he were prosecuted in 48 other States or by the Federal Government.

4. Identification Expect Testimony

Louisiana's jurisprudence prohibiting the use of identification experts violates the defendant's federal due process rights. Louisiana's courts repeatedly reject defense attempts to have identification experts testify to problems concerning the reliability of witness identifications because they fear that the jury will substitute the expert's opinion for their own common sense. However, the same courts allow the State to present experts in child sex crimes cases to discuss why victims may recant, delay reporting or omit details. Such testimony is not seen to be substituting the expert's opinion for the common sense of the jury. This dichotomy is bizarre. The issue is ripe for review since the matter is currently pending before the United States Supreme Court. In this case, an expert would have been useful since the sole identification of Edwards as the rapist was a cross racial identification made by a person who viewed Edwards for a few seconds.

5. *Brady-Giglio* Violation

The prosecutor deprived Edwards of his right to adequately confront his accusers when they failed to advise trial counsel of an informal plea deal made with one of his testifying witnesses. The prosecution presented testimony from an alleged accomplice to the robberies and kidnapping. At trial that witness purportedly testified because he wanted to put the matter behind him. At the time, there were no formal

deals. The witness was represented by an esteemed lawyer and, after testifying at another related trial, pled to a felony pursuant to the provisions of Article 893 and will, no doubt, have the matter expunged in due course. Whenever the criminal consequences of a witness is determined by the subjective assessment of their testimony by the State, disclosure is warranted. In this case it did not occur. How would the jury view this witnesses' testimony today if they knew he was auditioning for an expungement when he testified?

6. Coerced Confession

The State failed to meet its heavy burden of proving that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and obtained an uncounseled inculpatory statement from Edwards despite his request for counsel. Edwards denied criminal culpability on two occasions before succumbing to coercive police techniques during an unrecorded forty-five (45) minute interrogation by two officers. The lead detective freely admits his willingness to lie and manipulate a suspect in an effort to obtain an admission. The contents of this detective's cajoling is discussed more fully below. Additionally, the defendant testified that he requested an attorney that was never provided and that he confessed to facts provided to him by the police as part of his cooperation that was to result in leniency. The police acknowledge telling the defendant that it was senseless for him to hire an attorney. Needless to say, an attorney was not provided. The police use of coercive interrogation techniques prevented a free and voluntary waiver of the defendant's Fifth Amendment rights. The failure to provide an attorney, despite the defendant's request, is a direct violation of the defendant's Sixth Amendment rights. Taken together, it appears the

defendant's confession was impermissibly obtained and should have been excluded from evidence at trial.

7. Batson Violation

The State intentionally excluded African Americans from the jury. Through its use of cause and peremptory challenges, all but one African American was excluded by the State. interestingly, this person consistently voted to acquit Edwards. More specifically, the State was able to exclude ten (10) of eleven (11) African Americans on the venire from the jury. This obvious error is compounded when viewed within the context of the non-unanimous jury requirement noted above.

8. Ineffective Assistance of Counsel

Trial counsel was ineffective for not raising these above cited issues. More specifically, counsel should have made a Batson challenge during jury selection; objected to the forensic examiner's supervisor from testifying and should have objected to the prosecutor's improper comments during argument. Pre-trial, counsel should have moved to quash the non-unanimous jury requirement; petitioning the court for an identification expert; and compelling the prosecution to reveal all deals with witnesses.

ISSUE

Edwards was deprived of his confrontation rights when testimony concerning, the forensic rape kit examination was elicited from an analyst that was not involved with gathering and documenting that evidence.

ARGUMENT

The Sixth Amendment's Confrontation Clause gives the accused the right to be confronted by the witnesses against him[25]. Forensic laboratory reports created specifically to serve as evidence in a criminal proceeding are considered testimonial for Confrontation Clause purposes mandating live witness testimony regarding the truth of the report's contents[26]. The Confrontation Clause does not permit the prosecution to introduce a forensic report through the in court testimony of an analyst who did not personally perform or observe the performance of the test reported in the certification[27].

In Edwards' case, the State presented testimony from Wanda Pezant who purported to be the Director of Education at Ochsner Medical Center in Baton Rouge and a Sex Assault Nurse Examiner coordinator. As a SANE coordinator, Pezant reviewed the "Rape Kit" for [redacted] - the prosecution's victim. Pezant's testimony divulged the contents of the examiner's interview of [redacted], [redacted]'s demeanor and forensic findings following a physical examination and scientific testing. None of that testimony concerned first hand observations by Pezant. This testimony was particularly devastating because it was used to bolster and corroborate [redacted]'s testimony. Edwards' attorney could not effectively cross examine on the Rape Kit because the actual examiner was never tendered for cross examination. This error is a

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[25] *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004).

[26] *Melendez-Diaz v. Massachusetts*, __U.S.___, 129 S.Ct. (2010).

[27] *Bullcoming v. New Mexico*, 564 U.S.___, 131 S.Ct. 2705 (2011); *State v. Bolden*, 2011 WL 4578596 (La. App. 3 Cir. 2011).

clear violation of Edwards' constitutional rights and, as such, violated his due process rights.

ISSUE

The prosecution violated Edwards, federal due process guarantees when the prosecution made inflammatory and prejudicial comments by vouching for the credibility of the case detective; turning the prosecution into a plebiscite on crime; and insinuating that the jury served on a representative function.

ARGUMENT

Closing arguments in a criminal case should be limited to the evidence admitted, the lack of evidence, conclusions derived from them, and applicable law[28]. The prosecutor's prejudicial comments in closing argument may be considered to violate federal due process guarantees-even in the absence of a defense objection[29]. In order to overturn a conviction because of an improper prosecutorial argument, the court must be convinced that the remarks influenced the jury and contributed to the verdict[30].

In this case the prosecution argued that Detective Fairbanks was one of the best at his job and would not have a reason to convict an innocent man because he is a chaplain. The prosecutor also added that Detective Fairbanks was out for justice "like the rest of us[31]."

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[28] La C.Cr.P. Art. 774; *State v. Colligan*, 679 So.2d 184 (La. App. 3 Cir. 1996).

[29] State v. Lec, 346 So.2d 682 (La. 1977); State v. Hayes, 364 So.2d 923 (La. 1978).

[30] *State v. Jackson*, 80 So. 2d 105 (La. 1955).

[31] Record Page 1065

An attorney is prohibited from expressing an opinion as to the witness' credibility by LSBA Rule of Profession Conduct 3.4(e). The Rules of Professional Conduct have the force of substantive law[32]. The prosecutor's reference to Fairbanks' status as a chaplain is an impermissible bolster to the truthfulness of his testimony; his higher moral standing-especially when compared to the accused; and was a stamp of approval by the prosecutor regarding the detective's credibility.

Furthermore, prosecutors are prohibited from turning a closing argument into a plebiscite on crime by making reference to community sentiment[33]. In this case, the prosecutor appealed to public sentiment when she stated that Detective Fairbanks was out for justice "like the rest of us". That context establishes that "us" is the prosecutor, the jury, and society in general. The notion of the jury being aligned with the prosecutor or being the community's representative is contrary to its function which is specifically defined in La C.Cr.P. Art. 802. This case is similar to the conviction reversed by the Third Circuit in *State v. Colligan*[34]. In *Colligan*, the prosecutor commented that the jury represented the people of the parish. The Court of Appeal found the argument improper because the jury does not maintain a representative function and are required to deliberate without regard to public opinion. Likewise, Edwards' conviction should be reversed because the jury is not "the rest of us" nor is

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[32] *State v. Romero*, 533 So.2d 1264 (La. App. 3 Cir. 1988).

[33] *State v. Deboue*, 552 So.2d 355 (La. 1989).

[34] *State v. Colligan*, 679 So.2d 184 (La. App. 3 Cir. 1996)

it aligned with the prosecutor. The prosecutor's comments are wrong and a reversal is in order.

ISSUE

Louisiana's non-unanimous jury system violates Edwards' federal Sixth Amendment rights as incorporated through the Fourteenth Amendment's due process clause.

ARGUMENT

Currently, well settled jurisprudence upholds the constitutionality of La. C.Cr.P. Art 782 allowing for less than an unanimous jury to convict persons charged with second class felonies[35]. This jurisprudence relies upon the Supreme Court's ruling in *Apodeca v. Oregon* in which a plurality upheld Oregon's non-unanimous jury system[36]. However, a recent ruling by the High Court calls the current application of *Apodeca* into question.

Recently, the Court had to consider the scope of the incorporation doctrine in a case questioning whether the Second Amendment applied to the States in the same manner as the federal government[37]. The Court held that it does, noting that the right to bear arms is deeply rooted in this nation's history and tradition so it is a right fully incorporated by the Due Process Clause of the Fourteenth Amendment. In discussing the issue, the Court footnoted comments pertaining to

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[35] *State v. Bertrand*, 6 So.3d 738 (La. 2009); *State v. Jones*, 381 So.2d 416 (La. 1980); *State v. Simmons*, 414 So.2d 705 (La. 1982); *State v. Edwards*, 420 So. 2d 663 (La 1982).

[36] *Apodcca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628 (1972).

[37] *Mc Donald v. Chicago*, 551 U.S. 3028, 130 S.Ct. 3020 (2010)

one apparent exception- the unanimous jury requirement:

> "[14]There is one exception to this general rule. The Court has held that although the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials, it does not require a unanimous jury verdict in state criminal trials. See *Apodaca v. Oregon*, 406 U. S. 404 (1972); see also *Johnson v. Louisiana*, 406 U. S. 356 (1972) (holding that the Due Process Clause does not require unanimous jury verdicts in state criminal trials). But that ruling was the result of an unusual division among the Justices, not an endorsement of the two track approach to incorporation. In *Apodaca*, eight Justices agreed that the Sixth Amendment applies identically to both the Federal Government and the States. See *Johnson*, *supra*, at 395 (Brennan, J., dissenting). Nonetheless, among those eight, four Justices took the view that the Sixth Amendment does not require unanimous jury verdicts in either federal or state criminal trials, *Apodaca*, 406 U. S., at 406 (plurality opinion), and four other Justices took the view that the Sixth Amendment requires unanimous jury verdicts in federal and state criminal trials, *id.*, at 414–415 (Stewart, J., dissenting); *Johnson*, *supra*, at 381–382 (Douglas, J., dissenting). Justice Powell's concurrence in the judgment broke the tie, and he concluded that the Sixth Amendment requires juror unanimity in federal, but not state, cases. *Apodaca*, therefore, does not undermine the well established rule that incorporated Bill of Rights protections apply identically to the States and the Federal Government. See *Johnson*, *supra*, at 395–396 (Brennan, J., dissenting) (footnote omitted) ("In

> any event, the affirmance must not obscure that the majority of the Court remains of the view that, as in the case of every specific of the Bill of Rights that extends to the States, the Sixth Amendment's jury trial guarantee, however it is to be construed, has identical application against both State and Federal Governments").

According to Justice Alito's comments above, two principles are evident: first, those Bill of Rights that extend to the states have identical application and second, the right to a jury trial is one of those rights that extend to the states. The right to a unanimous jury is a deeply rooted part of our nation's history and tradition- it's required by the federal government and is required in 48 of the 50 states. The question that needs to be addressed by Louisiana's courts is by what legal authority can Louisiana create a two tier track on those provisions of the Bill of Rights incorporated to the states through the Due Process Clause of the Fourteenth Amendment?

In this case, Edwards had at least one person voting for an acquittal on every prosecuted offense. Edwards would not have been convicted if his were a federal prosecution, nor would he have been convicted in 48 other states. Interestingly, an ABA study entitled, "Principles for Juries and Jury Trials", finds that where unanimity is required, jurors evaluate evidence more thoroughly, spend more time deliberating and take more ballots. The contrary seems frightening: the marginalization of minority opinions and the power of the majority to form a coalition and, in effect, ignore dissenting views.

In Edwards' case, the consistent vote for an acquittal came from the sole African American on the jury. Was this person's voice heard? Federal jurisprudence

prohibits excluding jurors on the basis of race. However, Louisiana's 10-2 Rule can serve to deprive minorities of meaningful participation. Such was done in this case.

Simply put, Edwards would not be a convicted felon and serving a life sentence if Louisiana's jury system was consistent with this nation's tradition of requiring an unanimous jury. Louisiana's 10-2 Rule runs afoul of the federal constitution and it must be declared so. If done, Edwards would receive a new trial.

ISSUE

Louisiana's jurisprudence prohibiting eyewitness identification experts violates any criminal defendant's federal due process rights.

ARGUMENT

The sole victim able to identify Edwards as a rapist is Ryan Eaton. Eaton alleges that the perpetrators were masked except for 5 seconds when he observed Edwards without his bandanna. At that time, Eaton was crouching behind a seat inside a vehicle in a dimly lit parking lot. Furthermore, this is a cross-racial identification. An identification expert could have educated the jury about factors to be considered when evaluating the reliability of a cross racial identification and an identification made under an extremely stressful situation as well as factors of suggestibility.

Louisiana's prohibition against the use of identification experts is clearly established jurisprudence and is predicated upon the fear that the jury may place

greater emphasis on the expert's opinion than on their own common knowledge and experience[38].

However, this logic applies only when the defendant's liberty is at stake and he seeks to exonerate himself. The legal logic prohibiting defense experts is completely discarded and, in practice, reversed when the State's case is in peril. Louisiana's jurisprudence has created a contrary rule when allowing the State to present expert testimony in child sex abuse cases. This expert testimony is deemed appropriate if used to explain to the jury victim behaviors such as delayed reporting; recantations; and omissions of detail-so long as this is done ion "general characteristics testimony."[39]

In crafting the rules justifying the State's use of experts in assessing child victim credibility, courts have disregarded the legal underpinnings relied upon prohibiting the use of identification experts. Couldn't an identification expert be used to help educate the jurors regarding the effect of stress upon the reliability of an identification, the concept of cross racial identifications and the power of suggestibility?

In this case, the lone African American juror voted to acquit Edwards of every offense. Obviously, this juror was not convinced regarding the reliability of the cross racial identification. Wouldn't an expert explaining factors that need to be considered when evaluating cross racial identifications have been valuable for the jurors to assess the reliability of the identification? Louisiana's prohibition against identification experts

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[38] *State v. Young*, 35 So.3d 1042 (La. 2010).

[39] *State v. Foret*, 628 So.2d 1116 (La. 1983); *State v. Myles*, 887 So.2d 118 (La. App. 5 Cir. 2004); *State v. Chauvin*, 846 So.2d 697 (La. 2003)

runs afoul of federal due process concerns. Currently, a writ is granted by the United Sates Supreme Court on this issue in *Perry v. New Hampshire.* A favorable ruling by this nation's highest court would call the validity of Edwards' conviction into question.

ISSUE

The State's failure to disclose an imminent plea bargain favoring a co-defendant is a *Brady-Giglio* violation that violated Edwards' right to a fair trial

ARGUMENT

The State has an affirmative duty to provide the defense with any *Brady* evidence, which is interpreted to include both exculpatory and impeachment evidence[40]. The duty to provide this information to the defendant is an ongoing obligation and failure to do so may result in the reversal of a criminal conviction when the accused is prejudiced[41]. It is clearly established that this obligation requires the State to reveal any deals with its witnesses, whether they be formal or informal, regardless of whether the deals are consummated[42].

In *Bagley*, the prosecutor failed to disclose that the possibility of a reward had been held out to the witness if the information provided by that witness was deemed useful by the State. The Supreme Court believed that the possibility of reward gave the witness a direct, personal stake in the accused's conviction and

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[40] *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972).

[41] *State v. Viccaro*, 411 So.2d 415 (La. 1982)

[42] *U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985); *State v. Bailey*, 367 So.2d 368 (La. 1979).

the fact that the stake was not guaranteed through a promise but was contingent upon the State's satisfaction with the result strengthened the incentive to testify falsely to secure a conviction.

In *Bailey*, the Louisiana Supreme Court reversed the defendant's conviction upon finding that the State's witness may have gained the mere impression, without any overt action by the State, that his testimony on behalf of the State would lead to his release from his pending charges after the State secured his release from jail without bail so he could testify while not in custody.

In Edwards' case, the State presented testimony of Jacquin James who was considered a co-defendant and had pending armed robbery and kidnapping charges when he testified against Edwards. At trial, James stated that there were no deals and that he wanted to "get this over with."[43] In closing, the prosecutor noted that James hoped for consideration. After Edwards and another co-defendant were convicted at trial, James' charges were reduced to an accessory count and he was sentenced pursuant to Louisiana's felony expungement provision- La. C.Cr.P. Art. 893. This favorable treatment was never provided to the defense. It is not realistic to assume potential consideration James would receive if he testified and assisted the State.

In *State v. Lindsey*, the Second Circuit reversed a conviction when the prosecutor failed to disclose that he promised a witness favorable consideration if she testified and the testimony was deemed credible even though a specific reward was not guaranteed[44]. At

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[43] Record page 818

[44] *State v. Lindsey*, 621 So.2d 618 (La. App. 2 Cir. 1993)

minimum, this analysis should apply to James' testimony against Edwards.

The Sixth Amendment to the U.S. Constitution guarantees the accused the right to cross. examine adverse witnesses allowing the accused to reveal biases and ulterior motives of witnesses[45]. In this case, the State's *Brady* violation in failing to disclose potential consideration to James in exchange for testimony violated Edwards' right to confront, via cross examination. Shouldn't the jury know, when assessing James' credibility, that his armed robbery and kidnapping charges would be reduced to an expungeable offense after he testifies?

The State's failure to disclose possible plea bargains with co-defendant witnesses is both a *Brady* violation and Confrontation Clause violation.

ISSUE

The Federal Constitution mandates high standards of proof for the waiver of an individual's constitutional rights[46]. The government carries a heavy burden to demonstrate the knowing and intelligent waiver of 5th and 6th Amendment rights for uncounseled interrogations[47] and must cease the interrogation when counsel is requested until either an attorney is provided or the accused himself initiates further contact with the police[48].

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[45] *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105 (1974).

[46] *Tague v. Louisiana*, 444 U.S. 469, 100 S.Ct. 562 (1980)

[47] *Arizona v. Roberson*, 486 U.S. 675, 108 S.Ct. 2093 (1988)

[48] *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981)

ARGUMENT

The first issue in this application requires an examination of the interrogation techniques employed against Edwards in light of those abuses which troubled the *Miranda* Court followed by an analysis as to whether the inculpatory statements were obtained in violation of Edwards' right to counsel. The undersigned believes that the police interrogation techniques were so psychologically coercive that it can not be said that Edwards freely and voluntarily surrendered his right against self-incrimination. This constitutional violation was further magnified by the failure of the police to honor Edwards' request for counsel as evidenced by the interrogator's post-confession comments to the accused that it was "senseless" to hire an attorney.

As noted above, the defendant initially denied criminal culpability when interrogated on the day of his arrest. The following day, he was transported from the parish jail to the police station under the guise of providing a DNA sample. However, once at the station, the defendant is placed inside an interview room, chained to it wall, and is interrogated by two detectives for forty-five (45) minutes before taking advantage of the video and audio capabilities available in the interview room. According to the lead detective, the defendant initially denied guilt before opening up and providing a full confession. The interrogation techniques used by the police are similar to those questioned by the *Miranda* Court and suggest that the defendant did not make a free and voluntary waiver of his constitutional rights.

The *Miranda* opinion is due, in large part, to the Court's concern that the rights proclaimed in the Constitution were becoming "a form of words in the

hands of government officials[49]." The Court aptly noted that modern interrogations take place in secret which advantages the government and results "in a gap in our knowledge as to what in fact goes on in interrogation rooms[50]." The Court's concern for secrecy stems from the police training manuals which view that secrecy as the principal psychological factor contributing to a successful interrogation and deemed it essential that the accused be deprived of every psychological advantage in an effort to create an atmosphere which "suggests the invincibility of the forces of law[51]."

The *Miranda* Court summarized the essence of police interrogations as follows:

> "To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the investigator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.' When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then

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[49] *Miranda v. Arizona*, 348 U.S. 436, 444, 86 S.Ct. 1602 (1966)

[50] *Miranda* at 448

[51] *Miranda* at 450

> persuade, trick or cajole him out of exercising his constitutional rights.
>
> Even without employing brutality, the 'third degree' or specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals[52]."

Detective Fairbanks' testimony indicates the severity of the psychological warfare employed against Edwards in an effort to induce him into surrendering his constitutional rights. As noted above, Edwards was transported to the police station in order to obtain a DNA sample. The undersigned surmises that the true intent of the police was to transport Edwards in order to extract a confession at the police station. There is no reason why the DNA swabs could not be obtained at the parish jail. However, it is the walled interview room of the police station that provides the detective with his maximum psychological advantage. In this case, the psyche of the Edwards is further weakened by the fear and tension created by the transportation from the jail to the police station and his chained confinement to the walls of the secluded interview room where he is placed at the mercy of his interrogators.

The *Miranda* Court was wise in noting that the privacy of the interrogation rooms creates a knowledge gap as to what actually takes place inside. One supposes this concern prompted many departments, including Baton Rouge, to install recording devices in the rooms. Conveniently, the recording devices were not utilized during the first 45 minutes of Edwards' interrogation. As such, we do not definitively know

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[52] *Miranda* at 455

what transpired from Edwards' initial denial of culpability until his confession. We must rely on the trial testimonies of the police and the defendant to piece the interrogation together.

Detective Fairbanks testified that Edwards went through an initial "denial process" that he had to get beyond before obtaining a confession. Sadly, this detective easily admits his willingness to lie and deceive in an effort to obtain a confession:

> "If I need to manipulate or make false statements to get him to admit to what he did and If I have to throw a lie in to do it, I'll do it . . . . I would not use the word 'routine' but I have done it in the past[53]."

In the instant case, it appears that part of the unrecorded interrogation consisted of how the defendant's cooperation could help him obtain a plea, pre-sentencing investigation considerations, and the defendant's desire to attend college. The following are excerpts from Fairbanks' testimony on these topics:

"Q: Detective Fairbanks, did you promise my client that he would be able to go to college once he gave it up?

A: We talked about college. I did not promise he could go to college.

Q: You didn't make that promise?

A: I told him he could- there was a reference made to college. I didn't promise him he could go. I remember thinking, well, a lot of people take

[53] Record Page 974

college courses in prison but I didn't tell him he could or could not go[54]."

"Q: You don't recall telling him that the judge would go light on him since he had no record?

A: No m'am

Q: As we sit here today, do you remember that?

A: No, I know that we talked about the fact that he did not have a record and I told him that, through a presentence investigation, sometimes that is a consideration. But I was very careful for him to understand that I couldn't promise what the courts would do. I couldn't promise what a judge would do, It's just that those things are taken into consideration[55]."

"Q: Detective Fairbanks, did you ever advise Mr. Edwards that if he gave up information on Joshua Johnson, things would go easier on him?

A: I remember telling Mr. Edwards that its going to be up to the courts but if there is any plea agreements, it would be beneficial for him to cooperate with the investigation. But, I made it clear that, that is up to the courts and that is not a police matter. That's a court matter[56]."

The above referenced quotes suggest that Fairbanks was willing to lure the defendant into surrendering his constitutional rights by inferring promises that cooperation would be helpful to him and that attending college was a possibility. Edwards testified that

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[54] Record Page 974

[55] Record Page 975

[56] Record Page 982

the cajoling went a bit further and that he was promised probation and the ability to attend college if he cooperated[57] and that he would not have cooperated if it were not for these promises[58]. Edwards further testified that he requested counsel and was advised that if he cooperated that he would not need a lawyer[59]. These specific allegations were not rebutted as the State opted against presenting a case in rebuttal. As this Court is well aware, once a person requests counsel, he is not subject to further interrogation until counsel is made available unless the accused himself initiated further communications, exchanges or conversations with the police[60]. Although Fairbanks denied that Edwards requested counsel, an interesting comment at the end of his testimony suggests otherwise:

> "A: I told Mr. Edwards that in my opinion it's in his best interest to be honest to his mother and his father as to what he did as opposed to fronting up, you know, a supposed innocence and having them expend resources and money that they may or may not have to hire an attorney. I never told him that he should not hire an attorney. I told him he needs to be truthful with his parents. That was my statement.
>
> Q: Did [the] statement include references to hiring an attorney?
>
> A: I explained to him that I thought it was senseless to hire an attorney under the [guise]

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[57] Record page 1028

[58] Record Page 1048

[59] Record Page 1021

[60] *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981)

> that you're innocent when you know in fact that you had committed crimes. Why put your parents through all of that and expend those resources? And be honest with your parents because they're going to find out eventually that you committed a crime[61]."

Interestingly, the *Miranda* Court noted a common interrogation technique utilized by the police requiring the interrogator to suggest that the accused save his family the expense of hiring an attorney when one is requested[62]. No doubt, Fairbanks is familiar with that tactic as evidenced by the above referenced testimony. We will never know what transpired in that interview room because the police failed to hit the record button. We do know that the police created an antagonistic environment and cajoled Edwards into surrendering his constitutional rights by inferring multiple promises regarding the outcome of his arrest if he cooperated. This compelled statement must be excluded from trial regardless of the cost. Therefore, the ruling to the Court of Appeals must be reversed.

ISSUE

The State's use of peremptory and cause challenges systematically excluded all but one African American from the venire-interestingly, this one juror voted to acquit the accused. Such tactics by the prosecution run afoul of constitutional provisions prohibiting the exclusion of jurors on the basis of race.

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[61] Record Pages 972

[62] *Miranda* at 454

ARGUMENT

Constitutional principles forbid the use of peremptory challenges as a means of eliminating jurors on the basis of race[63]. In the case at hand, the State was able to exclude ten (10) of eleven (11) African Americans from the jury. Five (5) of these exclusions were the result of peremptory challenges and five (5) were for cause. Regrettably, the State exercised only seven (7) peremptory challenges,[64] meaning that it used 70% of its exercised challenges to exclude African Americans from the jury[65]. As such, it is requested that the Court review the record to determine if the defendant was denied a fair and impartial trial before his peers due to the State's juror challenges that excluded 10 of 11 African Americans from the jury.

ISSUE

Edwards' trial counsel was ineffective in its handling of Edwards' criminal case.

A defendant is entitled to effective assistance of counsel under the Sixth Amendment of the United States Constitution and Article 1, § 13 of the Louisiana Constitution of 1974. In assessing a claim of ineffectiveness, a two-pronged test is employed. The defendant must show that (1) his attorney's performance was deficient, and (2) the deficiency prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). With regard to counsel's performance, the defendant must show that counsel made errors so serious that counsel was not function-

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[63] *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986).

[64] The State also exercised lone (1) peremptory challenge to exclude an alternate juror.

[65] Record Pages 338-342

ing as "counsel" guaranteed by the Sixth Amendment and Art. I, § 13.

Edwards retained a lawyer whom lie believed had handled many life imprisonment trials but, after his conviction, has come to learn that this was her first criminal jury trial of this magnitude.

In reviewing the record, counsel was ineffective for failing to raise a Batson challenge after observing the State cut all but one African American from the jury. The record reflects that this sole African American voted to acquit Edwards on all counts. The State should have had to explain race neutral reason for using 70% of its peremptory challenges to exclude African Americans from the jury. Additionally, in light of the high percentage of cuts being used to strike minorities a further examination of the State's cause challenges used to exclude minorities was necessary.

Trial counsel was also ineffective for failing to object to Wanda Pezant's testimony on hearsay grounds. Rape kits are not business records. Pezant should not have been allowed to testify regarding the forensic findings of the SANE nurse, nor should she have been able to relate to the jury that nurse's comments regarding the victim's demeanor etc. during the examination and interview.

Trial counsel was ineffective for failing to object to the prosecutor's comments in closing argument that vouched for the credibility of Detective Fairbanks and also made reference to the jury being a part of the community that is out for justice. As noted above, the jury serves no representative function and must render its decision independent of community sentiment.

CONCLUSION

For the foregoing reasons, Thedrick Edwards maintains that the claims set forth in this application are sufficient to warrant an evidentiary hearing. Once his claims are established, Edwards urges that that this Honorable Court grant his application for post-conviction relief.

RESPECTFULLY SUBMITTED BY:

MANASSEH, GILL, KNIPE
& BELANGER. P.L.C.

/s/ André Bélanger
ANDRÉ BÉLANGER
LSBN: 26797
8075 Jefferson Highway
Baton Rouge, LA 70809
(225) 383-9703 Telephone
(225) 383-9704 Facsimile

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Number: 07-06-0032

Section: VI

THEDRICK EDWARDS

vs.

N. BURL CAIN, WARDEN

COMMISSIONER'S RECOMMENDATION

The Petitioner, Thedrick Edwards, was charged by grand jury indictment with armed robbery (five counts), aggravated rape, aggravated kidnapping (two counts), and attempted armed robbery.[1] He entered a plea of not guilty. The Petitioner's motion to suppress confession was denied.[2] A jury subsequently found the Petitioner guilty as charged on all counts, except the attempted armed robbery charge, for which he was acquitted.[3] On February 7, 2008, the Petitioner was sentenced to thirty years without benefit consecutive on each armed robbery count[4]; life imprisonment without benefit for aggravated rape and each count of aggravated kidnapping, all consecutive to each other

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[1] R. pp. 24-31, Indictment No. 07-06-0032.

[2] R. pp. 442-487, Transcript of Motion to Suppress heard July 18, 2007.

[3] *Id.*

[4] R. pp. 16-17, Minutes of Court dated February 7, 2008.

and to the other sentences.[5] On June 12, 2009, the First Circuit Court of Appeal affirmed the Petitioner's convictions and sentences[6] and writs were denied on December 17, 2010.[7]

On or about December 15, 2011, the Petitioner, through Counsel, filed the instant application for post-conviction relief alleging the following constitutional errors: **1) Confrontation Rights Were Violated (by expert witness's reliance on another individual's findings in Rape Kit); 2) Improper Comments by Prosecutor During Closing Arguments; 3) Louisiana Juris-prudence Allowing Conviction Without Unanimous Jury Verdict is Unlawful; 4) Louisiana Jurisprudence Prohibiting Use of Identification Experts Violates Due Process Rights; 5) Failure of Prosecutor to Inform of an Informal Plea Deal With Testifying Witness; 6) Trial Court Error For Allowing Confession That Was a Product of Coercion; 7) Intentional Exclusion of African Americans From the Jury; and 8) IAC For Failing to Address the Violations in Claims 1-7.**

The State filed procedural objections and a partial answer seeking to dismiss the Petitioner's application. The Petitioner filed a response to the State's procedural objections.

For the following reasons, it is the recommendation of this Commissioner that the instant application should be dismissed in its entirety without the necessity of further proceedings and without a hearing.

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[5] *Id.*

[6] *State v. Edwards*, 2008 KA 2011 (La. App. 1 Cir. 6/12/2009).

[7] *State v. Edwards*, 51 So.3d 27 (La. 12/17/2010).

Statement of Facts

The facts as taken from the appellate decision are as follows:

> On May 13, 2006, at approximately 11:30 p.m., Ryan Eaton, who was a student at Louisiana State University, went to the Circle K on State Street and Highland Road and then drove to the apartment of his girlfriend, G.W., on East Boyd Drive near Nicholson Drive. Eaton turned his vehicle off, opened a beer, and opened the driver's door. As Eaton began to step out of his vehicle, a male subject wearing black clothing and a black bandana across his face (from the nose down) pointed a .45 caliber, black, semiautomatic pistol at Eaton's head and told Eaton to get back into his vehicle and unlock the doors. Another male subject, also armed with a gun, entered the back of Eaton's vehicle after Eaton unlocked the back door. The armed subject who entered the front of Eaton's vehicle drove away from the complex. The assailants were later identified as the defendant and Joshua Johnson.
>
> The assailants demanded money and ultimately took the victim to an ATM so that he could retrieve cash. Eaton's accounts were depleted, so he was unable to retrieve any cash from the ATM. According to Eaton, the assailants were angry because he did not have any money. Eaton suggested that the assailants take him to his apartment on Bluebonnet Road and take some of his belongings; the assailants agreed.
>
> After they entered the apartment, the assailants blindfolded Eaton, tied his hands together, began rummaging through his apartment, and

took several items. The assailants also took Eaton's cellular telephone, turning on the telephone speaker when G.W. called. The assailants instructed Eaton to speak to G.W. calmly and make arrangements for a meeting. G.W. told Eaton that she was at Chelsea's Bar and asked him to meet her there. The assailants led Eaton, at gunpoint, back to his vehicle, put him in the front passenger seat, and drove away from his apartment. According to Eaton, the defendant was driving at this point, and Johnson was in the back seat sitting behind Eaton. They drove to Chelsea's Bar, and when the vehicle stopped, Eaton was able to get a good look at the defendant. The assailants responded to text messages sent by G.W. to Eaton, encouraging her to go back to her apartment.

Eaton and his assailants ultimately drove back to G.W.'s apartment where Eaton was instructed, at .gunpoint, to knock on the door. By that time, G.W., her roommate R.M., and her friend L.R. were at the apartment. When G.W. answered the door, the defendant and Johnson rushed in behind Eaton. They rummaged through the apartment, finding items to steal. L.R. was vaginally and anally raped at gunpoint and forced to perform oral sex. L.R. was unable to identify her attacker as his face was obscured, but Eaton believed it to be the defendant. R.M. was dragged upstairs and raped. R.M. also was unsure of her attacker's identity. The assailants gathered several items and told Eaton that they would abandon his vehicle nearby. After the assailants left, Eaton walked out of the apartment and used a passerby's telephone to call for emergency assistance.

> Two days later, during the early morning hours of May 15, 2006, two assailants began following Marc Verret as he drove through his apartment complex near State Street. After Verret parked, the assailants forced entry into his vehicle. They brandished guns and had bandanas over their faces. One of the assailants entered the front of Verret's vehicle as Verret slid to the passenger's side, and the other entered the back of the car. Verret was taken to an ATM, where he withdrew funds and gave them to the assailants. The assailants exited the vehicle after taking the money and other items. Verret was able to identify Johnson as one of the armed assailants.[8]

ANALYSIS

The State argues that the claims raised in the instant application are either procedurally barred or without merit. As to several of the claims, the State suggests the Petitioner's claims are procedurally barred for his inexcusable failure to raise them previously, while the Petitioner suggests that any such failure was a result of counsel's performance. I have reviewed the Petitioner's claims, and for reasons stated, recommend that the instant application should be dismissed in its entirety without the necessity of further proceedings and without a hearing.

Claims 5 & 6

The State argues Claim 6 is procedurally barred pursuant to Art. 930.4(A) as it was fully litigated on appeal. The State argues Claim 5 is without merit. For reasons more fully explained herein, and those

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[8] *State v. Edwards*, 2008 KA 2011, 3-5 (La. App. 1 Cir., 2009).

asserted by the State, Claims 5 & 6 should be dismissed.

Claim 6 Fully Litigated

In Claim 6, the Petitioner argues the trial Court erred in admitting Petitioner's confession. He contends the confession was the product of coercion and made without the presence of counsel. The State argues the claim is procedurally barred pursuant to Art. 930.4 as it was fully litigated on appeal.

La. C.Cr.P. art. 930.4 (A) states:

> A. Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.

On appeal, the Petitioner claimed that the trial court erred in denying the motion to suppress his confession.[9] The First Circuit Court of Appeal determined the assignment of error to be without merit.

> Although the defendant subsequently presented trial testimony regarding an assertion of his right to counsel, this testimony was in direct conflict with testimony presented by all three officers at the motion to suppress hearing. Moreover, although the defendant claims otherwise, his trial testimony regarding his request for an attorney was rebutted during the trial. During the trial, on cross-examination, the defense attorney asked Detective Fairbanks if the defendant ever

[9] *State v. Edwards*, 2008 KA 2011, 5-11 (La. App. 1 Cir., 2009).

> asked for an attorney, and he responded, "No, ma'am."
>
> During the videotaped confession, the defendant expressed hesitancy only to the extent that he was concerned about the number of years of incarceration he would receive. There was no indication that the defendant asked for an attorney. The confession contained ample, unprompted, highly detailed facts that were consistent with statements given by the victims herein, including timelines and locations. Further, there was no indication that the confession was being made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises.
>
> While the issue raised on appeal was not preserved, we further conclude that the record supports the trial court's denial of the defendant's motion to suppress the confession. The sole assignment of error lacks merit.[10] (footnote omitted)

As asserted by the State, the instant Claim 6 is repetitive of his challenge to the trial Court's denial of his motion to suppress his confession on appeal. The interests of justice do not require further litigation of this issue. Therefore, Claim 6 should be dismissed as procedurally barred pursuant to La. C.Cr.P. art. 930.4.

Claim 5 *is factually insufficient to warrant relief and/or without merit*

In Claim 5, the Petitioner suggests the State failed to disclose an informal plea deal with an unidentified witness, presumably Jacquin James. He claims the

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[10] *State v. Edwards*, 2008 KA 2011, 10-11 (La. App. 1 Cir., 2009).

witness testified at Petitioner's trial, as well as a related trial, and subsequently pled guilty to a felony which, according to Petitioner's allegations, he will seek to have expunged. Petitioner questions how the jury may have viewed the testimony if they knew the witness "was auditioning for an expungement when he testified".[11]

As indicated by the State, Jacquin James testified at the trial in this matter.[12] James stated that he had been arrested and charged in connection with this matter.[13] He indicated that he was facing criminal charges, but the State had not made promises to him to get him to testify.[14] He testified that he was there to tell the truth, and also that he hoped for leniency in exchange for his testimony.[15] James acknowledged the pending charges and his hope for leniency when examined by defense counsel.[16] Additionally, defense counsel emphasized the obvious incentives for James to testify against the Petitioner.

> Q: WHEN THE POLICE FIRST QUESTIONED YOU, WHAT DID YOU TELL THEM?
>
> A: I DON'T REMEMBER EXACTLY WHAT I TOLD THEM.
>
> Q: BUT YOU PRETTY MUCH TOLD THEM THAT YOU WERE INNOCENT.
>
> A: YES, MA'AM.

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[11] *See* PCR, Claim 5.

[12] R. pp. 817-843, Testimony of Jacquin James.

[13] *Id.* p. 818.

[14] *Id.*

[15] *Id.* pp. 818-819.

[16] *Id.* p. 836.

Q: YOU WERE TRYING TO SAVE YOURSELF THEN, WEREN'T YOU.

A: YES, MA'AM.

Q: IS THAT LIKE YOU'RE TRYING TO SAVE YOURSELF HERE TODAY?

A: NO, MA'AM.

Q: WHAT'S THE DIFFERENCE?

A: I'M TELLING MY INVOLVEMENT IN THE SITUATION.[17]

Even assuming James, subsequent to his testimony at Petitioner's trial, pled guilty to a felony and that he intends to seek an expungement at some point, there is nothing to indicate that the guilty plea was a part of a deal or that he was otherwise promised anything for his testimony at trial. It does not even appear that Petitioner is suggesting that there was an actual deal. Rather, Petitioner merely suggests that James entered a plea to a felony and speculates that he may seek an expungement. In sum, the Petitioner fails to show that there was any undisclosed deal between the State and any witness in which a witness received consideration for his testimony at the trial in this matter.

For the reasons stated, Claim 5 should be dismissed without the necessity of further proceedings as it is not only factually insufficient to warrant relief, but also contradicted by the record.

Claims 1-4, 7 & 8

The State argues Claims 1-4 & 7 are procedurally barred, pursuant to Art. 930.4(B), for the Petitioner's

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[17] *Id.* p. 841.

failure to raise the issues previously. The State argues Claim 8, the Petitioner's IAC claim(s), should be dismissed in accord with Art. 926 for failure to set forth a factual basis for relief with sufficient particularity.

I note that Art. 930.4(B) provides a discretionary bar for claims that were not raised in the proceedings leading to conviction, upon the Court's determination that such failure was inexcusable.[18] Also, it is well settled that the issue of ineffective assistance of counsel is more properly raised in an application for post conviction relief.[19]

In connection with Claims 1-4 & 7, the Petitioner alleges that any failure to raise the claims previously is due to counsel's ineffectiveness. In Claim 8, the Petitioner claims he was denied effective assistance of counsel for failure to raise the issues presented in his application. In connection with the State's procedural objections, and also in connection with his IAC Claim(s), I have reviewed the Petitioner's Claims 1-4, 7 & 8. For the following reasons I find that these claims are factually insufficient to warrant relief and/or insufficient to support a finding that counsel was ineffective. Thus, I recommend that Claims 1-4, 7 & 8 should be dismissed without the necessity of further proceedings.

As this Court is aware, the *Strickland* standard (for IAC claims) requires a *showing of both deficient conduct and prejudice in the outcome/verdict.* Claims of ineffective assistance of counsel are evaluated by the two-prong test set forth by the United States

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[18] *See* La. C.Cr.P. art. 930.4(F).

[19] *See State v. Williams*, 632 So.2d 351, 361 (La. App. 1 Cir. 1993).

Supreme Court in *Strickland v. Washington*[20]. Under *Strickland,* a defendant claiming ineffective assistance of counsel must show both that counsel's performance was deficient and that the deficiency prejudiced the defense.[21] One claiming ineffective assistance of counsel must identify specific acts or omissions and general statements and conclusionary charges will not suffice.[22] There is a strong presumption that the conduct of counsel falls within a wide range of responsible, professional assistance.[23] Hindsight is not the proper perspective for judging the competence of counsel's trial decisions, and an attorney's level of representation may not be determined by whether a particular strategy is successful.[24] In evaluating whether counsel's alleged error has prejudiced the defense, it is not enough for the defendant to show that an error had some conceivable effect on the outcome of the proceeding; rather, the defendant must demonstrate a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different.[25] Claims of ineffective assistance of counsel may be disposed of for either reasonable performance of counsel or lack of prejudice and, if one is found dispositive, it is not necessary that the court address the other.[26] A claim that an attorney was deficient for failing to raise an issue is without

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[20] 466 U. S. 668, 104 S. Ct. 2052, 8o L.Ed.2d. 674 (1984).

[21] *Celestine v. Blackburn*, 750 F. 2d 353 (5th Cir. 1984).

[22] *Knighton v. Maggio*, 740 F. 2d 1344 (5th Cir. 1984).

[23] *State v. Myers*, 583 So. 2d 67 (La. App. 2nd Cir. 1991).

[24] *State v. Brooks*, 505 So. 2d 714 (La. 1987).

[25] *Sawyer v. Butler*, 848 F. 2d 582 (5th Cir. 1988).

[26] *Murray v. Maggio*, 736 F. 2d 279 (5th Cir. 1984).

merit, when the substantive issue the attorney failed to raise is without merit.[27]

I note that once a defendant has the assistance of counsel, the vast array of trial decisions, strategic and tactical, which must be made before and during trial rest with an accused and his attorney. The fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel.[28]

Claim 1

In Claim 1, the Petitioner alleges his right to confrontation was violated when Wanda Pezant testified regarding reports/examination conducted by another nurse. He concludes that this violation mandates a new trial. He claims, in part, as follows:

> "One of the witnesses, Wanda Pezant, testified regarding the "Rape Kit." Her testimony included commenting on the victim's demeanor and experiences with such victims. However, Pezant did not perform the actual examination of the victim and her testimony regarding the victim's demeanor and forensic findings of the examination violated Edwards' confrontation rights."[29]

The record reveals that Pezant was qualified to testify as an expert in sexual assault examination.[30] She testified that she was the supervisor of Christy Bronould (the nurse who examined the victim) and

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[27] *State ex rel. Roper v. Cain*, 763 So.2d 1, 5, 99-2173, p. 6 (La. App. 1 Cir. 10/26/99), *writ denied*, 773 So.2d 733, 2005-0975 (La. 11/17/00).

[28] *State v. Folse*, 623 So.2d 59, 71 (La. App. 1st Cir.1993).

[29] PCR, p. 11.

[30] R. p. 703.

she, Pezant, was responsible for keeping the records.[31] At trial the State introduced the medical records of the victim (LR) without objection.[32] Pezant stated that the records reflected an interview with the victim that was taken for purposes of guiding the exam and helping with medical needs.[33] Defense counsel objected to Pezant testifying as if she had independent knowledge of what the victim did/said. The Court instructed the State to re-phrase the question so as to clarify Pezant was not there when the examination was done and that she was only testifying as to what was contained in the report.[34] Pezant testified that the nurse documented crying and poor eye contact.[35]

Even assuming the report or any of Pezant's testimony violated his right to confrontation, confrontation errors are subject to harmless error analysis.[36]

From my review of the record, the victim did testify at trial, and the fact that she was raped was established by the testimony of other witnesses, and, more importantly, by the Petitioner's confession. The guilty verdict in this matter is surely unattributable to any error in admitting the reports or the examining nurse's statements. Even assuming counsel was deficient, there is nothing to indicate the Petitioner

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[31] R. p .704.

[32] R. p. 707.

[33] R. pp. 708-709.

[34] R. p. 710.

[35] R. p. 710.

[36] *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 1438, 89 L.Ed.2d 674 (1986) (Confrontation errors, are subject to a harmless-error analysis).

was prejudiced as a result of counsel's alleged failure to challenge Pezant's testimony.

Claim 1, and also Claim 8 to the extent it alleges IAC for failing to raise the issue in Claim 1, should be dismissed as Petitioner's allegations are not only factually insufficient to warrant relief but also factually insufficient to establish deficient performance and prejudice.

Claim 2

In Claim 2, the Petitioner complains regarding alleged Improper Closing Arguments/Improper Vouching. He asserts that the prosecutor improperly referenced Detective Fairbanks' status as a Pastor, and commented that the jury represented people who were "out for justice".

The scope of closing arguments is limited to evidence or the lack of evidence admitted, to conclusions of fact that the state or defendant may draw there from, and to the law applicable to the case.[37] Louisiana jurisprudence allows prosecutors wide latitude in closing arguments, and the trial judge has broad discretion in controlling the scope of closing arguments.[38] Even if the prosecutor exceeds the bounds of proper argument, the court will not reverse a conviction unless "thoroughly convinced" that the argument influenced the jury and contributed to the verdict.[39] It is well settled that much credit should be accorded to the good sense and fair-mindedness of jurors who will see the

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[37] La. C.Cr.P. art. 774; *State v. Casey*, 99-0023 (La. 1/26/00), 775 So.2d 1022, 1036, *cert. denied*, 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000).

[38] *Id.*

[39] *State v. Taylor*, 669 So.2d 364, 384 (La.,1996).

evidence, hear the argument, and be instructed repeatedly by the trial judge that arguments of counsel are not evidence.[40]

As to the allegations of improper comments "that the jury represented the people who were out for justice" OR "detective was out for justice like the rest of us"[41], I note that the prosecutor, in closing stated:

> "When we started this trial, in opening statement, counsel for the **defense said this was a journey for justice**. I don't usual agree with defense counsel, but in that statement, I do, **this is journey for justice.**"[42] (emphasis added)

As indicated by the prosecutor in closing, defense counsel stated the following during opening statements:

> "We're getting ready to embark this week, ladies and gentlemen, on what I'm going to call "a journey for justice." Justice for everybody who's concerned or has anything to do with this case."[43]

Even assuming the prosecutor's statements agreeing with defense counsel's characterization of the proceeding as a "journey for justice" somehow exceeded the scope of closing arguments, the Petitioner fails to show how he may have been prejudiced. The transcript of the jury instructions reveals that the jury was specifically instructed that opening and closing

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[40] *See State v. Dilosa*, 01-0024, p. 22 (La.App. 1 Cir. 5/9/03), 849 So.2d 657, 674, *writ denied*, 03-1601 (La.12/12/03), 86o So.2d 1153.

[41] PCR, p. 13.

[42] R. p. 1050.

[43] R. pp. 583.

arguments are not evidence.[44] Further, there is nothing to indicate that any improper argument influenced the jury and contributed to the verdict. Similarly, insofar as Petitioner alleges counsel was deficient with respect to the prosecutor's statements, his allegations are insufficient to establish both deficient performance and prejudice.

The Petitioner also suggests that counsel was ineffective with respect to an alleged incident of improper vouching. The Petitioner alleges that the prosecutor vouched for a detective when she referenced his status as a pastor.

I note that in closing arguments, the prosecutor stated the following:

> "Does Detective Fairbanks have any reason at all to convict an innocent man? Absolutely not. He's a chaplain. He's been a Detective for a long time. He's got a good career. He's not going to get up there — He's out for justice like the rest of us."[45]

As to the issue of vouching, the Louisiana Supreme Court has stated it is only reversible error if the State bolsters the credibility of a witness by appearing to rely on evidence outside of the record or testimony:

> [I]t has consistently been held to be reversible error for the prosecutor to express his belief in the guilt of the accused, or the credibility of a key witness, *where doing so implies that he has additional knowledge or information about the case which has not been disclosed to the* jury.[46]

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[44] R. pp. 1072-1073.

[45] R. p. 1065.

[46] *State v. Smith*, 554 So.2d 676 (La. 1989) (Emphasis added).

In this case, the Petitioner suggests that the prosecutor improperly vouched for the detective. However, the information that Fairbanks was a chaplain was brought out during the questioning of Fairbanks.[47] Thus, it can not be said that this is a situation where the prosecutor's reference in closing could be considered as implying knowledge not disclosed to the jury. Therefore, the improper vouching claim is without merit. Likewise, any claim that counsel was ineffective for failing to raise the issue is without merit.

For the reasons stated, Claim 2, and Claim 8 insofar as it alleges IAC with respect to the issue(s) raised in Claim 2, should be dismissed.

Claims 3 & 4

In claims 3 & 4, the Petitioner challenges the constitutionality of Art. 782 C.Cr.P., which allows non-unanimous verdicts, and this State's prohibition on the Defendant's use of identification experts to challenge eye witness reliability.

As to the first challenge, the Petitioner acknowledges in his written argument that "Louisiana's Supreme Court has repeatedly upheld [art. 782]". By analogy, the U.S. Supreme Court has upheld a state's use of non-unanimous verdicts in *Apodeca v. Oregon.*[48]

The Petitioner also challenges Louisiana's refusal to allow experts to testify on the unreliability of eyewitness identification. I note that there is no allegation that the Defense attempted to call such a witness

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[47] *See* R. pp. 983-984 (wherein Fairbanks stated that he was also a chaplain of the police department and explained his duties as chaplain).

[48] 92 S.Ct. 1628 (1972), as cited by the Petitioner on pp. 20-21 of application.

at his trial, but even if he had wanted to, the Petitioner once again acknowledges in his argument that "Louisiana's courts [have] *repeatedly rejected defense attempts to have identification experts testify. . .".*[49]

The Petitioner's allegations are, thus, factually insufficient to support that either Art. 782 C.Cr.P., which allows non-unanimous verdicts, and/or this State's prohibition on the Defendant's use of identification experts to challenge eye witness reliability violates any constitutional or statutory right.

Therefore, Claims 3 & 4 should be dismissed for failure to state sufficient legal or factual support for the claim that Art. 782 C.Cr.P. and/or this State's prohibition on the Defendant's use of identification experts to challenge eye witness reliability are unconstitutional.[50]

In a related portion of Claim 8 he alleges ineffectiveness based on his lawyer's failure to challenge the constitutionality of Art. 782 C.Cr.P., and also challenges counsel's failure to contest this State's prohibition on a Defendant's use of identification experts to challenge eye witness reliability.[51]

However, as to *this* ineffectiveness claim, it is important to remember that in 2007, when the trial occurred, the jurisprudence from the highest court in this State, and the land, clearly upheld the constitutionality of the non-unanimous verdict.

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[49] PCR, p. 16.

[50] *State v. Interiano*, 868 So.2d 9, 13, 03-176o, p. 4 (La. 2/13/04) (A statute is presumed constitutional and the burden of proving a claim of unconstitutionality rests upon the party attacking the statute).

[51] P. 16 of application.

Consequently, based on the facts and the law applicable, counsel could not have been incompetent for failing to challenge a statutory procedure that was then accepted by this State and the United States Supreme Court. Simply put, deficient conduct on this issue cannot be proven on the facts alleged and the applicable law. This is especially true considering the Petitioner's admission that the statutory law and applicable authoritative jurisprudence was adverse to his current argument.

Similarly, Petitioner acknowledges Louisiana's courts have repeatedly rejected defense attempts to have identification experts testify. Petitioner's admission of such and the state of the admitted jurisprudence makes it impossible to conclude counsel could have been incompetent for failing to challenge well known jurisprudence prohibiting such experts to testify. In other words, based on the then current state of the law, one could not find counsel's representation to be constitutionally deficient simply for failing to urge a challenge that admittedly has been historically and "repeatedly rejected" by the courts throughout this State.

Based on Petitioner's own admissions that the law in Louisiana in 2007 was (and still is) adverse to the challenges, these two claims of ineffectiveness can not be proven pursuant to the Supreme Court's standard of proof set out in *Strickland v. Washington.*

For the reasons stated, Claims 3 & 4, and Claim 8 insofar as it alleges IAC with respect to the issues raised in Claims 3 & 4, should be dismissed.

Claim 7 Batson Violation

In Claim 7, the Petitioner claims intentional exclusion of African Americans through the use of *cause and*

peremptory challenges, in violation of *Batson.*[52] In a related portion of Claim S he alleges counsel was ineffective for failing to raise the issue.

In *Batson,* the United States Supreme Court held that the use of peremptory challenges to exclude persons from a jury based on their race violates the Equal Protection Clause.[53] The holding in *Batson* was subsequently adopted by the Louisiana Supreme Court, and has been codified in Louisiana Code of Criminal Procedure article 795(C) and (D).[54]

> The Court in *Batson* outlined a three-step test for determining whether a peremptory challenge was based on race. Under *Batson* and its progeny, the opponent of a peremptory strike must first establish a prima facie case of purposeful discrimination. Second, if a prima facie showing is made, the burden shifts to the proponent of the strike to articulate a race-neutral explanation for the challenge. Third, the trial court then must determine if the opponent of the strike has carried the ultimate burden of proving purposeful discrimination. *Batson,* 476 U.S. at 94-98, 106 S.Ct. 1712. *See also, Johnson v. California,* 545 U.S. 162, 168, 125 S.Ct. 2410, 2416, 162 L.Ed.2d 129 (2005); *State v. Sparks,* 1988-0017 (La.5/11/11), GS So.3d 435, 468; *State v. Givens,* 99-3518 (La.1/17/01), 776 So.2d 443, 448.[55]

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[52] PCR, pp. 14, 18, & 33. *See* R. pp. 338-342 (jury selection sheets and peremptory challenge sheets).

[53] *Batson*, 476 U.S. at 96-98, 106 S.Ct. 1712.

[54] *See State v. Nelson*, 85 So.3d 21, 23 (La. 3/13/12) (citing *State v. Collier*, 553 So.2d 815 (La.1989)).

[55] *State v. Nelson*, 85 80.3d 21, 28-29 (La. 3/13/12).

In his instant claim, the Petitioner complains regarding the State's use of cause and peremptory challenges, arguing that the State used its challenges improperly in violation of *Batson.* His allegations are insufficient to warrant relief under the *Batson* analysis.[56]

Initially, I note that time is of the essence when raising *Batson* issues because the nature of the challenge depends largely on contemporaneous analyses and deductions by the presiding judge[57]:

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[56] *See State v. Tilley*, 767 So.2d 6, 12, 99-0569 (La.7/6/00) (observing that, under *Batson*, a defendant must first establish a prima facie case of discrimination by showing facts and relevant circumstances which raise an inference that the prosecutor used his peremptory challenges to exclude potential jurors on account of their race).

[57] *State v. Parker*, App. 2 Cir.1995, 27,417 (La.App. 2 Cit. 9/27/95), 661 So.2d 603, writ denied 95-2576 (La. 2/16/96), 667 So.2d 1049; *State v. Matthews*, App. 2 Cir.1994, 26,550 (La.App. 2 Cir. 12/21/94), 649 So.2d 1022, rehearing denied, writ denied 95-0435 (La. 6/16/95), 655 So.2d 341; *State v. Mamon*, App. 2 Cir.1994, 26,337 (La. App. 2 Cir. 12/16/94), 648 So.2d 1347, writ denied 95-0220 (La. 6/2/95), 654 So.2d 1104. *See also U.S. v. Masat*, 948 F.2d 92.3, 927 FN 6 (C.A.5 (Tex.),1991) *(United States v. Romero-Reyna*, 867 F.2d 834, 836-837 (5th Cir.), *appeal after remand*, 889 F.2d. 559 (5th Cir.1989), *cert. denied*, 494 U.S. 1084, 110 S.Ct. 1818, 108 L.Ed.2d 948 (1990) (*Batson* objection timely because made immediately after completion of jury selection, before the jury venire was dismissed, and prior to the commencement of the trial); *Sawyer v. Butler*, 881 F.2d 1273, 1286 (5th Cir.1989), *cert. granted*, 493 U.S. 1042, no S.Ct. 835, 107 L.Ed.2d 830 (1990), *motion granted*, --- U.S. --- S.Ct. 1468, 108 L.Ed.2d 606 (199o), *aff'd*, 497 U.S. 227, 110 S.Ct. 2822, 111 L.Ed.2d 193 (199o), *later proceeding*, 567 So.2d 597 (La.1990), *habeas corpus proceeding*, 772 F.Supp. 297 (E.D.La.1991), *aff'd*, *stay vacated*, 945 F.2d 812 (5th Cir.1991) (citation omitted) (a timely objection is an essential element of a claim of racial discrimination in the exercise of peremptory challenges under *Batson); United States*

> Subsequent to *Batson,* "both the federal and state courts have consistently held that failure to make a timely objection effectively waives any arguments based on improprieties in jury selection which the defendant might urge pursuant to *Batson."* Brian J. Serr & Mark Maney, *Racism, Peremptory Challenges and the Democratic Jury: The Jurisprudence of a Delicate Balance,* 79 J.Crim. L. and Criminology 1, 19 (1988); *See, e.g., United States v. Cashwell*, 950 F.2d 699, 704 (11th Cir.1992); *United States v. Masat, 948 F.2d* 923, 927 (5th Cir.1991); *State v. English,* 795 S.W.2d 610, 612 (Mo.App.1990); *People v. Lockhart,* 201 Ill.App.3d 700,146 Ill.Dec. 1011, 558 N.E.2d 1345, 1350 (1990).[58]

The Petitioner's instant claim is not only speculative, but is also undermined by the fact that Petitioner's attorney, who was present during voir dire and able to observe and assess the potential jurors' responses and non-verbal communications, did not make a *Batson* challenge. Great deference is to be accorded to counsel's judgment, tactical decisions, and trial strategy and should not be second guessed if within the range of professional reasonableness.[59] Examination of potential jurors is dependent upon a variety of factors including counsel's observations of potential jurors and questions asked by the attorneys as well as the responses thereto. Moreover, the trial

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v. Erwin, 793 F.2d 656, 667 (5th Cir.), *cert. denied*, 479 U.S. 991, 107 S.Ct. 589, 93 L.Ed.2d 590 (1986) (*Batson* motion must be timely to be entertained; motion not timely because appellants waited a full week before moving to strike panel, trial was about to begin and unselected venire persons had been released)).

[58] *Strong v. State*, 263 S.W .3d 636, FN 6 (Mo., 2008).

[59] *See State v. Morgan*, 472 So.2d 934, (La. App. 1st Cir. 1985).

court plays a unique role in the dynamics of a voir dire, for it is the court that observes firsthand the demeanor of the attorneys and venire persons, the questions presented, the composition of the venire, and the general atmosphere of the voir dire that simply cannot be replicated from the transcript.[60] The Petitioner does not even identify a particular panelist who was likely struck based on his/her being a member of a cognizable group or indicate that otherwise similar panelists were allowed to serve.[61] Also, he does not identify any evidence of disparate questioning of any perspective jurors.[62] In sum, he fails to particularly identify any violation that may have required corrective action.[63] Also, by Petitioner's own allegations, the allegedly targeted group was not actually excluded from the jury.

Moreover, the Petitioner's allegations are not only insufficient in showing that the State's exercise of its challenges was improper, but also insufficient in establishing that counsel's deficient performance resulted in prejudice. In sum, the Petitioner's allega-

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[60] *State v. Myers*, 761 So.2d 498, 502 (La. 4/11/00).

[61] *See State v. Sparks*, 68 So.3d 435, 468-9 (La. 5/11/11), citing *Batson v. Kentucky*, 476 U.S. at 96, 106 S.Ct. at 1723 (noting that to establish a prima facie case, the defendant must show: (1) the prosecutor's challenge was directed at a member of a cognizable group; (2) the challenge was peremptory rather than for cause; and (3) relevant circumstances sufficient to raise an inference that the prosecutor struck the venire person on account of his being a member of that cognizable group).

[62] *See State v. Draughn*, 950 So.2d 583, 605, 2005-1825 (La.,2007) citing *Miller-El v. Dretke*, 545 U.S. 231, 249 (2005).

[63] *See generally State v. Nelson*, 85 So.3d 21, 35-36 (La. 3/13/12) (noting that La. C.Cr.P. art. 795 gives broad discretion to the trial court to formulate "corrective action" to remedy a *Batson* violation.).

tions are factually insufficient to support a finding that he was denied effective assistance of counsel. Claim 7 should be dismissed pursuant to Arts. 926 & 928-929 C.Cr.P.

Therefore, Claim 7, and Claim 8 to the extent it alleges IAC with respect to the *Batson* issue, should be dismissed.

Claim 8

As previously indicated and discussed herein, the Petitioner, in Claim 8, argues that counsel was ineffective for failing to address the alleged violations in Claims 1-7. However, based on a review of the record and the Petitioner's application, the Petitioner fails to establish that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that he was prejudiced as a result of any alleged deficiency. Therefore, and for the reasons stated hereinabove, Claim 8 should be dismissed.

For the reasons stated herein, it is the recommendation of this Commissioner that the instant application for post-conviction relief should be dismissed in its entirety without the necessity of further response from the State and without a hearing. Should this Court agree, my formal recommendation follows.

COMMISSIONER'S RECOMMENDATION

I have considered the Petitioner's application for post-conviction relief, the State's response thereto, any traversals filed, the record and the law applicable, and for the reasons stated hereinabove, I recommend that Claim 6 should be dismissed as procedurally barred pursuant to La. C.Cr.P. art. 930.4 as it was fully litigated on appeal. As to Claims 1-5, 7 & 8, I recom-

mend dismissal pursuant to La. C.Cr.P. arts. 926 & 927-929 as Petitioner's allegations in connection therewith are factually insufficient to warrant relief, or without merit.

Respectfully recommended, this 11th day of March, 2013 in Baton Rouge, Louisiana.

/s/ Nicole Robinson
NICOLE ROBINSON
COMMISSIONER, SECTION A
NINETEENTH JUDICIAL
DISTRICT COURT

HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS/JUDGEMENT/ ORDER/COMMISSIONER'S RECCOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO:

ALL PARTIES

DONE AND SIGNED THIS 11TH DAY OF MARCH 2013

DEBBIE [Illegible]
Deputy Clerk Of Court

FILED
MAR 11 2013
/s/ Debbie [Illegible]
DEPUTY CLERK OF COURT

19TH JUDICIAL DISTRICT COURT FOR THE
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 07-06-0032

Section VI

STATE OF LOUISIANA

versus

THEDRICK EDWARDS

FILED:_____ DEPUTY CLERK:_____

TRAVERSAL OF COMMISSIONER'S RECOMMENDATION

NOW INTO COURT, through undersigned counsel, comes petitioner, THEDRICK EDWARDS, who respectfully traverses the Commissioner's Recommendation.

INTRODUCTION

This Commissioner denied Edwards post conviction claims on March 11, 2013. A copy of the judgement was received on March 14, 2013. The following is a response and traversal to each recommendation.

CLAIM 6

The Commissioner sustained the State's objection that a challenge to the defendant's confession should be dismissed because the matter was litigating on appeal, however, the interest of justice requires additional litigation on post conviction since the matter concerns a very fundamental set of rights, namely 5th

and 6th Amendment claims. In denying this claim on appeal, the First Circuit had to rely on a transcript and not on live testimony. These officers can be crossed examined on the specific allegations and the Trial Court could weigh their demeanor and ask its own questions if deemed necessary. This is something that Court could not do at the motion to suppress he aring because Mr. Edwards did not testify. The matter is ripe for post conviction.

CLAIM 5

The Commissioner found meritless Edwards' claim alleging a plea deal with Jacquin James. The troubling part about this recommendation is that the Commissioner takes this position without hearing testimony on the issue. The record of Jacquin James' case establishes he pled guilty after testifying and was sentenced pursuant to La. C.Cr.P. Art 893. This appears to be an "after the fact deal." Evidence needs to be developed to establish James' expectations when he testified and communications between his attorneys and the prosecution to see if an informal plea bargain was discussed. If so, it is a proper avenue of cross examination which would cause the jury to discredit his testimony.

CLAIM 1

The commissioner denies Edwards' claim contesting the hearsay evidence concerning the "rape kit" introduction at trial on the basis of insufficient evidence. The Commissioner further notes that any error is harmless clue to the victim and witness testimony. The problem with this ruling is the Court's failure to appreciate Edwards confrontation rights. The admission of the rape kit through hearsay is only part of the problem. The inability to cross examine the nurse who

actually met with the victim prevented the defense from adequately attacking her findings, establishing mitigating testimony, and potentially establishing facts that could later be used to impeach the victim during her cross examination.

CLAIM 2

The Commissioner denied Edwards' claim contesting the prosecutor's comments in closing arguments without merit. This claim concerns the prosecution vouching for the lead detective's credibility which, if established, could be used to rebut the claims of misconduct made by Edwards that compelled him to confess. Also, the prosecutor's comments attempts to align the jury and the State as a team "out for justice." That is simply improper and not the role of the jury.

CLAIM 3 and 4

The Commissioner denies Edwards' claims concerning Louisiana's non-unanimous jury requirement and the use of identification experts on the basis of sufficient legal support. These claims were raised on post conviction to preserve the issue and also to make a good faith effort in changing the jurisprudence concerning these areas of law.

CLAIM 7

The Commissioner denied Edwards' claim that African Americans were improperly excluded from the jury on the basis of an insufficient factual showing. However, the record clearly establishes that 10 of 11 African Americans were excluded by the State. That's 90%. Here is a question to ponder: Who would serve on the jury if 90% of white people were excluded?

The Commissioner gives great deference to trial counsel for not making a Batson challenge. But trial counsel was ineffective. A first year law student would know that excluding 10 out of 11 members of a particular race is a problem that should be addressed. Again, what makes this problematic is that the lone African American consistently voted for an acquittal. Prejudice is clearly established.

CLAIM 8

The Commissioner denies Edwards' claim that trial counsel was ineffective. However, all of the previously claims not only establish specific instance, but when viewed cumulatively, establish that Edwards did not receive a fair trial.

Respectfully submitted:

RESPECTFULLY SUBMITTED

MANASSEH, GILL, KNIPE
& BÉLANGER, P.L.C.

/s/ Andre Bélanger
ANDRE BÉLANGER

Louisiana Bar Roll No. 26797
8075 Jefferson Highway
Baton Rouge, LA 70809
Telephone: (225) 383-9703
Facsimile: (225) 383-9703

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Traversal of Commissioner's Recommendations has this day been mailed via first class mail and/or hand delivered to the Office of the District Attorney, East Baton Rouge Parish, Louisiana.

Baton Rouge, Louisiana, this 21st day of [Illegible], 2013.

/s/ André Belanger
ANDRÉ BELANGER

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Number: 07-06-0032; Section: VI

THEDRICK EDWARDS

versus

N. BURL CAIN, Warden

ORDER

CONSIDERING the Petitioner's application for post-conviction relief, the Commissioner's Recommendation dated March 11, 2013, the Petitioner's traversal thereto and;

FOR the reasons stated in the Commissioner's Recommendation, which the Court hereby adopts as its own;

IT IS ORDERED that the Petitioner's **Claim 6** is **DISMISSED** as procedurally barred pursuant to La. C.Cr.R. art. 930.4 as it was fully litigated on appeal.

IT IS FURTHER ORDERED that **Claims 1-5, 7, & 8**, are **DISMISSED** pursuant to La. C.Cr. P. arts. 926 & 927-929, as they are factually insufficient to warrant relief or without merit.

IT IS FURTHER ORDERED that the Petitioner's application is hereby **DISMISSED** in its entirety without the necessity of a hearing.

SO ORDERED, this 26 day of April, 2013 in Baton Rouge, Louisiana.

/s/ Richard Moore, III
JUDGE, RICHARD "CHIP" MOORE, III
19TH JUDICIAL DISTRICT COURT

Mr. Thedrick Edwards,
Louisiana State Penitentiary
Angola, Louisiana 70712

[SEAL]
Office Of The Clerk
Court of Appeal, First Circuit
State of Louisiana
www.la-fcca.org

Christine L. Crow
Clerk of Court

Post Office Box 4408
Baton Rouge, LA 70821-4408
(225) 382-3000

Notice of Judgment and Disposition
March 24, 2014

Docket Number: 2013 - KW - 2019

State of Louisiana versus Thedrick Edwards

TO:

Andre Robert Belanger
8075 Jefferson Highway
Baton Rouge, LA 70809

Dana J. Cummings Esq.
State of Louisiana
District Att.
222 St. Louis Street
Baton Rouge, La 70802

James Phillip Manasseh Esc
MANASSEH & GILL, P.L.C.
8075 Jefferson Highway
Baton Rouge, LA 70809

Hillar C. Moore III
EBR District Attorney – Juven
233 St. Ferdinand Street
Baton Rouge, LA 70802
esuydam@ebrda.org

Hon. Richard "Chip" Moore
222 St Louis St., Room 623
Baton Rouge, LA 70801

Hon. Nicole Robinson
300 North Boulevard
Room 2B
Baton Rouge, LA 70802

In accordance with Local Rule 6 of the Court of Appeal, First Circuit, I hereby certify that this notice of judgment and disposition and the attached

disposition were transmitted this date to the trial judge or equivalent, all counsel of record, and all parties not represented by counsel,

/s/ Christine L. Crow
CHRISTINE L. CROW
CLERK OF COURT

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

[Filed March 24, 2014]

No. 2013 KW 2019

STATE OF LOUISIANA

versus

THEDRICK EDWARDS

In Re: Thedrick Edwards, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 07-06-0032.

BEFORE: WHIPPLE, C. J., WELCH AND CRAIN, *JJ.*

WRIT DENIED.

JEW
WJC
VGW

COURT OF APPEAL, FIRST CIRCUIT

/s/ Elizabeth D. [illegible]
DEPUTY CLERK OF COURT
FOR THE COURT

149

THE SUPREME COURT OF
THE STATE OF LOUISIANA

No. 2014-KP-0889

STATE OF LOUISIANA

versus

THEDRICK EDWARDS

IN RE: Edwards, Thedrick; - Defendant; Applying For Supervisory and/or Remedial Writs, Parish of E. Baton Rouge, 19th Judicial District Court Div. N, No. 07-06-0032; to the Court of Appeal, First Circuit, No. 2013 KW 2019;

February 13, 2015

Denied.

SJC
BJJ
JTK
JLW
GGG
MRC
JDH

Supreme Court of Louisiana
February 13, 2015

/s/ [Illegible]
Deputy Clerk of Court
For the Court

IN THE UNITED STATES COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA

[Filed May 14, 2015]

No. 15-305

THEDRICK EDWARDS,

Petitioner,

v.

BURL CAIN, Warden

Petition for a Writ of Habeas Corpus
by a Prisoner in State Custody

MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C.

ANDRÉ BÉLANGER
Louisiana Bar No. 26797
8075 Jefferson Highway
Baton Rouge, LA 70809
Tel: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com

Attorney for Thedrick Edwards

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PETITION UNDER 28 U.S.C. § 2254
FOR WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

United States District Court		District: Middle
Name: Thedrick Edwards		Docket No. 15-305
Place of Confinement: Louisiana State Penitentiary		DOC No. 533192
Petitioner		Respondent
Thedrick Edwards	v.	Burl Cain, Warden Louisiana State Penitentiary Angola, Louisiana
The Attorney General of the State of: Louisiana		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

   The Nineteenth Judicial District Court in the Parish of East Baton Rouge

   (b) Criminal docket or case number:

   07-06-0032

2. (a) Date of the judgment of conviction:

   December 7, 2007

   (b) Date of sentencing:

   February 7, 2008

3. Length of sentence:

Count I: Armed Robbery – Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count II: Armed Robbery – Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count III: Armed Robbery – Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count IV: Armed Robbery – Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count V: Armed Robbery – Thirty (30) years at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count VI: Attempted Armed Robbery – Not Guilty

Count VII: Aggravated Kidnapping – Life at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count VIII: Aggravated Kidnapping – Life at hard labor, to be served without benefit of probation, parole or suspension of sentence.

Count IX: Aggravated Rape – Life at hard labor, to be served without benefit of probation, parole or suspension of sentence.

ALL SENTENCES TO RUN CONSECUTIVE

4. In this case, were you convicted on more than one count or of more than one crime?

   Yes

5. Identify all crimes of which you were convicted and sentenced in this case:

   Armed Robbery, Attempted Armed Robbery, Aggravated Kidnapping, Aggravated Rape

6. (a) What was your plea?

   Not Guilty

   (b) If you entered a guilty plea to one count or charge and not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

   N/A

   (c) If you went to trial, what kind of trial did you have?

   Jury

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

   Yes

8. Did you appeal from the judgment of conviction?

   Yes

9. If you did appeal, please answer the following:

   a) Name of the court: First Circuit Court of Appeal

   b) Docket or case number: 2008-KA-2011

   c) Result: Denied

d) Date of result: June 12, 2009

e) Citation to the case: *State v. Edwards*, 11 So.3d 1241 (La. App. 1 Cir. 6/12/09)

f) Grounds raised: *Miranda* Violation

g) Did you see further review by a higher state court? Yes

If yes, answer the following:

1) Name of court: Louisiana Supreme Court

2) Docket or case number: 2009-K-1612

3) Result: Denied

4) Date of result: December 17, 2010

5) Citation to the case: *State v. Edwards*, 51 So.3d 27 (La. 12/17/10)

6) Grounds raised: *Miranda* violation; *Batson* violation

h) Did you file the petition for certiorari in the United States Supreme Court?

1) Docket or case number: Filing petition contemporaneously with this application.

2) Result: Pending

3) Date of result: N/A

4) Citation to the case: Unknown

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes, filed state post-conviction application.

11. (a) If your answer to Question 10 was "Yes", give the following information:

1) Name of court: 19 Judicial District Court

2) Docket or case number: 07-06-0032

3) Date of filing: December 15, 2011

4) Nature of the proceeding: Post-Conviction Relief Application

5) Grounds raised: *Miranda* violation, confrontation rights violations, *Batson* violations, Sixth Amendment jury trial violation, ineffective assistance of counsel claim and improper conduct by the prosecutor

6) Did you receive a hearing where evidence was given on your petition, application, or motion? No.

7) Result: Denied

8) Date of result: April 26, 2013

(b) If you filed any motion, give the same information:

1) Name of court: Louisiana First Circuit Court of Appeal

2) Docket or case number: 2013-KW-2019

3) Date of filing: November 21, 2013

4) Nature of the proceeding: *Writ of Certiorari*

5) Grounds raised: *Miranda* violation, confrontation rights violations, *Batson* violations, Sixth Amendment jury trial violation, ineffective assistance of coun-

sel claim and improper conduct by the prosecutor

6) Did you receive a hearing where evidence was given on your petition, application, or motion? No.

7) Result: Denied

8) Date of result: March 24, 2014

(c) If you filed any third motion, give the same information:

1) Name of court: Louisiana State Supreme Court

2) Docket or case number: 2014-KK-0889

3) Date of filing: April 28, 2014

4) Nature of the proceeding: *Writ of Certiorari*

5) Grounds raised: *Miranda* violation, confrontation rights violations, *Batson* violations, Sixth Amendment jury trial violation, ineffective assistance of counsel claim and improper conduct by the prosecutor

6) Did you receive a hearing where evidence was given on your petition, application, or motion? No.

7) Result: Denied.

8) Date of result: February 13, 2015

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

First Petition: Yes. The information is included above.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds.

Ground One: Confrontation Rights Violation

(a) Supporting Facts (Do not argue or cite law. Just state the specific facts that support your claim.):

There are two confrontation rights violations. The first concerning a sexual assault examination where the findings were presented through hearsay testimony. The second concerns the State's failure to advise an informal plea deal with an accomplice who testified at trial.

(b) If you did not exhaust your state remedies on Ground One, explain why:

These claims were raised as part of an ineffective assistance claim on post-conviction.

(c) Direct Appeal of Ground One: No.

(1) If you appealed from the judgment of conviction, did you raise the issue? No.

(2) If you did not raise the issue in your direct appeal, explain why:

The failure to assert claim formed the basis of an ineffective assistance of counsel claim on post-conviction.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial count? Yes.

(2) If your answer to Question (d)(1) is "Yes", state:

Type of motion or petition: Post-Conviction Application

Name and location of the court where the motion or petition was filed: 19th Judicial District Court, Baton Rouge, Louisiana

Docket or case number: 07-06-0032

Date of the court's decision: April 26, 2013

Result (attach a copy of the court's opinion or order): Denied

(3) Did you receive a hearing on your motion or petition? No.

(4) Did you appeal from the denial of your motion or petition? Yes.

(5) If your answer to Question (d)(4) is "Yes", did you raise this issue in the appeal? Yes.

(6) If your answer to Question (d)(4) is "Yes", state:

Name and location of the court where the appeal was filed: Louisiana First Circuit Court of Appeal

Docket or case number: 2013-KW-2019 Date of the court's decision: March 24, 2014

Result (attach a copy of the court's opinion or order): Denied.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No", explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

Ground Two: Petitioner was denied his right to an impartial jury

(a) Supporting Facts (Do not argue or cite law. Just state the specific facts that support your claim.):

This ground raises two claims. First, the jury was selected in a manner inconsistent with *Batson v. Kentucky*. More specifically, the State excluded 10 of 11 African American jurors through the combined use of cause and peremptory challenges. Second, petitioner was denied his right to a unanimous jury.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Both claims were raised on post-conviction

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise the issue? No.

(2) If you did not raise the issue in your direct appeal, explain why:

Both claims are incorporated into an ineffective assistance of counsel claim on post-conviction. The *Batson* claim was also raised for consideration to the Louisiana Supreme Court on writ consideration for the denial of the direct appeal.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial count? Yes.

(2) If your answer to Question (d)(1) is "Yes", state:

Type of motion or petition: Post-Conviction Application

Name and location of the court where the motion or petition was filed: 19th Judicial District Court, Baton Rouge, Louisiana

Docket or case number: 07-06-0032

Date of the court's decision: April 26, 2013

Result (attach a copy of the court's opinion or order): Relief denied.

(3) Did you receive a hearing on your motion or petition? No.

(4) Did you appeal from the denial of your motion or petition? Yes.

(5) If your answer to Question (d)(4) is "Yes", did you raise this issue in the appeal? Yes.

(6) If your answer to Question (d)(4) is "Yes", state:

Name and location of the court where the appeal was filed: Louisiana First Circuit Court of Appeal

Docket or case number: 2013-KW-2019 Date of the court's decision: March 24, 2014

Result (attach a copy of the court's opinion or order): Denied.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No", explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

Ground Three: *Miranda* Violation

(a) Supporting Facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The police coerced a confession in violation of petitioner's right to counsel.

(b) If you did not exhaust your state remedies on Ground Three, explain why:

N/A

(c) Direct Appeal of Ground Three:

(3) If you appealed from the judgment of conviction, did you raise the issue? Yes.

(4) If you did not raise the issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial count? Yes.

(2) If your answer to Question (d)(1) is "Yes", state:

Type of motion or petition: Post-Conviction Application

Name and location of the court where the motion or petition was filed: 19th Judicial District Court, Baton Rouge, Louisiana

Docket or case number: 07-06-0032

Date of the court's decision: April 26, 2013

Result (attach a copy of the court's opinion or order): Denied.

(3) Did you receive a hearing on your motion or petition? No.

(4) Did you appeal from the denial of your motion or petition? Yes.

(5) If your answer to Question (d)(4) is "Yes", did you raise this issue in the appeal? Yes.

(6) If your answer to Question (d)(4) is "Yes", state:

Name and location of the court where the appeal was filed:

Louisiana First Circuit Court of Appeal

Docket or case number: 2013-KW-2019

Date of the court's decision: March 24, 2014

Result (attach a copy of the court's opinion or order): Denied.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No", explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

Ground Four: Due Process Violation

(a) Supporting Facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The prosecutor's closing arugement was impermissible because she vouched for the lead detective's credibility and aligned the jury with the prosecution team .

(b) If you did not exhaust your state remedies on Ground Four, explain why:

N/A

(c) Direct Appeal of Ground Four:

(5) If you appealed from the judgment of conviction, did you raise the issue? No.

(6) If you did not raise the issue in your direct appeal, explain why: The issue was raised as part of an ineffective assistance claim on post-conviction relief.

(d) Post-Conviction Proceedings:

(8) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial count? Yes.

(9) If your answer to Question (d)(1) is "Yes", state:

Type of motion or petition: Post-Conviction Application

Name and location of the court where the motion or petition was filed: 19th Judicial District Court, Baton Rouge, Louisiana

Docket or case number: 07-06-0032

Date of the court's decision: April 26, 2013

Result (attach a copy of the court's opinion or order): Denied.

(10) Did you receive a hearing on your motion or petition? No.

(11) Did you appeal from the denial of your motion or petition? Yes.

(12) If your answer to Question (d)(4) is "Yes", did you raise this issue in the appeal? Yes.

(13) If your answer to Question (d)(4) is "Yes", state:

Name and location of the court where the appeal was filed: Louisiana First Circuit Court of Appeal

Docket or case number: 2013-KW-2019 Date of the court's decision: March 24, 2014

Result (attach a copy of the court's opinion or order): Denied.

(14) If your answer to Question (d)(4) or Question (d)(5) is "No", explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

Yes, on post-conviction

If your answer is "No", state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) If there is any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them. No.

14. Have you previously filed any type of petition, application, or motion in federal court regarding

the conviction that you challenge in this petition? No.

If "Yes", state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?

Yes, filing a *writ of certiorari* to the United States Supreme Court contemporaneously with this petition.

If "Yes", state the name and location of the court, the docket or case number, the type of proceeding and the issues raised.

The United States Supreme Court in Washington D.C. The case has not yet been docketed. The same issues are raised.

16. Give the name and address of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Sonya Hall, 658 St. Charles, Baton Rouge, Louisiana 70802

(b) At arraignment and plea: Sonya Hall, 658 St. Charles, Baton Rouge, Louisiana 70802

(c) At trial: Sonya Hall, 658 St. Charles, Baton Rouge, Louisiana 70802

(d) At sentencing: Sonya Hall, 658 St. Charles, Baton Rouge, Louisiana 70802

(e) On appeal:

First Circuit Appeal: Frank Sloan, 948 Winona, Mandeville, Louisiana 70471 Louisiana Supreme Court Writ: Andre Belanger, 8075 Jefferson Highway, Baton Rouge, Louisiana 70809

(f) In any post-conviction proceeding: Undersigned counsel

(g) On appeal from any ruling against you in a post-conviction proceeding: Undersigned Counsel

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? No.

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? No.

AEPDA STANDARD OF REVIEW

Questions of law and mixed questions of law and fact are reviewed under 28 U.S.C. § 2254(d)(1), while pure questions of fact are reviewed under § 2254(d)(2). *Hill v. Johnson*, 210 F.3d 481, 485 (5th Cir. 2000). The state court's decision is contrary to federal law within the meaning of § 2254(d)(1) when the state court applies a rule contradicting the governing law set forth in the Supreme Court's jurisprudence or the state court

"confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [Supreme Court] precedent." *Ibid. See Williams v. Taylor*, 529 U.S. 362, 405-06; 120 S. Ct. 1495; 146 L. Ed. 2d 389 (2000). The inquiry into the issue of "unreasonableness" is objective. *Id*. At 409-10. A state court's incorrect application of clearly established Supreme Court precedent is not enough to warrant federal habeas relief – the application must also be unreasonable. *Id*. at 410-12. A state court's factual findings constitute "an unreasonable application of clearly established" Supreme Court precedent if the state court "correctly identifies the governing legal rule but applies it unreasonable to the facts of a particular prisoner's case." *Id.* at 407-08.

TIMELINESS

Title 28 U.S.C. § 2254 provides a one-year limit for the filing of an application for a Writ of Habeas Corpus in federal court. *See* 28 U.S.C. § 2244(d)(1). The limitation period commences from the latest of:

> *(A) The date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;*

Moreover, "the time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. § 2244(d)(2). The one year time limitation imposed by § 2244(d)(1)(A) begins to commence on "the date on which the judgment becomes final by the conclusion of direct review." A state prisoner's conviction becomes "final" for the purposes of § 2254 ninety (90) days after

the judgment is entered, when the time to file a petition for writ of certiorari with the U.S. Supreme Court has expired. *Roberts v. Cocrell*, 319 F.3d 690, 693 (5th Cir. 2003), *Wessinger v. Cain*, 358 F.Supp. 2d 523 (MDLA 2005). A pending state habeas or post-conviction proceeding tolls the statute of limitations created by § 2244(d)(1). *Ybanez v. Johnson*, 204 F.3d 645, 646 (5th Cir. 2000). "[A] state application is 'pending; during the intervals between the state court's disposition of a state habeas and the petitioner's timely filing of a petition for review to the next level." *Dixon v. Cain*, 316 F.3d 553, 556 (5th Cir. 2003).

In this case, the Louisiana Supreme Court declined to consider Mr. Edwards' direct appeal on December 17, 2010. The time limitations to seek a review by the United States Supreme Court would have concluded 90 days later on March 17, 2011. Edwards filed his state application for post-conviction relief within one year from that date on December 15, 2011. The statute of limitations would have tolled until that application was denied by the Louisiana Supreme Court on February 13, 2015 leaving the defendant 93 days or until May 17, 2015 to file this petition.

EXHAUSTION

Applicants seeking Federal Habeas relief under 28 U.S.C. § 2254 are required to exhaust all claims in state court prior to requesting federal collateral relief. *Mercandel v. Cain*, 179 F.3d 271, 275 (5th Cir. 1999). "The exhaustion requirement is satisfied when the substance of the federal habeas claim has been fairly presented to the highest state court." *Armsted v. Maggio*, 720 F.2d 894, 896 (5th Cir. 1983). Habeas claims can be exhausted for § 2254 purposes during either direct appeal or state post-conviction review. *Garner v. Cain*, 99-3272 "G", 2000 U.S. Dist. LEXIS

6451 (E.D. La. May 1, 2000) (finding raised by petitioner on direct appeal "properly exhausted and ripe for habeas review"). Mr. Thomas' Petition for Post-Conviction Relief and his subsequent request for Remedial and/or Supervisory Writs fairly presented the facts and law of Federal Habeas claims enumerated herein. Although exhaustion inquiries are fact-specific, "as a general rule dismissal is not required when evidence presented for the first time in a habeas proceeding supplements, but does not fundamentally alter, the claim presented to the state courts." *Anderson v. Johnson*, 338 F.3d 382, 386 (5th Cir. 2003).

Mr. Edwards' claims were adjudicated on the merits before the 19th Judicial District Court. An evidentiary hearing was granted. The phrase "adjudicated on the merits" as it appears in 28 U.S.C. § 2254 "does not require that state have conducted evidentiary hearing, or indeed, any particular kind of hearing; state has 'adjudicated' petitioner's constitutional claim 'on the merits' for the purposes of 28 U.S.C. § 2254(d) when it has decided Mr. Edwards' right to post-conviction relief on the basis of substance of constitutional claim advanced, rather than denying claim on the basis of procedural or other rule precluding state court review of the merits." *See generally*, *Lambert v. Blodgett*, 393 F.3d 943, 965-966 (9th Cir. 2004). As will be noted *infra*, the Louisiana Supreme Court's disposition of Mr. Edwardss' application for post-conviction relief represents a severe departure from clearly established federal law, as determined by the Supreme Court of the United States, an unreasonable determination of facts in light of the evidence presented in the State court proceedings and an unreasonable application of Supreme Court jurisprudence. This Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 timely follows.

DISCUSSION

THE VIOLATION OF EDWARDS' CONFRONTATION RIGHTS

I. This Court's holding in *Bullcoming v. New Mexico* requires the prosecution to provide testimony of the forensic examiner actually performing the examination in order for the accused to fully confront the witnesses against him. In this case, the supervisor of the examiner performing the rape kit testified as to that examiner's forensic findings, interview with the victim and demeanor of the victim. Since the supervisor lacked first-hand knowledge of the examination, such testimony was hearsay. Edwards' inability to cross examine the actual examiner is a Confrontation Clause violation mandating a new trial.

The Sixth Amendment's Confrontation Clause gives the accused the right to be confronted by the witnesses against him[1]. Forensic laboratory reports created specifically to serve as evidence in a criminal proceeding are considered testimonial for Confrontation Clause purposes mandating live witness testimony regarding the truth of the report's contents[2]. The Confrontation Clause does not permit the prosecution to introduce a forensic report through the in court testimony of an analyst who did not personally per-

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[1] *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004).

[2] *Melendez-Diaz v. Massachusetts*, _____ U.S. _____, 129 S.Ct. (2010).

form or observe the performance of the test reported in the certification[3].

In Edwards' case, the State presented testimony from Wanda Pezant who purported to be the Director of Education at Ochsner Medical Center in Baton Rouge and a Sex Assault Nurse Examiner coordinator. As a SANE coordinator, Pezant reviewed the "Rape Kit" for [redacted]—the prosecution's victim. Pezant's testimony divulged the contents of the examiner's interview of [redacted], [redacted]'s demeanor and forensic findings following a physical examination and scientific testing[4]. None of that testimony concerned first hand observations by Pezant. This testimony was particularly devastating because it was used to bolster and corroborate [redacted]'s testimony. Edwards' attorney could not effectively cross examine on the Rape Kit because the actual examiner was never tendered for cross examination. This error is a clear violation of Edwards' constitutional rights and, as such, violated his due process rights.

II. The prosecutor deprived Edwards of his right to adequately confront his accusers when they failed to advise trial counsel of an informal plea deal made with one of his testifying witnesses. The prosecution presented testimony from an alleged accomplice to the robberies and kidnapping. At trial that witness purportedly testified because he wanted to put the matter behind him. At the time, there were no formal deals. The witness was represented

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[3] *Bullcoming v. New Mexico*, 564 U.S. _____, 131 S.Ct. 2705 (2011); *State v. Bolden*, 2011 WL 4578596 (La. App. 3 Cir. 2011).

[4] Record pages 701, 704m 708, 709

> **by an esteemed lawyer and, after testifying at another related trial, pled to a felony pursuant to the provisions of Article 893 and will, no doubt, have the matter expunged in due course. Whenever the criminal consequences of a witness is determined by the subjective assessment of their testimony by the State, disclosure is warranted. In this case it did not occur. How would the jury view this witnesses' testimony today if they knew he was auditioning for an expungement when he testified?**

The State has an affirmative duty to provide the defense with any *Brady* evidence, which is interpreted to include both exculpatory and impeachment evidence[5]. The duty to provide this information to the defendant is an ongoing obligation and failure to do so may result in the reversal of a criminal conviction when the accused is prejudiced[6]. It is clearly established that this obligation requires the State to reveal any deals with its witnesses, whether they be formal or informal, regardless of whether the deals are consummated[7].

In *Bagley*, the prosecutor failed to disclose that the possibility of a reward had been held out to the witness if the information provided by that witness was deemed useful by the State. This Court believed that the possibility of reward gave the witness a direct, personal stake in the accused's conviction and the fact

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[5] *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972).

[6] *State v. Viccaro*, 411 So.2d 415 (La. 1982)

[7] *U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985); *State v. Bailey*, 367 So.2d 368 (La. 1979).

that the stake was not guaranteed through a promise but was contingent upon the State's satisfaction with the result strengthened the incentive to testify falsely to secure a conviction.

In Edwards' case, the State presented testimony of Jacquin James who was considered a co-defendant and had pending armed robbery and kidnapping charges when he testified against Edwards. At trial, James stated that there were no deals and that he wanted to "get this over with."[8] In closing, the prosecutor noted that James hoped for consideration. After Edwards and another co-defendant were convicted at trial, James' charges were reduced to an accessory count and he was sentenced pursuant to Louisiana's felony expungement provision—La. C.Cr.P. Art. 893. This favorable treatment was never provided to the defense. It is not realistic to assume potential consideration James would receive if he testified and assisted the State. Nor is it reasonable to assume that counsel would allow a client to incriminate himself and receive a life sentence unless there was an implicit agreement in place.

The Sixth Amendment to the U.S. Constitution guarantees the accused the right to cross examine adverse witnesses allowing the accused to reveal biases and ulterior motives of witnesses[9]. In this case, the State's *Brady-Giglio* violation in failing to disclose potential consideration to James in exchange for testimony violated Edwards' right to confront, via cross examination. Shouldn't the jury know, when assessing James' credibility, that his armed robbery

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[8] Record page 818, 836

[9] *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105 (1974).

and kidnapping charges would be reduced to an expungeable offense after he testifies?

The State's failure to disclose possible plea bargains with co-defendant witnesses is both a *Brady-Giglio* violation and Confrontation Clause violation.

RIGHT TO AN IMPARTIAL JURY

III. Louisiana's jurisprudence allowing for criminal convictions to occur without a unanimous jury violates Edward's Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Louisiana's Supreme Court has repeatedly upheld this provision but those cases must be viewed in light of the Court's decision in *McDonald v. Chicago*, in which the Court noted that the Bills of Rights are not selectively incorporated to the States with differing standards than those binding upon the federal government. The Court further noted that those legal decisions used to justify the non-unanimous jury provisions in Oregon and Louisiana do not establish a multi-track approach to the incorporation doctrine. As such, the unanimous jury issue is again proper for inquiry. Edwards is the proper person to raise the issue because he would not be serving the rest of his life in jail if he were prosecuted in 48 other States or by the Federal Government.

Currently, well settled Louisiana jurisprudence upholds the constitutionality of La. C.Cr.P. Art 782 allowing for less than a unanimous jury to convict

persons charged with second class felonies[10]. This jurisprudence relies upon the Supreme Court's ruling in *Apodeca v. Oregon* in which a plurality upheld Oregon's non-unanimous jury system[11]. However, a recent ruling by the High Court calls the current application of *Apodeca* into question.

Recently, the Court had to consider the scope of the incorporation doctrine in a case questioning whether the Second Amendment applied to the States in the same manner as the federal government[12]. The Court held that it does, noting that the right to bear arms is deeply rooted in this nation's history and tradition so it is a right fully incorporated by the Due Process Clause of the Fourteenth Amendment. In discussing the issue, the Court footnoted comments pertaining to one apparent exception—the unanimous jury requirement:

> "[14]There is one exception to this general rule. The Court has held that although the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials, it does not require a unanimous jury verdict in state criminal trials. See *Apodaca* v. *Oregon*, 406 U. S. 404 (1972); see also *Johnson* v. *Louisiana*, 406 U. S. 356 (1972) (holding that the Due Process Clause does not require unanimous jury verdicts in state criminal trials). But that ruling was the result of an unusual division among the Justices, not an endorsement of the two-track approach to

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[10] *State v. Bertrand*, 6 So.3d 738 (La. 2009); *State v. Jones*, 381 So.2d 416 (La. 1980); *State v. Simmons*, 414 So.2d 705 (La. 1982); *State v. Edwards*, 420 So. 2d 663 (La 1982).

[11] *Apodeca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628 (1972).

[12] *Mc Donald v. Chicago*, 551 U.S. 3028, 130 S.Ct. 3020 (2010)

> incorporation. In *Apodaca*, eight Justices agreed that the Sixth Amendment applies identically to both the Federal Government and the States. See *Johnson*, *supra*, at 395 (Brennan, J., dissenting). Nonetheless, among those eight, four Justices took the view that the Sixth Amendment does not require unanimous jury verdicts in either federal or state criminal trials, *Apodaca*, 406 U. S., at 406 (plurality opinion), and four other Justices took the view that the Sixth Amendment requires unanimous jury verdicts in federal and state criminal trials, *id*., at 414–415 (Stewart, J., dissenting); *Johnson*, *supra*, at 381–382 (Douglas, J., dissenting). Justice Powell's concurrence in the judgment broke the tie, and he concluded that the Sixth Amendment requires juror unanimity in federal, but not state, cases. *Apodaca*, therefore, does not undermine the well established rule that incorporated Bill of Rights protections apply identically to the States and the Federal Government. See *Johnson*, *supra*, at 395–396 (Brennan, J., dissenting) (footnote omitted) ("In any event, the affirmance must not obscure that the majority of the Court remains of the view that, as in the case of every specific of the Bill of Rights that extends to the States, the Sixth Amendment's jury trial guarantee, however it is to be construed, has identical application against both State and Federal Governments").

According to Justice Alito's comments above, two principles are evident: first, those Bill of Rights that extend to the states have identical application and second, the right to a jury trial is one of those rights that extend to the states. The right to a unanimous jury is a deeply rooted part of our nation's history and tradition—it's required by the federal government and

is required in 48 of the 50 states. The question that needs to be addressed is by what legal authority can Louisiana create a two tier track on those provisions of the Bill of Rights incorporated to the states through the Due Process Clause of the Fourteenth Amendment?

In this case, Edwards had at least one person voting for an acquittal on every prosecuted offense[13]. Edwards would not have been convicted if his were a federal prosecution, nor would he have been convicted in 48 other states. Interestingly, an ABA study entitled, "Principles for Juries and Jury Trials", finds that where unanimity is required, jurors evaluate evidence more thoroughly, spend more time deliberating and take more ballots. The contrary seems frightening: the marginalization of minority opinions and the power of the majority to form a coalition and, in effect, ignore dissenting views.

This issue is beginning to gain traction. On May 5, 2015, Jarvis DeBerry, a reporter for the Times Picayune wrote an article about two recent homicide convictions that will send the offenders to jail for life even though some jurors were not convinced of their guilt. The article succinctly summarizes points made by Valdosta State University professor Thomas Aiello in his new book "Jim Crow's Last Stand: Nonunanimous Criminal Jury Verdicts in Louisiana". According to Professor Aiello, the law allowing for non-unanimous juries was passed in 1880 during the Jim Crow era. Aiello is reported to argue the law's purpose was to make it easier to imprison newly emancipated African Americans.

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[13] Record pages 384, 405-413

DeBerry's article concludes with reference to the Innocence Project's brief in the Oritz Jackson case. The story quotes statistics suggesting that half of the forty (40) exonerations referenced in their brief were from trials that did not require a unanimous jury. Nearly half (nine to be specific) of these twenty (20) exonerations involved non-unanimous verdicts.

In Edwards' case, the consistent vote for an acquittal came from the sole African American on the jury. Was this person's voice heard? Federal jurisprudence prohibits excluding jurors on the basis of race. However, Louisiana's 10-2 Rule[14] can serve to deprive minorities of meaningful participation. Such was done in this case.

Simply put, Edwards would not be a convicted felon and serving a life sentence if Louisiana's jury system was consistent with this nation's tradition of requiring a unanimous jury. Sending someone to jail for life should be hard. But, this obstacle does not seem problematic for 48 other states and the federal government. Louisiana's 10-2 Rule runs afoul of the federal constitution and it must be declared so. If done, Edwards would receive a new trial.

IV. The State intentionally excluded African Americans from the jury. Through its use of cause and peremptory challenges, all but one African American was excluded by the State. Interestingly, this person consistently voted to acquit Edwards. More specifically, the State was able to exclude ten (10) of eleven (11) African Americans on the venire from the jury. This obvious error is compounded when

[14] La.C.Cr.P. Art 782

viewed within the context of the non-unanimous jury requirement noted above.

Constitutional principles forbid the use of peremptory challenges as a means of eliminating jurors on the basis of race[15]. Doing so is considered an equal protection violation. In the case at hand, the State was able to exclude ten (10) of eleven (11) African Americans from the jury. Five (5) of these exclusions were the result of peremptory challenges and five (5) were for cause. Regrettably, the State exercised only seven (7) peremptory challenges,[16] meaning that it used 70% of its exercised challenges to exclude African Americans from the jury[17]. Courts reviewing a *Batson* error are instructed to consult all of the circumstances that bear upon the issue of racial animosity[18]. Counsel surmises that the one (1) juror selected was done so in an effort to rebut an allegation of a *prima facia* showing that jurors were excluded for race. Also, because of the non-unanimous jury rule, the State could afford to lose a vote. And, that they did. This juror voted to acquit on all counts. As such, the defendant was denied a fair and impartial trial before his peers due to the State's juror challenges that excluded 10 of 11 African Americans from the jury.

***MIRANDA* WARNING VIOLATION**

V. The State failed to meet its heavy burden of proving that the defendant made a knowing and intelligent waiver of his

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[15] *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986).

[16] The State also exercised 1one (1) peremptory challenge to exclude an alternate juror.

[17] Record Pages 338-342

[18] *Synder v. Louisiana*, 128 S.Ct.1203, 552 U.S. 472 (2008)

privilege against self-incrimination and obtained an uncounseled inculpatory statement from Edwards despite his request for counsel. Edwards denied criminal culpability on two occasions before succumbing to coercive police techniques during an unrecorded forty-five (45) minute interrogation by two officers. The lead detective freely admits his willingness to lie and manipulate a suspect in an effort to obtain an admission. The contents of this detective's cajoling is discussed more fully below. Additionally, the defendant testified that he requested an attorney that was never provided and that he confessed to facts provided to him by the police as part of his cooperation that was to result in leniency. The police acknowledge telling the defendant that it was senseless for him to hire an attorney. Needless to say, an attorney was not provided. The police use of coercive interrogation techniques prevented a free and voluntary waiver of the defendant's Fifth Amendment rights. The failure to provide an attorney, despite the defendant's request, is a direct violation of the defendant's Sixth Amendment rights. Taken together, it appears the defendant's confession was impermissibly obtained and should have been excluded from evidence at trial.

This issue requires an examination of the interrogation techniques employed against Edwards in light of those abuses which troubled the *Miranda* Court followed by an analysis as to whether the inculpatory

statements were obtained in violation of Edwards' right to counsel. The undersigned believes that the police interrogation techniques were so psychologically coercive that it cannot be said that Edwards freely and voluntarily surrendered his right against self-incrimination. This constitutional violation was further magnified by the failure of the police to honor Edwards' request for counsel as evidenced by the interrogator's post-confession comments to the accused that it was "senseless" to hire an attorney[19]. As noted above, the defendant initially denied criminal culpability when interrogated on the day of his arrest[20]. The following day, he was transported from the parish jail to the police station under the guise of providing a DNA sample. However, once at the station, the defendant is placed inside an interview room, chained to it wall, and is interrogated by two detectives for forty-five (45) minutes before taking advantage of the video and audio capabilities available in the interview room[21]. According to the lead detective, the defendant initially denied guilt before opening up and providing a full confession. The interrogation techniques used by the police are similar to those questioned by the *Miranda* Court and suggest that the defendant did not make a free and voluntary waiver of his constitutional rights.

The *Miranda* opinion is due, in large part, to the Court's concern that the rights proclaimed in the Constitution were becoming "a form of words in the hands of government officials[22]." The Court aptly

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[19] Record page 972

[20] Record pages 733-736

[21] Record pages 462, 945, 975

[22] *Miranda v. Arizona*, 348 U.S. 436, 444, 86 S.Ct. 1602 (1966)

noted that modern interrogations take place in secret which advantages the government and results "in a gap in our knowledge as to what in fact goes on in interrogation rooms[23]." The Court's concern for secrecy stems from the police training manuals which view that secrecy as the principal psychological factor contributing to a successful interrogation and deemed it essential that the accused be deprived of every psychological advantage in an effort to create an atmosphere which "suggests the invincibility of the forces of law[24]."

The *Miranda* Court summarized the essence of police interrogations as follows:

> "To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the investigator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.' When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick or cajole him out of exercising his constitutional rights.

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[23] *Miranda* at 448

[24] *Miranda* at 450

> Even without employing brutality, the 'third degree' or specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals[25]."

Detective Fairbanks' testimony indicates the severity of the psychological warfare employed against Edwards in an effort to induce him into surrendering his constitutional rights. As noted above, Edwards was transported to the police station in order to obtain a DNA sample. The undersigned surmises that the true intent of the police was to transport Edwards in order to extract a confession at the police station. There is no reason why the DNA swabs could not be obtained at the parish jail. However, it is the walled interview room of the police station that provides the detective with his maximum psychological advantage. In this case, the psyche of the Edwards is further weakened by the fear and tension created by the transportation from the jail to the police station and his chained confinement to the walls of the secluded interview room where he is placed at the mercy of his interrogators.

The *Miranda* Court was wise in noting that the privacy of the interrogation rooms creates a knowledge gap as to what actually takes place inside. One supposes this concern prompted many departments, including Baton Rouge, to install recording devices in the rooms. Conveniently, the recording devices were not utilized during the first 45 minutes of Edwards' interrogation. As such, we do not definitively know what transpired from Edwards' initial denial of culpability until his confession. We must rely on the trial

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[25] *Miranda* at 455

testimonies of the police and the defendant to piece the interrogation together.

Detective Fairbanks testified that Edwards went through an initial "denial process" that he had to get beyond before obtaining a confession. Sadly, this detective easily admits his willingness to lie and deceive in an effort to obtain a confession:

> "If I need to manipulate or make false statements to get him to admit to what he did and if I have to throw a lie in to do it, I'll do it. . . . I would not use the word 'routine' but I have done it in the past[26]."

In the instant case, it appears that part of the unrecorded interrogation consisted of how the defendant's cooperation could help him obtain a plea, presentencing investigation considerations, and the defendant's desire to attend college. The following are excerpts from Fairbanks' testimony on these topics:

> "Q: Detective Fairbanks, did you promise my client that he would be able to go to college once he gave it up?
>
> A: We talked about college. I did not promise he could go to college.
>
> Q: You didn't make that promise?
>
> A: I told him he could- there was a reference made to college. I didn't promise him he could go. I remember thinking, well, a lot of people take college courses in prison but I didn't tell him he could or could not go[27]."

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[26] Record Page 974

[27] Record Page 974

"Q: You don't recall telling him that the judge would go light on him since he had no record?

A: No ma'am

Q: As we sit here today, do you remember that?

A: No, I know that we talked about the fact that he did not have a record and I told him that, through a presentence investigation, sometimes that is a consideration. But I was very careful for him to understand that I couldn't promise what the courts would do. I couldn't promise what a judge would do, It's just that those things are taken into consideration[28]."

"Q: Detective Fairbanks, did you ever advise Mr. Edwards that if he gave up information on Joshua Johnson, things would go easier on him?

A: I remember telling Mr. Edwards that its going to be up to the courts but if there is any plea agreements, it would be beneficial for him to cooperate with the investigation. But, I made it clear that, that is up to the courts and that is not a police matter. That's a court matter[29]."

The above referenced quotes suggest that Fairbanks was willing to lure the defendant into surrendering his constitutional rights by inferring promises that cooperation would be helpful to him and that attending college was a possibility. Edwards testified that the cajoling went a bit further and that he was promised probation and the ability to attend college if he

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[28] Record Page 975

[29] Record Page 982

cooperated[30] and that he would not have cooperated if it were not for these promises[31]. Edwards further testified that he requested counsel and was advised that if he cooperated that he would not need a lawyer[32]. These specific allegations were not rebutted as the State opted against presenting a case in rebuttal. As this Court is well aware, once a person requests counsel, he is not subject to further interrogation until counsel is made available unless the accused himself initiated further communications, exchanges or conversations with the police[33]. Although Fairbanks denied that Edwards requested counsel, an interesting comment at the end of his testimony suggests otherwise:

> "A: I told Mr. Edwards that in my opinion it's in his best interest to be honest to his mother and his father as to what he did as opposed to fronting up, you know, a supposed innocence and having them expend resources and money that they may or may not have to hire an attorney. I never told him that he should not hire an attorney. I told him he needs to be truthful with his parents. That was my statement.
>
> Q: Did [the] statement include references to hiring an attorney?
>
> A: I explained to him that I thought it was senseless to hire an attorney under the [guise] that you're innocent when you know in fact that you

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[30] Record page 1028

[31] Record Page 1048

[32] Record Page 1021

[33] *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981)

> had committed crimes. Why put your parents through all of that and expend those resources? And be honest with your parents because they're going to find out eventually that you committed a crime[34]."

Interestingly, the *Miranda* Court noted a common interrogation technique utilized by the police requiring the interrogator to suggest that the accused save his family the expense of hiring an attorney when one is requested[35]. No doubt, Fairbanks is familiar with that tactic as evidenced by the above referenced testimony. We will never know what transpired in that interview room because the police failed to hit the record button. We do know that the police created an antagonistic environment and cajoled Edwards into surrendering his constitutional rights by inferring multiple promises regarding the outcome of his arrest if he cooperated. This compelled statement must be excluded from trial regardless of the cost. Therefore, the ruling to the Court of Appeals must be reversed.

DUE PROCESS VIOLATION

VI. The prosecution violated Edwards' federal due process guarantees when the prosecutor made inflammatory and prejudicial comments by vouching for the credibility of the case detective; turning the prosecution into a plebiscite on crime; and insinuating that the jury served a representative function.

Closing arguments in a criminal case should be limited to the evidence admitted, the lack of evidence,

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[34] Record Pages 972

[35] *Miranda* at 454

conclusions derived from them, and applicable law. The prosecutor's prejudicial comments in closing argument may be considered to violate federal due process guarantees-even in the absence of a defense objection[36]. A prosecutor is permitted to argue a fair inference from the facts presented but cannot "roam beyond the evidence" presented at trial. Furthermore, a prosecutor is prohibited from expressing a personal opinion on the merits of the case or a witness' credibility[37]. In order to overturn a conviction because of an improper prosecutorial argument, the court must be convinced that the remarks affected the defendant's substantive rights[38]. In reaching this determination, the court will look to at: 1) the magnitude of the statement's prejudice; 2) the effect of any cautionary instructions; and 3) the strength of evidence of the defendant's guilt.

In this case the prosecution argued that Detective Fairbanks was one of the best at his job and would not have a reason to convict an innocent man because he is a chaplain. The prosecutor also added that Detective Fairbanks was out for justice "like the rest of us[39]."

An attorney is prohibited from expressing an opinion as to the witness' credibility by LSBA Rule of Profession Conduct 3.4(e). The Rules of Professional Conduct have the force of substantive law[40]. The prosecutor's reference to Fairbanks' status as a chaplain is an impermissible bolster to the truthfulness of his

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[36] *State v. Lee*, 346 So.2d 682 (La. 1977); *State v. Hayes*, 364 So.2d 923 (La. 1978).

[37] *U.S. v. Gallardo-Trapero*, 185 F.3d 307 (1999).

[38] *Id*.

[39] Record Page 1065

[40] *State v. Romero*, 533 So.2d 1264 (La. App. 3 Cir. 1988).

testimony; his higher moral standing-especially when compared to the accused; and was a stamp of approval by the prosecutor regarding the detective's credibility.

Furthermore, prosecutors are prohibited from turning a closing argument into a plebiscite on crime by making reference to community sentiment[41]. In this case, the prosecutor appealed to public sentiment when she stated that Detective Fairbanks was out for justice "like the rest of us". That context establishes that "us" is the prosecutor, the jury, and society in general. The notion of the jury being aligned with the prosecutor or being the community's representative is contrary to its function which is specifically defined in La C.Cr.P. Art. 802. Edwards' conviction should be reversed because the jury is not "the rest of us" nor is it aligned with the prosecutor. The prosecutor's comments are wrong and a reversal is in order.

CONCLUSION

Edwards is feeling the full force of Louisiana's refusal to adopt a unanimous jury requirement. Proponents of a new rule cite the lack of unimity as a vestige of a racist justice system and fear that it disempowers minority jurors. In this case, the sole African America juror acquitted Edwards in a cross racial identification case. Compounding matters is the realization that the State combined its cause and peremptory challenges to exclude every African American but this one from having a seat on the jury. Bluntly, the State could "afford" to lose her vote and still obtain a conviction. This voir dire tactic is inconsistent with the spirit of *Batson* and its progeny.

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[41] *State v. Deboue*, 552 So.2d 355 (La. 1989).

Edwards' due process rights were further violated by the quality of evidence presented at trial. Here, the State offered testimony by the nurse who conducted the sexual assault examination. That testimony included the examiner's findings as well as her interview of the case victim. The problem with the nurse's testimony is that it was offered by a hospital official instead of the nurse, a clear violation of Edwards' confrontation rights.

Also, the State introduced a coerced, and false, confession into evidence. Here, Edwards denied any wrong doing and was subjected to multiple interrogations before he confessed, and did so only after the police told him it would be senseless to get an attorney when he inquired about getting care.

Lastly, accomplice evidence was introduced at trial. That witness would be spared a life sentence and be allowed to have this matter removed from his record. But, that plea deal was never communicated to Edwards. It was done "after the fact". This tactic prevents effective cross examination on the witness' bias to testify.

RESPECTFULLY SUBMITTED:
MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C.

s/ André Bélanger
ANDRÉ BÉLANGER
Louisiana Bar No. 26797
8075 Jefferson Highway
Baton Rouge, LA 70809
Tel: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO._____

THEDRICK EDWARDS,

Petitioner,

v.

BURL CAIN, Warden, Louisiana State Penitentiary, Angola, Louisiana,

Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2015, a copy of the foregoing Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 By a Person in State Custody was filed electronically with the Clerk of Court using CM/ECF system. I also certify that I have mailed by United States Postal Service this filing to the following:

The Honorable Richard Moore III
19th Judicial District Courthouse
300 North Blvd., Suite 8301
Baton Rouge, LA 70801

Commissioner Nicole Robinson
(successor to former Commissioner
Rachel P. Morgan)
19th Judicial District Courthouse
300 North Blvd., Suite 2012
Baton Rouge, LA 70801

Mr. Buddy Caldwell,
Attorney General
P.O. Box 94005
Baton Rouge, LA 70804-9005

Mr. Hillar C. Moore, III,
District Attorney
222 St. Louis Street, Suite 550
Baton Rouge, Louisiana 70802

Mr. N. Burl Cain,
Warden Louisiana State Penitentiary
General Delivery
Angola, LA 70712-9999

RESPECTFULLY SUBMITTED:

MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C.

s/ André Bélanger
ANDRÉ BÉLANGER
Louisiana Bar No. 26797
8075 Jefferson Highway
Baton Rouge, LA 70809
Tel: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[Filed July 31, 2015]

CIVIL ACTION
NO. 15-0305-JJB-RLB

THEDRICK EDWARDS

versus

BURL CAIN, Warden

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

NOW INTO COURT, through the undersigned Assistant District Attorney, comes the State of Louisiana, respectfully answering petitioner's Application for Writ of Habeas Corpus as follows:

1.

On July 5, 2006, petitioner, Thedrick Edwards, along with five co-defendants, was indicted by the Grand Jury of the Parish of East Baton Rouge, which charged the petitioner with the following crimes: Armed Robbery (5 counts), Aggravated Rape, Aggravated Kidnapping (2 counts), and Attempted Armed Robbery, in violation of Louisiana Revised Statutes 14:64, 14:44, 14:42 and 14:27. (R. Vol. I, p. 24) On July 25, 2006, petitioner waived formal arraignment, and entered his own plea of not guilty as charged. (R. Vol. I, p. 1) Petitioner filed several pretrial motions, including a Motion To Suppress/Recant Confession. (R. Vol. I, p. 41) Petitioner's motion was heard by the

court on July 18, 2007, on which date the motion was denied. (R. Vol. III, p. 486)

2.

Following a jury trial on December 3, 4, 5, 6 and 7, 2007, petitioner was found guilty of all charges except for the attempted armed robbery, on which charge he was acquitted. (R. Vol. I, pp. 6-16) The petitioner was thereafter sentenced by the court, on February 7, 2008, to thirty years, on each of the five counts of armed robbery, said sentences to run consecutive to one another. The court sentenced the petitioner to three consecutive life sentences on the two counts of aggravated kidnapping, and one count of aggravated rape. (R. Vol. I, pp. 16-17)

3.

On February 28, 2008, petitioner filed a Motion For Appeal, which was granted by the trial court on July 7, 2008. (R. Vol. IV, pp. 434, 439) In his appeal, petitioner asserted a single assignment of error, namely that "The trial court's denial of Mr. Edwards' Motion to Suppress Confession should be reversed." On June 12, 2009, the Court of Appeal, First Circuit affirmed petitioner's convictions and sentences. *State v. Edwards*, 2008 KA 2011 (La.App. 1 Cir. 6/12/09), 2009 WL 1655544. Petitioner filed a timely application for writ of certiorari and/or review in the Supreme Court of the State of Louisiana, which writ application was denied on December 17, 2010. *State v. Edwards*, 2009-K-1612 (La. 12/17/10), 51 So.3d 27.

4.

On December 15, 2011, petitioner filed an application for post-conviction relief asserting the following claims:

1. Edwards' Confrontation Rights were violated when testimony concerning the "Rape Kit" consisting of forensic findings and victim analysis were admitted because the actual examiner did not testify. Rather, the State relied upon the testimony of a supervisor lacking any firsthand knowledge to comment upon the kit.

2. The prosecutor's comments during closing argument prevented Edwards from receiving a fair trial. During argument, the prosecutor vouched for the credibility of Detective Fairbanks and also commented that the jury represented the people who were "out for justice" knowing full well that the jury does not have a representative function and that plebiscites on crime are improper.

3. Louisiana's jurisprudence allowing for criminal convictions to occur without an unanimous jury violates Edwards' federal Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Edwards would not have been convicted of any offense if prosecuted in 48 other States or by the Federal Government.

4. Louisiana's jurisprudence prohibiting the use of identification experts violates the defendant's federal due process rights. In this case, an expert would have been useful since the sole identification of Edwards as the rapist was a cross racial identification made by a person who viewed Edwards for a few seconds.

5. The prosecutor deprived Edwards of his right to adequately confront his accusers when they

failed to advise trial counsel of an informal plea deal made with one of his testifying witnesses. This is also considered a *Brady* violation and implicates due process concerns.

6. The trial court erred by allowing the admission of the defendant's confession when these inculpatory statements were the product of coercive police techniques and made without the presence of counsel despite the defendant's request for an attorney.

7. The State intentionally excluded African Americans from the jury. Through its use of cause and peremptory challenges, all but one African American was excluded by the State. Interestingly, this person consistently voted to acquit Edwards.

8. Trial counsel was ineffective for failing to address the confrontation and due process violations noted above.

5.

On April 9, 2012, the state filed "Procedural Objections, Partial Answer, and Motion to Dismiss Application For Post-Conviction Relief." On March 11, 2013, the Honorable Nicole Robinson, Commissioner, Section A, Nineteenth Judicial District Court, recommended "that Claim 6 should be dismissed as procedurally barred pursuant to La. C.Cr.P. art. 930.4 as it was fully litigated on appeal. As to Claims 1-5, 7 & 8, I recommend dismissal pursuant to La. C.Cr.P. arts. 926 & 927-929 as Petitioner's allegations in connection therewith are factually insufficient to warrant relief, or without merit." The petitioner filed a Traversal to the Commissioner's Recommendation on April 21, 2013. On April 26, 2013, the Honorable

Richard "Chip" Moore, III, Division VI of the Nineteenth Judicial District Court, issued an Order dismissing the petitioner's application for post-conviction relief for the reasons set forth in the Commissioner's Recommendation.

6.

On May 7, 2013, the petitioner filed a "Notice of Defendant's Intent to File An Application For Supervisory Writs" in the trial court. Thereafter, on July 15, 2013, petitioner filed an application for supervisory writ to review the court's ruling in the Louisiana Court of Appeal, First Circuit. The first circuit denied the writ on March 24, 2014. *State v. Edwards*, 2013 KW 2019 (La.App. 1 Cir. 3/24/14). The petitioner subsequently sought writs in the Supreme Court of the State of Louisiana, which writ application was denied on February 13, 2015. *State v. Edwards*, 2014-KP-0889 (La. 2/13/15), 159 So.3d 456.

7.

On May 14, 2015, the petitioner filed the present application for a writ of habeas corpus wherein he asserts six claims. The petition appears to be timely and the claims asserted therein appear to have been exhausted in the state courts.

8.

For the reasons presented herein and detailed in the accompanying memorandum of law, the State of Louisiana respectfully submits the judgments of the state courts dismissing petitioner's claims on the merits are entitled to AEDPA deference, and applying proper deference in the instant case should result in the dismissal of all of petitioner's federal habeas claims. Further, the state court decision rejecting

petitioner's claim was not contrary to, nor involved an unreasonable application of, clearly established Federal law, and it did not result in an unreasonable determination of the facts in light of the evidence presented in the state courts. All of petitioner's claims for habeas relief should be dismissed as without merit.

9.

No evidentiary hearing is required.

WHEREFORE, the State of Louisiana prays that this answer be deemed good and sufficient and that the petition for writ of habeas corpus be dismissed.

RESPECTFULLY SUBMITTED,

HILLAR C. MOORE, III
DISTRICT ATTORNEY

/s/ Stacy L. Wright, #25307
Assistant District Attorney
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana
222 St. Louis Street
Baton Rouge, Louisiana 70802
Tel. 225-389-3462

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed, postage prepaid, to petitioner's counsel, Andre Belanger, 8075 Jefferson Highway, Baton Rouge, Louisiana, 70809.

Baton Rouge, Louisiana, this ~31st~ day of July 2015.

/s/ Stacy L. Wright
Assistant District Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[Filed July 31, 2015]

CIVIL ACTION
NO. 15-0305-JJB-RLB

THEDRICK EDWARDS

versus

BURL CAIN, Warden

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF THE CASE

On July 5, 2006, petitioner, Thedrick Edwards, along with five co-defendants, was indicted by the Grand Jury of the Parish of East Baton Rouge, which charged the petitioner with the following crimes: Armed Robbery (5 counts), Aggravated Rape, Aggravated Kidnapping (2 counts), and Attempted Armed Robbery, in violation of Louisiana Revised Statutes 14:64, 14:44, 14:42 and 14:27. (R. Vol. I, p. 24) On July 25, 2006, petitioner waived formal arraignment, and entered his own plea of not guilty as charged. (R. Vol. I, p. 1) Petitioner filed several pretrial motions, including a Motion To Suppress/Recant Confession. (R. Vol. I, p. 41) Petitioner's motion was heard by the court on July 18, 2007, on which date the motion was denied. (R. Vol. III, p. 486)

Following a jury trial on December 3, 4, 5, 6 and 7, 2007, petitioner was found guilty of all charges except

for the attempted armed robbery, on which charge he was acquitted. (R. Vol. I, pp. 6-16) The petitioner was thereafter sentenced by the court, on February 7, 2008, to thirty years, on each of the five counts of armed robbery, said sentences to run consecutive to one another. The court sentenced the petitioner to three consecutive life sentences on the two counts of aggravated kidnapping, and one count of aggravated rape. (R. Vol. I, pp. 16-17)

On February 28, 2008, petitioner filed a Motion For Appeal, which was granted by the trial court on July 7, 2008. (R. Vol. IV, pp. 434, 439) In his appeal, petitioner asserted a single assignment of error, namely that "The trial court's denial of Mr. Edwards' Motion to Suppress Confession should be reversed." On June 12, 2009, the Court of Appeal, First Circuit affirmed petitioner's convictions and sentences. *State v. Edwards*, 2008 KA 2011 (La.App. 1 Cir. 6/12/09), 2009 WL 1655544. Petitioner filed a timely application for writ of certiorari and/or review in the Supreme Court of the State of Louisiana, which writ application was denied on December 17, 2010. *State v. Edwards*, 2009-K-1612 (La. 12/17/10), 51 So.3d 27.

On December 15, 2011, petitioner filed an application for post-conviction relief asserting the following claims:

1. Edwards' Confrontation Rights were violated when testimony concerning the "Rape Kit" consisting of forensic findings and victim analysis were admitted because the actual examiner did not testify. Rather, the State relied upon the testimony of a supervisor lacking any firsthand knowledge to comment upon the kit.

2. The prosecutor's comments during closing argument prevented Edwards from receiving a fair trial. During argument, the prosecutor vouched for the credibility of Detective Fairbanks and also commented that the jury represented the people who were "out for justice" knowing full well that the jury does not have a representative function and that plebiscites on crime are improper.

3. Louisiana's jurisprudence allowing for criminal convictions to occur without an unanimous jury violates Edwards' federal Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Edwards would not have been convicted of any offense if prosecuted in 48 other States or by the Federal Government.

4. Louisiana's jurisprudence prohibiting the use of identification experts violates the defendant's federal due process rights. In this case, an expert would have been useful since the sole identification of Edwards as the rapist was a cross racial identification made by a person who viewed Edwards for a few seconds.

5. The prosecutor deprived Edwards of his right to adequately confront his accusers when they failed to advise trial counsel of an informal plea deal made with one of his testifying witnesses. This is also considered a *Brady* violation and implicates due process concerns.

6. The trial court erred by allowing the admission of the defendant's confession when these inculpatory statements were the product of coercive police techniques and made without the pres-

ence of counsel despite the defendant's request for an attorney.

7. The State intentionally excluded African Americans from the jury. Through its use of cause and peremptory challenges, all but one African American was excluded by the State. Interestingly, this person consistently voted to acquit Edwards.

8. Trial counsel was ineffective for failing to address the confrontation and due process violations noted above.

On April 9, 2012, the state filed "Procedural Objections, Partial Answer, and Motion to Dismiss Application For Post-Conviction Relief." On March 11, 2013, the Honorable Nicole Robinson, Commissioner, Section A, Nineteenth Judicial District Court, recommended "that Claim 6 should be dismissed as procedurally barred pursuant to La. C.Cr.P. art. 930.4 as it was fully litigated on appeal. As to Claims 1-5, 7 & 8, I recommend dismissal pursuant to La. C.Cr.P. arts. 926 & 927-929 as Petitioner's allegations in connection therewith are factually insufficient to warrant relief, or without merit." The petitioner filed a Traversal to the Commissioner's Recommendation on April 21, 2013. On April 26, 2013, the Honorable Richard "Chip" Moore, III, Division VI of the Nineteenth Judicial District Court, issued an Order dismissing the petitioner's application for post-conviction relief for the reasons set forth in the Commissioner's Recommendation.

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writ to review the court's ruling in the Louisiana Court of Appeal, First Circuit. The first circuit denied the writ on March 24, 2014. *State v. Edwards*, 2013 KW 2019 (La.App. 1 Cir. 3/24/14). The petitioner subsequently sought writs in the Supreme Court of the State of Louisiana, which writ application was denied on February 13, 2015. *State v. Edwards*, 2014-KP-0889 (La. 2/13/15), 159 So.3d 456.

On May 14, 2015, the petitioner filed the present application for a writ of habeas corpus wherein he asserts six claims. The petition appears to be timely and the claims asserted therein appear to have been exhausted in the state courts.

STATEMENT OF FACTS

On May 13, 2006, at approximately 11:15 p.m., Ryan Eaton left Juban's restaurant in Baton Rouge, where he was then working. (R. Vol. III, pp. 493-494) From there he went to the Circle K on State Street near LSU to purchase gas and a beer. (R. Vol. III, p. 494; Evidence would later reveal that Ryan Eaton had been stalked by petitioner's co-defendant at the Circle K. R. Vol. IV, p. 727) Thereafter, Ryan Eaton proceeded to his girlfriend's apartment on East Boyd, as they had plans to go out. (R. Vol. III, pp. 493-494; Vol. IV, p. 772) As he tried to get out of his vehicle he was confronted with a man with a black .45 caliber semiautomatic pistol, and a black bandana on his face, ordering him to get back into his vehicle. (R. Vol. III, p. 494) Ryan moved to the passenger seat of his vehicle, the man with the .45 got into the driver's seat, and petitioner, who was also armed, got into the backseat. (R. Vol. III, pp. 494-495) The petitioner then held his gun to the back of Ryan's head while the accomplice/driver put his gun into Ryan's mouth. (R. Vol. III, p. 496) Ryan was driven to North Baton Rouge, where he was taken

out of the car and "patted down." Ryan's kidnappers then went through his vehicle. (R. Vol. III, p. 497) Thereafter, Ryan was driven to an ATM machine and ordered to withdraw funds but was unable to do so because he had no money in the bank. (R. Vol. III, p. 498) When Ryan was unable to withdraw funds, his kidnappers became very angry and discussed killing him and abandoning his body. (R. Vol. III, p. 498) At this point, Ryan, hoping his life would be spared, offered to take them to his apartment on Bluebonnet. (R. Vol. III, p. 499)

Once inside his apartment, Ryan was bound and blindfolded, and his kidnappers rummaged through the apartment looking for things to steal. (R. Vol. III, p. 500) Among the things stolen from the apartment were a .22 caliber revolver, a sweatshirt, and Ryan's roommate's television, DVD player, camera, a drill, and a handheld computer game. (R. Vol. III, p. 501)

While in the apartment, Ryan's girlfriend Grace called, and Ryan was forced to inform her that he wanted to meet up. She told him to come to Chelsea's bar in South Baton Rouge. (R. Vol. III, p. 502) Thereafter, Ryan was ordered back into his car, and petitioner and his accomplice drove to Chelsea's. (R. Vol. III, p. 503) Once at Chelsea's, petitioner's accomplice got out of the backseat of the car. At this point, Ryan looked over at the driver, catching a glimpse of his face. The driver/petitioner once again held the gun on Ryan, threatening him. (R. Vol. III, p. 503) When petitioner's accomplice got back into the car, petitioner and his accomplice argued over the fact the petitioner's accomplice had apparently just arm-robbed someone, which wasn't "part of the plan." (R. Vol. III, p. 504) Petitioner's accomplice, who was in possession of Ryan's cell phone, began texting Ryan's girlfriend

Grace, telling her to go to her apartment. (R. Vol. III, p. 504; R. Vol. IV, p. 774)

His kidnappers then took Ryan back to his girlfriend's apartment, where he was forced to knock on the door. (R. Vol. III, pp. 506-507; Vol. IV, p. 775) When Ryan's girlfriend Grace answered the door, the kidnappers forced Ryan inside, rushed in behind him, and ordered everyone to lie on the floor face down. (R. Vol. III, p. 507, Vol. IV, pp. 662, 676-680, pp. 775-776) Two other girls were present in the apartment, [redacted] and [redacted]. [redacted] was upstairs, but was called to come downstairs. (R. Vol. IV, pp. 677, 776) Thedrick and his accomplice dumped the girls' purses out on the living room floor. (R. Vol. III, p. 554, Vol. IV, pp. 663, 779) While the four were lying on the floor, petitioner herein yanked [redacted] a few feet away from the others and raped her, and his accomplice, "Lips," dragged [redacted] upstairs and raped her. (R. Vol. III, pp. 507-510; 555, Vol. IV, pp. 663-666, 681, pp. 780-781) Though [redacted] was unable to identify her attacker, [redacted] was able to get a good look at her attacker, petitioner's accomplice. (R. Vol. IV, pp. 682-683) Thereafter, Thedrick and "Lips" gathered their loot and left the apartment in Ryan's truck, abandoning it down the road. (R. Vol. III, pp. 510-511, R. Vol. IV, pp. 684-685, 781) Among the items stolen from [redacted] were a cell phone, and four hundred dollars in cash. (R. Vol. IV, p. 680) Among the items stolen from Grace were her cell phone, laptop, iPod, and a Mother's Day gift for her mother from Bath and Body Works. (R. Vol. IV, p. 792)

Thereafter, as all of the victims' cell phones had been stolen, Ryan went outside and borrowed someone's phone to call 911. (R. Vol. III, p. 511) Approximately one week later, Ryan identified the petitioner

herein as one of the persons who committed kidnapping, rape and armed robbery that night. (R. Vol. III, pp. 519-521, Vol. V, pp. 927-929)

In the early morning hours of May 15, 2006, Marc Verrett had just returned to his apartment on July Street near LSU. Marc had been to see a late movie with friends. (R. Vol. IV, pp. 750-751) As Marc was driving through the apartment complex, he got the sense he was being trailed by a PT Cruiser. However, when the PT Cruiser pulled into a parking spot, Marc assumed the occupants of the Cruiser were just looking for a parking spot. As Marc parked and gathered his things to get out of his vehicle, he was rushed by the petitioner and his accomplice, Joshua Johnson. Joshua Johnson pointed a gun at Marc and ordered him to "slide over." The petitioner got into the back of Marc's car, and also held a gun on Marc. (R. Vol. IV, p. 751) Marc was ordered to put his hat over his face and direct them to an ATM.[1] (R. Vol. IV, p. 752) The first ATM they went to was closed. (R. Vol. IV, p. 752) After driving Marc around awhile, they finally ended up at an ATM machine near the old Walmart on Perkins Road. The kidnappers pulled in so that Marc's passenger side was at the machine and ordered him to withdraw all of his money. (R. Vol. IV, p. 753) Marc withdrew three hundred dollars and gave it to his abductors. (R. Vol. IV, p. 756) His abductors asked him what he had at his apartment to steal, and whether his television was a plasma or flat-screen. (R. Vol. p. 753) Ultimately, and possibly because Marc's car was running out of gas, his abductors pulled into a random driveway on Christian Street and fled on foot. (R. Vol. IV, pp. 753-754) Also stolen from Marc were

[1] R. Vol. IV, p. 752.

his video iPod, cell phone and wallet. (R. Vol. IV, p. 756) Marc later picked petitioner's co-defendant, Joshua Johnson, out of a photographic lineup. (R. Vol. IV, pp. 759, 843-846, Vol. p. 941)

On May 16, 2006, Thedrick Edwards, the petitioner herein, pursuant to an arrest warrant, turned himself in to police, and later gave a taped confession. (R. Vol. V, pp. 946-948, State's Exhibit 53)

STANDARD OF REVIEW – DEFERENCE

The Antiterrorism and Effective Death Penalty Act (AEDPA) is applicable to this proceeding as petitioner's habeas corpus application was filed after the effective date of the AEDPA. *See* ***Lindh v. Murphy***, 521 U.S. 320, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997), and ***Nobles v. Johnson***, 127 F.3d 409, 412-413 (5th Cir. 1997).

According to clear statutory requirements, an application for writ of habeas corpus shall not be granted unless the adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1) & (2).

Two recent decisions by the Supreme Court bear on the amount and type of deference that should be given to state court decisions. In April 2011, the Supreme Court of the United States decided ***Cullen v. Pinholster***, 79 USLW 4229, 131 S.Ct. 1388, 1398, 179 L.Ed.2d 557 (2011). ***Pinholster*** clarified the amount and type of deference federal courts reviewing state

court decisions must apply. The Court noted as follows:

> We first consider the scope of the record for a § 2254(d)(1) inquiry. The State argues that review is limited to the record that was before the state court that adjudicated the claim on the merits. Pinholster contends that evidence presented to the federal habeas court may also be considered. We agree with the State.
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> A
>
> As amended by AEDPA, 28 U.S.C. § 2254 sets several limits on the power of a federal court to grant an application for a writ of habeas corpus on behalf of a state prisoner. Section 2254(a) permits a federal court to entertain only those applications alleging that a person is in state custody "in violation of the Constitution or laws or treaties of the United States." Sections 2254(b) and (c) provide that a federal court may not grant such applications unless, with certain exceptions, the applicant has exhausted state remedies.
>
> If an application includes a claim that has been "adjudicated on the merits in State court proceedings," § 2254(d), an additional restriction applies. Under § 2254(d), that application "shall not be granted with respect to [such a] claim . . . unless the adjudication of the claim":
>
> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of

> the evidence presented in the State court proceeding."
>
> This is a "difficult to meet," ***Harrington v. Richter***, 562 U.S. ——, — —, 131 S.Ct. 770, 786, 178 L.Ed.2d 624 (2011), and "highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt," ***Woodford v. Visciotti***, 537 U.S. 19, 24, 123 S.Ct. 357, 154 L.Ed.2d 279 (2002) *(per curiam)* (citation and internal quotation marks omitted). The petitioner carries the burden of proof. *Id.*, at 25, 123 S.Ct. 357.
>
> We now hold that review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits. Section 2254(d)(1) refers, in the past tense, to a state-court adjudication that "resulted in" a decision that was contrary to, or "involved" an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made. It follows that the record under review is limited to the record in existence at that same time *i.e.*, the record before the state court.

In ***Pinholster*** the Supreme Court of the United States noted that it did not matter whether the state court decided the matter on summary disposition or following an evidentiary hearing. In either event, a state court decision on the merits of an issue is entitled to deference under the AEDPA. The Court specifically stated:

> Section 2254(d) applies even where there has been a summary denial. See ***Richter***, 562 U.S., at ——, 131 S.Ct. at 786. In these circumstances,

> Pinholster can satisfy the "unreasonable application" prong of § 2254(d)(1) only by showing that "there was no reasonable basis" for the California Supreme Court's decision. *Id.*, at ——, 131 S.Ct. at 784. "[A] habeas court must determine what arguments or theories . . . could have supporte[d] the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." *Id.*, at ——, 131 S.Ct., at 786. After a thorough review of the state-court record, [FN12] we conclude that Pinholster has failed to meet that high threshold.
>
> ***Cullen v. Pinholster***, 131 S.Ct. 1388, 1402-1403 (2011).

In footnote 12, the Supreme Court noted: "Under California law, the California Supreme Court's summary denial of a habeas petition on the merits reflects that court's determination that "the claims made in th[e] petition do not state a prima facie case entitling the petitioner to relief." ***In re Clark***, 5 Cal.4th 750, 770, 21 Cal.Rptr.2d 509, 855 P.2d 729, 741–742 (1993). It appears that the court generally assumes the allegations in the petition to be true, but does not accept wholly conclusory allegations, ***People v. Duvall***, 9 Cal.4th 464, 474, 37 Cal.Rptr.2d 259, 886 P.2d 1252, 1258 (1995), and will also "review the record of the trial . . . to assess the merits of the petitioner's claims," ***Clark,*** *supra*, at 770, 21 Cal.Rptr.2d 509, 855 P.2d, at 742."

Pinholster cites with approval the January 2011 decision of ***Harrington v. Richter***, 562 U.S. 86, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011), for the proposition that Section 2254(d) applies even where there has

been a summary denial by the state court. *See* ***Pinholster***, 131 S.Ct. at 1402 and *Richter*,131 S.Ct. at 786. In fact, in both ***Pinholster*** and ***Richter*** the California Supreme Court summarily denied consideration of the petitioner's state habeas petitions.[2]

Further, prior to these cases decided by the Supreme Court, the Fifth Circuit has previously determined that a state court decision is "contrary to . . . clearly established Federal law, as determined by the Supreme Court" if: (1) "the state court applies a rule that contradicts the governing law set forth in [the Supreme Court's] cases," or (2) "the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [Supreme Court] precedent." A state court decision is an unreasonable application of clearly established Supreme Court precedent if the state court "correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case." The inquiry into unreasonableness is objective. A state court's incorrect application of clearly established Supreme Court precedent is not enough to warrant federal habeas relief; in addition, such an application must also be unreasonable. The state court's factual findings are presumed to be correct, and the habeas petitioner has the burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). ***Coble v. Dretke***, 444 F.3d 345,

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[2] Apparently, in California a state habeas petition in a death penalty case is filed with the California Supreme Court in the first instance. In both cases the Supreme Court of the United States noted that the petitioners filed with the California Supreme Court, included affidavits with their petitions, and had theirs summarily denied that Court.

349 -350 (5th Cir. 2006), citing ***Williams v. Taylor***, 529 U.S. 362, 406, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000).

As the Fifth Circuit has explained,

> [b]ecause a federal habeas court only reviews the reasonableness of the state court's ultimate decision, the AEDPA inquiry is not altered when, as in this case, state habeas relief is denied, or partially denied, without an opinion.

Rather, in such a situation, "our court: (1) assumes that the state court applied the proper 'clearly established Federal law'; and (2) then determines whether its decision was 'contrary to' or 'an objectively unreasonable application of' that law." ***Jordan v. Dretke***, 416 F.3d 363, 367 -368 (5th Cir. 2005).

Furthermore, 28 U.S.C. § 2254(e) reads as follows:

> (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court **shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.**
>
> (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, **the court shall not hold an evidentiary hearing on the claim unless the applicant shows** that—
>
> (A) the claim relies on—
>
> (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(Emphasis added.)

Following ***Pinholster***, the Fifth Circuit has clarified the more stringent deference requirement announced in that case. In ***Pape v. Thaler***, 645 F.3d 281 (5th Cir. 2011) the Fifth Circuit reversed a district court's grant of habeas corpus, noting that the court erred in granting an evidentiary hearing, in using the evidence from that evidentiary hearing to dispute the state court record, and in not showing proper deference to the state courts. *See also* ***Amos v. Thorton***, 646 F.3d 199 (5th Cir. 2011).

The State of Louisiana respectfully submits the judgments of the state courts dismissing petitioner's claims on the merits are entitled to AEDPA deference, and applying proper deference in the instant case should result in the dismissal of all of petitioner's federal habeas claims.

STANDARD OF REVIEW – INEFFECTIVE ASSISTANCE OF COUNSEL

At the outset, the state notes that petitioner's habeas claims one, three, four and six, were examined by the trial court in post-conviction proceedings, in the context of a claim of ineffective assistance of trial counsel for failure to raise the claims during trial. As stated by the Commissioner in her Recommendation:

As this Court is aware, the *Strickland* standard (for IAC claims) requires a *showing of both deficient conduct and prejudice in the outcome/verdict.* Claims of ineffective assistance of counsel are evaluated by the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*., 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under *Strickland*, a defendant claiming ineffective assistance of counsel must show both that counsel's performance was deficient and that the deficiency prejudiced the defense.[3] One claiming ineffective assistance of counsel must identify specific acts or omissions and general statements and conclusory charges will not suffice.[4] There is a strong presumption that the conduct of counsel falls within a wide range of responsible, professional assistance.[5] Hindsight is not the proper perspective for judging the competence of counsel's trial decisions, and an attorney's level of representation may not be determined by whether a particular strategy is successful.[6] In evaluating whether counsel's alleged error has prejudiced the defense, it is not enough for the defendant to show that an error had some conceivable effect on the outcome of the proceeding; rather, the defendant must demonstrate a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different.[7] Claims of

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[3] *Celestine v. Blackburn*, 750 F.2d 353 (5th Cir. 1984).

[4] *Knighton v. Maggio*, 740 F.2d 1344 (5th Cir. 1984).

[5] *State v. Myers*, 583 So.2d 67 (La.App. 2nd Cir. 1991).

[6] *State v. Brooks*, 505 So.2d 714 (La. 1987).

[7] *Sawyer v. Butler*, 848 F.2d 582 (5th Cir. 1988).

> ineffective assistance of counsel may be disposed of for either reasonable performance of counsel or lack of prejudice and, if one is found dispositive, it is not necessary that the court address the other.[8] A claim that an attorney was deficient for failing to raise an issue is without merit, when the substantive issue the attorney failed to raise is without merit.[9]

CLAIM ONE: "This Court's holding in *Bullcoming v. New Mexico* requires the prosecution to provide testimony of the forensic examiner actually performing the examination in order for the accused to fully confront the witnesses against him. In this case, the supervisor of the examiner performing the rape kit testified as to that examiner's forensic findings, interview with the victim and demeanor of the victim. Since the supervisor lacked first-hand knowledge of the examination, such testimony was hearsay. Edwards' inability to cross examine the actual examiner is a Confrontation Clause violation mandating a new trial."

With regard to this claim, the state court found that "Claim 1, and also Claim 8 to the extent it alleges IAC for failing to raise the issue in Claim 1, should be dismissed as Petitioner's allegations are not only factually insufficient to warrant relief but also factually insufficient to establish deficient performance and prejudice." The trial court's ruling dismissing petitioner's claim is entirely reasonable and supported by the record.

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[8] *Murray v. Maggio*, 736 F.2d 279 (5th Cir. 1984).

[9] *State ex rel. Roper v. Cain*, 763 So.2d 1, 5, 99-2173, p. 6 (La.App. 1 Cir. 10/26/99), writ denied, 2005-0975 (La. 11/17/00), 773 So.2d 733.

As noted by the court, "Even assuming the report or any of Pezant's testimony violated his right to confrontation, confrontation errors are subject to harmless error analysis."[10] In *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011), cited by the petitioner, the Court, in footnote 11, states, "As in *Melendez-Diaz*, 557 U.S., at ____, and n. 14, 129 S.Ct., at 2542, and n. 14, we express no view on whether the Confrontation Clause error in this case was harmless. The New Mexico Supreme Court did not reach that question, see Brief for Respondent 59-60, ***and nothing in this opinion impedes a harmless-error inquiry on remand***." (Emphasis added)

The trial court further found as follows:

> The record reveals that Pezant was qualified to testify as an expert in sexual assault examination.[11] She testified that she was the supervisor of Christy Bronould (the nurse who examined the victim) and she, Pezant, was responsible for keeping the records.[12] At trial the State introduced the medical records of the victim (LR) without objection.[13] Pezant stated that the records reflected an interview with the victim that was taken for purposes of guiding the exam and helping with medical needs.[14] Defense counsel objected to Pezant testifying as if she had independent knowledge of what the victim did/said. The Court instructed the State to re-

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[10] *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 1438, 89 L.Ed.2d 674 (1986).

[11] R. p. 703.

[12] R. p. 704.

[13] R. p. 707.

[14] R. pp. 708-709.

> phrase the question so as to clarify Pezant was not there when the examination was done and that she was only testifying as to what was contained in the report.[15] Pezant testified that the nurse documented crying and poor eye contact.[16]

In finding any confrontation error that occurred to be harmless, and therefore, insufficient to establish prejudice in connection with petitioner's ineffective assistance of counsel claim, the court stated as follows:

> From my view of the record, the victim did testify at trial, and the fact that she was raped was established by the testimony of other witnesses, and, more importantly, by the Petitioner's confession. The guilty verdict in this matter is surely unattributable to any error in admitting the reports or the examining nurse's statements. Even assuming counsel was deficient, there is nothing to indicate the Petitioner was prejudiced as a result of counsel's alleged failure to challenge Pezant's testimony.

The state court decision rejecting petitioner's claim was not contrary to, nor involved an unreasonable application of, clearly established Federal law. Further it did not result in an unreasonable determination of the facts in light of the evidence presented in the state courts. As such, petitioner's claim is without merit.

CLAIM TWO: "The prosecutor deprived Edwards of his right to adequately confront his accusers when they failed to advise trial counsel of an informal plea deal made with one of the testifying witnesses. The

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[15] R. p. 710.

[16] R. p. 710.

prosecution presented testimony from an alleged accomplice to the robberies and kidnapping. At trial that witness purportedly testified because he wanted to put the matter behind him. At the time, there were no formal deals. The witness was represented by an esteemed lawyer and, after testifying at another related trial, pled to a felony pursuant to the provisions of Article 893 and will, no doubt, have the matter expunged in due course. Whenever the criminal consequences of a witness is determined by the subjective assessment of their testimony by the State, disclosure is warranted. In this case it did not occur. How would the jury view this witnesses' testimony today if they knew he was auditioning for an expungement when he testified?"

Jacquin James testified at trial that he was facing pending charges of armed robbery and conspiracy to commit armed robbery but that the state had made no deals with him to get him to testify. (R. Vol. IV, p. 818) However, he responded affirmatively to the state's question, "Did you also hope that in telling the truth, I will take that into consideration, and the judge will take that into consideration?" (R. Vol. IV, p. 818) At the close of the state's direct examination the witness reiterated that he "didn't have a deal." (R. Vol. IV, p. 835) During cross-examination the witness indicated his hope for leniency if he came to court and told the truth. (R. Vol. IV, p. 836) In closing the prosecutor acknowledged of Jacquin James: "Does he hope to get a break? Certainly." (R. Vol. V, p. 1054) Defense counsel also informed the jury in closing, "He's hoping to get a lighter deal. He wants the D.A. to cooperate with him so he'll cooperate with the state." (R. Vol. V, p. 1056) Finally, the jury was instructed that "The testimony of a witness may be discredited by showing that the witness will benefit in some way by the

defendant's conviction or acquittal, that the witness is prejudiced or that the witness has any other reason or motive for not telling the truth." (R. Vol. V, p. 1076) The record is abundantly clear that the possibility of leniency for Jacquin James was disclosed. Not only that, it was used by the defense to attack his credibility. Finally, the jury was able to consider the possibility in evaluating his testimony.

The state court found,

> Even assuming James, subsequent to his testimony at Petitioner's trial, pled guilty to a felony and that he intends to seek an expungement at some point, there is nothing to indicate that the guilty plea was a part of a deal or that he was otherwise promised anything for his testimony at trial. It does not even appear that Petitioner is suggesting that there was an actual deal. Rather, Petitioner merely suggests that James entered a plea to a felony and speculates that he may seek an expungement. In sum, Petitioner fails to show that there was any undisclosed deal between the State and any witness in which a witness received consideration for his testimony at the trial in this matter.[17]

The state court decision rejecting petitioner's claim was not contrary to, nor involve an unreasonable application of, clearly established Federal law. Further it did not result in an unreasonable determination of the facts in light of the evidence presented in the state courts. As such, petitioner's claim is without merit.

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[17] Commissioner's Recommendation, pp. 4-5.

CLAIM THREE: "Louisiana's jurisprudence allowing for criminal convictions to occur without a unanimous jury violates Edward's Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Louisiana's Supreme Court has repeatedly upheld this provision but those cases must be viewed in light of the Court's decision in *McDonald v. Chicago*, in which the Court noted that the Bill of Rights are not selectively incorporated to the States with differing standards than those binding upon the federal government. The Court further noted that those legal decisions used to justify the non-unanimous jury provisions in Oregon and Louisiana do not establish a multi-track approach to the incorporation doctrine. As such, the unanimous jury issue is again proper for inquiry. Edwards is the proper person to raise the issue because he would not be serving the rest of his life in jail if he were prosecuted in 48 other States or by the Federal Government."

The state court found, and petitioner concedes, that the United States Supreme Court has upheld a state's use of non-unanimous jury verdicts in *Apodeca v. Oregon*, 92 S.Ct. 1628 (1972). Clearly, the state court decision rejecting petitioner's claim was not contrary to, nor involved an unreasonable application of, clearly established Federal law. Furthermore, with regard to alleged ineffectiveness of counsel, the court stated:

> . . . it is important to remember that in 2007, when the trial occurred, the jurisprudence from the highest court in this State, and the land, clearly upheld the constitutionality of the non-unanimous verdict. Consequently, based on the facts and the law applicable, counsel could not have been incompetent for failing to challenge a statutory procedure that was then accepted by this State

> and the United States Supreme Court. Simply put, deficient conduct on this issue cannot be proven on the facts alleged and the applicable law. This is especially true considering the Petitioner's admission that the statutory law and applicable jurisprudence was adverse to his current argument.

Petitioner's claim is without merit.

CLAIM FOUR: "The State intentionally excluded African Americans from the jury. Through its use of cause and peremptory challenges, all but one African American was excluded by the State. Interestingly, this person consistently voted to acquit Edwards. More specifically, the State was able to exclude ten (10) of eleven (11) African Americans on the venire from the jury. This obvious error is compounded when viewed within the context of the non-unanimous jury requirement noted above."

The state court rejected petitioner's claim on post-conviction relief as both "speculative," and:

> . . . undermined by the fact that Petitioner's attorney, who was present during voir dire and able to observe and assess the potential jurors' responses and non-verbal communications, did not make a *Batson* challenge. Great deference is to be accorded to counsel's judgment, tactical decisions, and trial strategy and should not be second guessed if within the range of professional reasonableness.[18] Examination of potential jurors is dependent upon a variety of factors including counsel's observations of potential jurors and questions asked by the attorneys as well as the

[18] *See State v. Morgan*, 472 So.2d 934 (La.App. 1st Cir. 1985).

responses thereto. Moreover, the trial court plays a unique role in the dynamics of voir dire, for it is the court that observes firsthand the demeanor of the attorneys and venire persons, the questions presented, the composition of the venire, and the general atmosphere of the voir dire that simply cannot be replicated from the transcript.[19] The Petitioner does not even identify a particular panelist who was likely struck based on his/her being a member of a cognizable group or indicate that otherwise similar panelists were allowed to serve.[20] Also, he does not identify any evidence of disparate questioning of any perspective jurors.[21] In sum, he fails to particularly identify any violation that may have required corrective action.[22] Also, by Petitioner's own allegations, the allegedly targeted group was not actually excluded from the jury.

Moreover, the Petitioner's allegations are not only insufficient in showing that the State's exercise of its challenges was improper, but also

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[19] *State v. Myers*, 761 So.2d 498, 502 (La. 4/11/00).

[20] *See State v. Sparks*, 68 So.3d 435, 468-9 (La. 5/11/11), citing *Batson v. Kentucky*, 476 U.S. at 96, 106 S.Ct. at 1723 (noting that to establish a prima facie case, the defendant must show: (1) the prosecutor's challenge was directed at a member of a cognizable group; (2) the challenge was peremptory rather than for cause; and (3) relevant circumstances sufficient to raise an inference that the prosecutor struck the venire person on account of his being a member of that cognizable group).

[21] *See State v. Draughn*, 950 So.2d 583, 605, 2005-1825 (La. 2007) citing *Miller-El v. Dretke*, 545 U.S. 231, 249 (2005).

[22] *See generally State v. Nelson*, 85 So.3d 21, 35-36 (La. 3/13/12) (noting that La. C.Cr.P. art. 795 gives broad discretion to the trial court to formulate "corrective action" to remedy a *Batson* violation.).

> insufficient in establishing that counsel's deficient performance resulted in prejudice. In sum, the Petitioner's allegations are factually insufficient to support a finding that he was denied effective assistance of counsel. Claim 7 should be dismissed pursuant to Arts. 926 & 928-929 C.Cr.P.
>
> Therefore, Claim 7, and Claim 8 to the extent it alleges IAC with respect to the *Batson* issue, should be dismissed.

The state court decision rejecting petitioner's claim was not contrary to, nor involve an unreasonable application of, clearly established Federal law. Further it did not result in an unreasonable determination of the facts in light of the evidence presented in the state courts. As such, petitioner's claim is without merit.

CLAIM FIVE: "The state failed to meet its heavy burden of proving that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and obtained an uncounseled inculpatory statement from Edwards despite his request for counsel. Edwards denied criminal culpability on two occasions before succumbing to coercive police techniques during an unrecorded forty-five (45) minute interrogation by two officers. The lead detective freely admits his willingness to lie and manipulate a suspect in an effort to obtain an admission. The contents of this detective's cajoling is discussed more fully below. Additionally, the defendant testified that he requested an attorney that was never provided and that he confessed to the facts provided to him by the police as part of his cooperation that was to result in leniency. The police acknowledge telling the defendant that it was senseless for him to hire an attorney. Needless to say, an attorney was not provided. The police use of

coercive interrogation techniques prevented a free and voluntary waiver of the defendant's Fifth Amendment rights. The failure to provide an attorney, despite the defendant's request, is a direct violation of the defendant's Sixth Amendment rights. Taken together, it appears the defendant's confession was impermissibly obtained and should have been excluded from evidence at trial."

Petitioner's claim was raised in the state courts on direct appeal. The Louisiana Court of Appeal, First Circuit, rejected the claim, in a comprehensive, well-reasoned opinion:

> In his sole assignment of error, the defendant contends that the trial court erred in denying the motion to suppress his confession. The defendant notes that he did not testify at the hearing on the motion to suppress; however, he testified at trial that he requested an attorney before his interrogation, but his request was ignored. The defendant further claims that his trial testimony was not rebutted. The defendant concludes that the denial of his motion to suppress was not based on a credibility determination, since the issue of whether he asked for an attorney was not before the court.
>
> The State bears the burden of proving that an accused who makes an inculpatory statement or confession during custodial interrogation was first advised of his constitutional rights and made an intelligent waiver of those rights. **State v. Davis**, 94-2332 (La.App. 1 Cir. 12/15/95), 666 So.2d 400, 406, writ denied, 96-0127 (La. 4/19/96), 671 So.2d 925. In **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court promulgated a set of safeguards to

protect the therein delineated constitutional rights of persons subject to custodial police interrogation. The warnings must inform the person in custody that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. **Miranda**, 384 U.S. at 444, 86 S.Ct. at 1612. In order to introduce into evidence a defendant's statement or confession, in addition to showing that the **Miranda** requirements were met, the State must affirmatively show that the statement or confession was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. La. R.S. 15:451.

In **Miranda**, 384 U.S. at 444-445, 86 S.Ct. at 1612, the Supreme Court found that if a suspect indicates "in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning." The United States Supreme Court in **Edwards v. Arizona**, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884-1885, 68 L.Ed.2d 378 (1981), confirmed these views and, to lend them substance, held that when an accused either before or during interrogation asks for counsel, a valid waiver of that right cannot be established only by showing that he responded to further police-initiated, custodial interrogation, even if he has been advised of his rights. Once an individual in custody has expressed his desire to deal with the police only through counsel, the accused is not subject to further interrogation by the authorities until counsel is present, unless the accused himself initiates further communication, exchanges, or

conversations with the police. **Edwards**, 451 U.S. at 484-485, 101 S.Ct. at 1885. **State v. Tilley**, 99-0569 (La. 7/6/00), 767 So.2d 6, 11, cert. denied, 532 U.S. 959, 121 S.Ct. 1488, 149 L.Ed.2d 375. When an accused invokes his **Miranda** right to counsel, the admissibility of a subsequent confession or incriminating statement is determined by a two-step inquiry: did the accused initiate further conversation or communication; and was the purported waiver of counsel knowing and intelligent under the totality of the circumstances. **Tilley**, 767 So.2d at 11; see La. R.S. 15:452 (No arrestee "shall be subjected to any treatment designed by effect on body or mind to compel a confession of a crime.").

Trial courts are vested with great discretion when ruling on a motion to suppress.[23] Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion. **State v. Leger**, 2005-0011 (La. 7/10/06), 936 So.2d 108, 122, cert. denied, 549 U.S.

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[23] Louisiana Code of Criminal Procedure article 703G provides as follows:

When a ruling on a motion to suppress a confession or statement is adverse to the defendant, the state shall be required, prior to presenting the confession or statement to the jury, to introduce evidence concerning the circumstances surrounding the making of the confession or statement for the purpose of enabling the jury to determine the weight to be given the confession or statement.

A ruling made adversely to the defendant prior to the trial upon a motion to suppress a confession or statement does not prevent the defendant from introducing evidence during the trial concerning the circumstances surrounding the making of the confession or statement for the purpose of enabling the jury to determine the weight to be given the confession or statement.

1221, 127 S.Ct. 1279, 167 L.Ed.2d 100 (2007). In determining whether the ruling on the defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n. 2 (La. 1979).

At the outset, we note that the defendant's motion to suppress did not include a claim that he requested an attorney. Sergeant Tillman Cordell Cox of the Baton Rouge City Police Department (BRPD) testified at the motion to suppress hearing that he was the first officer to interview the defendant after he turned himself in. Sergeant Cox read the defendant his **Miranda** rights. The defendant indicated that he understood his rights and did not initially give a statement, except to say that he did not have anything to do with the offenses. The interview was terminated, and the defendant was booked. The State asked Sergeant Cox if the defendant requested an attorney, and he responded negatively. Sergeant Cox testified that the defendant was not threatened, not made any promises, and did not appear to be under the influence of alcohol or drugs.

The defendant was subsequently interviewed by Detective Greg Fairbanks of the BRPD. Detective Fairbanks testified at the motion to suppress hearing that he read the defendant his **Miranda** rights, and a waiver of rights form was executed. The defendant confessed to involvement in the armed robberies and the rapes, including details that had not yet been released to the public. During direct examination by the State, Detective Fairbanks specifically testified that the

defendant did not ask for an attorney at any point. The second half of the interview with Detective Fairbanks was recorded. On cross-examination, the defense attorney asked Detective Fairbanks if the defendant was offered an attorney or advised of his right to an attorney, and Detective Fairbanks responded positively. The defense counsel further asked if the defendant rejected that right, and Detective Fairbanks stated that the defendant signed the waiver of rights form acknowledging that the understood he had the right to counsel and chose to make statements in the absence of counsel. The defense counsel then asked if the defendant understood that he had the right to counsel at the time of the interview after his arrest, and Detective Fairbanks stated that he made that point very clear to the defendant. Detective Fairbanks also testified that there were no promises or threats and that the defendant did not appear to be under the influence of drugs or alcohol.

Lieutenant John Attuso of the BRPD, who was present during the untaped portion of Detective Fairbank's interview of the defendant and participated in the questioning of the defendant, testified at the motion to suppress hearing. Lieutenant Attuso confirmed that the defendant was informed of his rights and that he indicated he understood them. Lieutenant Attuso also testified that the defendant did not invoke his right to counsel. Lieutenant Attuso testified that the defendant was not threatened or coerced, that no promises were made, and that the defendant did not seem to be under the influence of alcohol or drugs.

Sergeant Cox further questioned the defendant after the interview by the other officers, and the defendant made further statements at that point. Although the defendant was concerned with the length of incarceration that he was subject to, no promises or indications were made.

During the argument portion of the motion to suppress hearing, the defense counsel stated that the basis for the motion to suppress was to show that the evidence did not support the confession and that the defendant was given information that he admitted. The State noted that the motion to suppress alleged that the confession was not freely and voluntarily made; rather, the confession was made under the influence of fear, duress, intimidation, threats, inducements, and promises, and without the benefit of counsel. Based on the testimony presented at the hearing and the defendant's demeanor on the videotape, the trial court found that the confession was not coerced and was freely and voluntarily given.

During the defendant's trial testimony, the defendant testified that he confessed to the instant offenses because, "it was more of a force and being naïve and soft-hearted, [I] really wanted to help at the same time." The defendant further testified that the portion of the interview when force was used was not recorded. The defendant specified that Detective Fairbanks and another officer, whose name he could not recall, took him in a room, chained him to a wall, read his **Miranda** rights, and asked if he wanted an attorney. The defendant added, "I told him, yeah, but they act[ed] like they was [sic] ignoring me." The defendant also testified that he was informed

that he would not need an attorney if he cooperated.

A new basis for the motion to suppress cannot be articulated for the first time on appeal. The raising on appeal of a new ground for objection is prohibited under the provisions of La. Code Crim. P. art. 841 in order to allow the trial court an opportunity to first consider the merits of the particular claim. See **State v. Cressy**, 440 So.2d 141, 142-143 (La. 1983). We find that the defendant failed to preserve the instant issue for appeal.

The defendant did not reference in the motion to suppress, nor argue before the trial court, that he was questioned after asserting his right to counsel. At the motion to suppress hearing, the defense counsel only questioned one of the three witnesses as to whether the defendant asked for an attorney, and this witness replied that the defendant did not. The defendant did not testify or offer any testimony regarding an assertion of his right to counsel.

Although the defendant subsequently presented trial testimony regarding an assertion of his right to counsel, this testimony was in direct conflict with testimony presented by all three officers at the motion to suppress hearing. Moreover, although the defendant claims otherwise, his trial testimony regarding his request for an attorney was rebutted during the trial. During the trial, on cross-examination, the defense attorney asked Detective Fairbanks if the defendant ever

asked for an attorney, and he responded, "No, ma'am."[24]

During the videotaped confession, the defendant expressed hesitancy only to the extent that he was concerned about the number of years of incarceration he would receive. There was no indication that the defendant asked for an attorney. The confession contained ample, unprompted, highly detailed facts that were consistent with statements given by the victims herein, including timelines and locations. Further, there was no indication that the confession was being made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises.

While the issue raised on appeal was not preserved, we further conclude that the record supports the trial court's denial of the defendant's motion to suppress the confession. The sole assignment of error lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.

The state court decision rejecting petitioner's claim was not contrary to, nor involved an unreasonable application of, clearly established Federal law. Further it did not result in an unreasonable determination of the facts in light of the evidence presented in the state courts. As such, petitioner's claim is without merit.

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[24] Detective Fairbanks testified prior to the defendant. However, when a defendant's allegations are in direct conflict with previous testimony by a State's witness on direct examination, the State's witness need not be recalled on rebuttal to repeat what he testified to in the State's affirmative showing. **State v. Toomer**, 572 So.2d 1152, 1154 (La.App. 1st Cir. 1990).

CLAIM SIX: "The prosecution violated Edwards' federal due process guarantees when the prosecutor made inflammatory and prejudicial comments by vouching for the credibility of the case detective; turning the prosecution into a plebiscite on crime; and insinuating that the jury served a representative function."

In rejecting petitioner's claim in state post-conviction proceedings, the trial court noted:

> . . . Louisiana jurisprudence allows prosecutors wide latitude in closing arguments, and the trial judge has broad discretion in controlling the scope of closing arguments.[25] Even if the prosecutor exceeds the bounds of proper argument, the court will not reverse a conviction unless "thoroughly convinced" that the argument influenced the jury and contributed to the verdict.[26] It is well settled that much credit should be accorded to the good sense and fair-mindedness of jurors who will see the evidence, hear the argument, and be instructed repeatedly by the trial judge that arguments of counsel are not evidence.[27]
>
> As to the allegations of improper comments "that the jury represented the people who were out for justice" OR "detective was out for justice

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[25] La. C.Cr.P. art. 774; *State v. Casey*, 99-0023 (La. 1/26/00), 775 So.2d 1022, 1036, *cert. denied*, 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000).

[26] *State v. Taylor*, 669 So.2d 364, 384 (La. 1996).

[27] *See State v. Dilosa*, 01-0024, p. 22 (La.App. 1 Cir. 5/9/03), 849 So.2d 657, 674, *writ denied*, 03-1601 (La. 12/12/03), 860 So.2d 1153.

like the rest of us"[28], I note that the prosecutor, in closing stated:

> "When we started this trial, in opening statement, counsel for **the defense said this was a journey for justice**. I don't usual agree with defense counsel, but in that statement, I do, **this is a journey for justice.**"[29]

As indicated by the prosecutor in closing, defense counsel stated the following during opening statements:

> "We're getting ready to embark this week, ladies and gentlemen, on what I'm going to call "a journey for justice." Justice for everybody who's concerned or has anything to do with this case."[30]

Even assuming the prosecutor's statements agreeing with defense counsel's characterization of the proceeding as a "journey for justice" somehow exceeded the scope of closing arguments, the Petitioner fails to show how he may have been prejudiced. The transcript of the jury instructions reveals that the jury was specifically instructed that opening and closing arguments are not evidence.[31] Further, there is nothing to indicate that any improper argument influenced the jury and contributed to the verdict. Similarly, insofar as Petitioner alleges counsel was deficient with respect to the prosecutor's statements, his allegations are insufficient to establish both deficient performance and prejudice.

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[28] PCR, p. 13.

[29] R. p. 1050.

[30] R. p. 583.

[31] R. pp. 1072-1073.

The Petitioner also suggests that counsel was ineffective with respect to an alleged incident of improper vouching. The Petitioner alleges that the prosecutor vouched for a detective when she referenced his status as a pastor.

I note that in closing arguments, the prosecutor stated the following:

> "Does Detective Fairbanks have any reason at all to convict an innocent man? Absolutely not. He's a chaplain. He's been a Detective for a long time. He's got a good career. He's not going to get up there--He's out for justice like the rest of us."[32]

As to the issue of vouching, the Louisiana Supreme Court has stated it is only reversible error if the State bolsters the credibility of a witness by appearing to rely on evidence outside of the record or testimony:

> [It] has consistently been held to be reversible error for the prosecutor to express his belief in the guilt of the accused, or the credibility of a key witness, *where doing so implies that he has additional knowledge or information about the case which has not been disclosed to the jury*.[33]

In this case, the Petitioner suggests that the prosecutor improperly vouched for the detective. However, the information that Fairbanks was a chaplain was brought out during the questioning of Fairbanks.[34] Thus, it cannot be said that this is a situation where the prosecutor's reference in closing could be con-

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[32] R. p. 1065.

[33] *State v. Smith*, 554 So.2d 676 (La. 1989) (Emphasis added).

[34] *See* R. pp. 983-984 (wherein Fairbanks stated that he was also a chaplain of the police department and explained his duties as chaplain.)

sidered as implying knowledge not disclosed to the jury. Therefore, the improper vouching claim is without merit. Likewise, any claim that counsel was ineffective for failing to raise the issue is without merit.

The state court decision rejecting petitioner's claim was not contrary to, nor involved an unreasonable application of, clearly established Federal law. Further it did not result in an unreasonable determination of the facts in light of the evidence presented in the state courts. As such, petitioner's claim is without merit.

CONCLUSION

Based on the foregoing, all of petitioner's claims for habeas relief should be dismissed, as without merit.

RESPECTFULLY SUBMITTED,

HILLAR C. MOORE, III
DISTRICT ATTORNEY

/s/ Stacy L. Wright, #25307
Assistant District Attorney
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana
222 St. Louis Street
Baton Rouge, Louisiana 70802
Tel. 225-389-3462

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2015, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to petitioner's counsel by operation of the court's electronic filing system.

/s/ Stacy L. Wright
Assistant District Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[Filed April 24, 2018]

CIVIL ACTION NO. 15-305-JWD-RLB

THEDRICK EDWARDS

versus

BURL CAIN, et al.

NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the United States District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have fourteen (14) days after being served with the attached Report to file written objections to the proposed findings of fact, conclusions of law and recommendations therein. Failure to file written objections to the proposed findings, conclusions, and recommendations within 14 days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions of the Magistrate Judge which have been accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Signed in Baton Rouge, Louisiana, on April 24, 2018.

/s/ Richard L. Bourgois, Jr.
RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 15-305-JWD-RLB

THEDRICK EDWARDS

versus

BURL CAIN, et al.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter comes before the Court on the petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The State has filed an opposition to the petitioner's application. *See* R. Docs. 7 and 8. The petitioner has also supplemented his petition, and the State has filed a response thereto. *See* R. Docs. 13 and 14. There is no need for oral argument or for an evidentiary hearing.

On May 14, 2015, the *pro se* petitioner, an inmate confined at the Louisiana State Penitentiary, Angola, Louisiana, filed this habeas corpus proceeding pursuant to 28 U.S.C. § 2254, attacking his 2007 criminal conviction and sentence, entered in 2008, in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, on five counts of armed robbery, one count of attempted armed robbery, two counts of aggravated kidnapping, and one count of aggravated rape. The petitioner attacks his conviction on the grounds that his confrontation rights were violated, he was denied an impartial jury, his

confession was coerced, and the prosecutor made improper remarks during his closing argument.

Procedural History

In December of 2007, the petitioner was found guilty of five counts of armed robbery, one count of aggravated rape, and two counts of aggravated kidnapping. On February 7, 2008, the petitioner was sentenced to 30 years on each count of armed robbery, with said sentences to run consecutively, and three consecutive life sentences on the counts of aggravated rape and aggravated kidnapping. The petitioner thereafter filed a counseled appeal, and on June 13, 2009 his conviction and sentence were affirmed by the Louisiana First Circuit Court of Appeal. *See State v. Edwards,* 08-2011 (La. App. 1 Cir. 6/12/09), 2009 WL 1655544. Thereafter, the petitioner filed an application for supervisory writs with the Louisiana Supreme Court, which was denied on December 17, 2010. *See State v. Edwards,* 09-1612 (La. 12/17/10), 51 So.3d 27.

On or about December 15, 2011, the petitioner filed an application for post-conviction relief ("PCR"), asserting numerous claims. After the filing of motions and various procedural objections, the trial court denied the petitioner's PCR application on April 26, 2013. The petitioner's writ applications seeking review were denied by the appellate court and by the Louisiana Supreme Court, on March 24, 2014 and February 13, 2015, respectively. On May 14, 2015, the petitioner filed the present application.

Factual Background

The facts, as accurately summarized in the decision of the Louisiana First Circuit Court of Appeal (*State v. Edwards,* 08-2011 (La. App. 1 Cir. 6/12/09), 2009 WL 1655544), are as follows: On May 13, 2006, at

approximately 11:30 p.m., Ryan Eaton, who was a student at Louisiana State University, went to the Circle K on State Street and Highland Road and then drove to the apartment of his girlfriend, G.W., on East Boyd Drive near Nicholson Drive. Eaton turned his vehicle off, opened a beer, and opened the driver's door. As Eaton began to step out of his vehicle, a male subject wearing black clothing and a black bandana across his face (from the nose down) pointed a .45 caliber, black, semiautomatic pistol at Eaton's head and told Eaton to get back into his vehicle and unlock the doors. Another male subject, also armed with a gun, entered the back of Eaton's vehicle after Eaton unlocked the back door. The armed subject who entered the front of Eaton's vehicle drove away from the complex. The assailants were later identified as the defendant and Joshua Johnson.

The assailants demanded money and ultimately took the victim to an ATM so that he could retrieve cash. Eaton's accounts were depleted, so he was unable to retrieve any cash from the ATM. According to Eaton, the assailants were angry because he did not have any money. Eaton suggested that the assailants take him to his apartment on Bluebonnet Road and take some of his belongings; the assailants agreed.

After they entered the apartment, the assailants blindfolded Eaton, tied his hands together, began rummaging through his apartment, and took several items. The assailants also took Eaton's cellular telephone, turning on the telephone speaker when G.W. called. The assailants instructed Eaton to speak to G.W. calmly and make arrangements for a meeting. G.W. told Eaton that she was at Chelsea's Bar and asked him to meet her there. The assailants led Eaton, at gunpoint, back to his vehicle, put him in the front

passenger seat, and drove away from his apartment. According to Eaton, the defendant was driving at this point, and Johnson was in the back seat sitting behind Eaton. They drove to Chelsea's Bar, and when the vehicle stopped, Eaton was able to get a good look at the defendant. The assailants responded to text messages sent by G.W. to Eaton, encouraging her to go back to her apartment.

Eaton and his assailants ultimately drove back to G.W.'s apartment where Easton was instructed, at gunpoint, to knock on the door. By that time, G.W., her roommate R.M., and her friend L.R. were at the apartment. When G.W. answered the door, the defendant and Johnson rushed in behind Eaton. They rummaged through the apartment, finding items to steal. L.R. was vaginally and anally raped at gunpoint and forced to perform oral sex. L.R. was unable to identify her attacker as his face was obscured, but Eaton believed it to be the defendant. R.M. was dragged upstairs and raped. R.M. also was unsure of her attacker's identity. The assailants gathered several items and told Eaton that they would abandon his vehicle nearby. After the assailants left, Eaton walked out of the apartment and used a passerby's telephone to call for emergency assistance.

Two days later, during the early morning hours of May 15, 2006, two assailants began following Marc Verret as he drove through his apartment complex near State Street. After Verret parked, the assailants forced entry into his vehicle. They brandished guns and had bandanas over their faces. One of the assailants entered the front of Verret's vehicle as Verret slid to the passenger's side, and the other entered the back of the car. Verret was taken to an ATM, where he withdrew funds and gave them to the

assailants. The assailants exited the vehicle after taking the money and other items. Verret was able to identify Johnson as one of the armed assailants.

Standard of Review

The standard of review in this Court is that set forth in 28 U.S.C. § 2254(d). Pursuant to that statute, an application for a writ of habeas corpus shall not be granted with respect to any claim that a state court has adjudicated on the merits unless the adjudication has "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Relief is authorized if a state court has arrived at a conclusion contrary to that reached by the Supreme Court on a question of law or if the state court has decided a case differently than the Supreme Court on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 413 (2000). Relief is also available if the state court has identified the correct legal principle but has unreasonably applied that principle to the facts of the petitioner's case or has reached a decision based on an unreasonable factual determination. *See Montoya v. Johnson*, 226 F.3d 399, 404 (5th Cir. 2000). Mere error by the state court or mere disagreement on the part of this Court with the state court determination is not enough; the standard is one of objective reasonableness. *Id*. *See also Williams v. Taylor*, *supra*, 529 U.S. at 409 ("[A] federal habeas court making the 'unreasonable application' inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable"). State court determinations

of underlying factual issues are presumed to be correct, and the petitioner has the burden to rebut that presumption with clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Substantive Review

Confrontation Rights Violation

Claim 1: Hearsay Testimony

Relying upon *Bullcoming v. New Mexico,* 564 U.S. 647 (2011), the petitioner asserts that his confrontation rights were violated when Wanda Pezant was allowed to testify with regards to the "Rape Kit" for L.R., which testimony included the contents of the examiner's interview of L.R. and forensic findings made after a physical examination and scientific testing. L.R. was examined by Christy Bronould, but Bronould was not called to testify at trial. Rather, Wanda Pezant, Bronould's supervisor, testified as an expert. According to her testimony, at the time of the examination, Pezant was responsible for overseeing all rape exams performed by the nurses, which included all documentation generated by those nurses in addition to being the statewide coordinator for the sexual assault nurse examiner program. Over the objection of defense counsel, Pezant was allowed to testify as the contents of Bronould's report, which was admitted into evidence without objection. Pezant testified that the report noted that L.R. was crying and her eye contact was poor, and testified as to the findings of the examination conducted in connection with L.R.'s complaint of oral, anal, and vaginal rape.

The petitioner asserts, pursuant to *Bullcoming*, that his Sixth Amendment rights under the Confrontation Clause were violated when Pezant, rather than Bronould, was called to testify regarding the examina-

tion performed by Bronould. The question presented in *Bullcoming* was whether the Confrontation Clause permits the prosecution to introduce a forensic laboratory report containing a testimonial certification – made for the purpose of providing a particular fact – through the in-court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification. The Court held that such testimony did not satisfy the Confrontation Clause. However, as explained by the Court in *Grim v. Fisher*, 816 F.3d. 296 (5th Cir. 2016), the Court in *Bullcoming* did not clearly establish the categorical rule that when the prosecution introduces a forensic laboratory report, the only witness whose in-court testimony can satisfy the Confrontation Clause is the analyst who performed the underlying analyses.

Citing to Justice Sotomayer's concurring opinion where she emphasized the limited reach of the Court's opinion in *Bullcoming*, the Fifth Circuit has noted "even after *Bullcoming,* it is not clear whether the testimony of the analyst in this case—who supervised and worked in the same lab as the analyst who did the actual testing—would violate the Confrontation Clause." *See U.S. v. Johnson,* 558 F. App'x. 450, 453 (5th Cir. 2014). In the instant matter Pezant was Bronould's supervisor, and was responsible for reviewing Bronould's work. There is no clearly established federal law which would require the testimony of Bronould, and only Bronould, to satisfy the Confrontation Clause.

Even if the Court were to assume a Confrontation Clause error, such errors are subject to a harmless error analysis. In analyzing whether a Confrontation Clause error is harmless, the reviewing court should consider, "the importance of the witness' testimony in

the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, ... and, of course, the overall strength of the prosecution's case. *Delaware v. Van Arsdall,* 475 U.S. 673 (1986). When the record is so evenly balanced that there is grave doubt as to whether the error had a substantial and injurious effect or influence in determining the jury's verdict, the error is not harmless. *O'Neal v. McAninch,* 513 U.S. 432 (1995).

> As noted by the trial court in denying the petitioner's PCR claim, "…the victim did testify at trial, and the fact that she was raped was established by the testimony of other witnesses, and, more importantly, by the Petitioner's confession." Furthermore, Pezant's testimony was cumulative. L.R. testified as to her demeanor, characterizing herself as hysterical and noting that she was administered medication in order to calm her down following the exam. The petitioner has not shown that the alleged error had a substantial and injurious effect or influence in determining the jury's verdict. As such, the trial court's denial of the petitioner's PCR claim was not contrary to, or an unreasonable application of, clearly established federal law.

Claim 2: Failure to Disclose Informal Plea Deal

The petitioner asserts that he was denied his right to adequately confront his accusers due to the State's failure to disclose an informal plea deal made with witness Jacquin James. James testified regarding the armed robbery and aggravated kidnapping of Marc Verret.

The State is obligated to disclose information that could be used to impeach the testimony of a witness for the government, including any agreements with government witnesses for testimony in return for monetary benefit or for more favorable treatment within the criminal justice system. *See Giglio v. United States,* 405 U.S. 150 (1972). The disclosure of plea agreements is particularly important where the case against the defendant depended almost entirely upon the testimony of cooperating witnesses. *Giglio,* 405 U.S. at 154–55.

In denying the petitioner's PCR claim, the trial court concluded that the petitioner failed to show that there was any undisclosed deal between the State and James. James testified at trial, on December 6, 2007, that no deals had been made with the State in exchange for his testimony, and that he hoped that by telling the truth, consideration would be given to him with regards to the charges then pending against him. On cross-examination, James testified that he had nothing to gain by testifying, and that he was simply hoping for the best. He further testified that he hoped that by telling the truth he could "get the slack off of me" with regards to his then pending criminal charges. As such, the testimony of James does not support the plaintiff's claim that the State failed to disclose a deal made with James in exchange for his testimony.

The petitioner supplemented the record with regards to this claim, and has provided this Court with a copy of correspondence from attorney Frank Holthaus, counsel for James, directed to prosecutor Dana Cummings. The correspondence is dated August 22, 2008, and reads in part, "When we last spoke in court, I thought it was a good idea to keep these matters "undetermined" so as to encourage him to do

well by keeping the hammer over his head...In any event, under these circumstances perhaps you would consider dismissing the charges against Jacquin sooner, rather than later." The correspondence is completely consistent with James' testimony on the issue and that no deal had been reached. The petitioner argues that James' counsel would not have pursued a "no deal" strategy without some sort of inducement to do so. The petitioner's arguments are speculation, and are unsupported by the record before the Court. As such, the trial court's denial of relief did not result in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Right to an Impartial Jury

Claim 3: Non-Unanimous Verdict

The petitioner claims that his conviction by a non-unanimous jury verdict violated his Sixth Amendment right to trial by jury. Louisiana Constitution article I, § 17(A) and Louisiana Code of Civil Procedure article 782(A) provide that cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to reach a verdict. The petitioner was tried before a twelve person jury, and eleven jurors voted to convict the petitioner.

The petitioner argues that the United States Supreme Court decision in *Apodaca v. Oregon*, 406 U.S. 404 (1972) holding that non-unanimous jury verdicts do not violate a defendant's constitutional rights, has been called into question by *McDonald v. City of Chicago, III*, 561 U.S. 742, wherein the Court noted in a footnote that the *Apodaca* decision was the result of an unusual division amount the Justices. *See*

McDonald, 561 U.S. at 766, n. 14. The petitioner's argument is without merit.

Since deciding *Apodaca,* the United States Supreme Court has repeatedly declined to grant certiorari to reconsider the constitutionality of non-unanimous verdicts in state proceedings. *See, e.g., Barbour v. Louisiana,* 562 U.S. 1217 (2011); *Herrera v. Oregon,* 562 U.S. 1135 (2011); and *Jackson v. Louisiana,* 134 S.Ct. 1950 (2014). As noted by Justice Stevens in his dissent in *McDonald*, the United States Supreme Court has resisted a uniform approach to the Sixth Amendment's criminal jury guarantee, and the repeated denials of certiorari confirm the proposition that the "incorporation" of a provision of the Bill of Rights into the Fourteenth Amendment does not, in itself, mean the provision must have precisely the same meaning in both contexts. *See McDonald,* 561 U.S. at 867-868.

As such, the law of *Apodaca* remains settled. The petitioner can claim no violation of federal law from his conviction by a non-unanimous verdict.

Claim 4: Exclusion of African American Jurors

The petitioner alleges that the State intentionally excluded African Americans from the jury by using peremptory challenges and challenges for cause to exclude ten of the eleven African Americans in the jury pool. The United States Supreme Court held in *Batson v. Kentucky,* 476 U.S. 79 (1986), that an equal protection violation occurs when a party uses a peremptory challenge to exclude a prospective juror on the basis of race. Whether there has been intentional racial discrimination is a question of fact, *Moody v. Quarterman,* 476 F.3d 260, 266 (5th Cir. 2007), and the trial court's evaluation of discriminatory intent is

to be accorded great deference on review, and should not be reversed unless it is clearly erroneous. *Id.*

As noted by the state trial court, the petitioner has not identified any particular panelist who was likely struck based on his or her membership in a cognizable group. Furthermore, a review of the record reveals that several of the African American panelists were struck for race neutral reasons. Sydney Eatmon was struck due to financial hardship which would render him unable to concentrate during the trial. Leo Gable was struck due to his position that he would be unable to judge another. Michael Roszya's child had been molested at a young age, and though he reported the crime the State failed to prosecute the perpetrator. Mr. Roszya did not feel he could be fair due to these circumstances and was struck. Olivia Guillory took issue with the possibility of the defendant receiving a life sentence, and was struck. Sandras Comeaux was struck because she indicated that she would be unable to put aside that her brother had been convicted of armed robbery, and died while incarcerated. Noah Williams was struck at the suggestion of the Court due to the fact that his father had shot a police officer and was serving a 30 year sentence.

There is nothing in the record that rebuts the determination of the trial court that the State's expressed reasons for exclusion were non-pretextual and were legitimate grounds for exercise of the challenges against the prospective jurors at issue. Accordingly, the trial court's denial of relief did not result in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Miranda Warning Violation

Claim 5: Knowing and Intelligent Waiver/ Failure to Honor Request for Attorney

The petitioner alleges that his confession was coerced and that the interviewing officers denied his request to speak to an attorney in violation of *Miranda v. Arizona,* 384 U.S. 436 (1966). In *Miranda v. Arizona,* the Supreme Court recognized that custodial interrogations, by their very nature, generate "compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." 384 U.S. 436, 467 (1966). *Miranda* imposed on the police an obligation to follow certain procedures in their dealings with the accused including the requirement that prior to the initiation of questioning, they must fully apprise the suspect of the State's intention to use his statements to secure a conviction, and must inform him of his rights to remain silent and to "have counsel present ... if [he] so desires." *Id.,* at 468–470. Beyond this duty to inform, *Miranda* requires that the police respect the accused's decision to exercise the rights outlined in the warnings. *Id.,* at 473–474. 1627.

Miranda holds that "[t]he defendant may waive effectuation" of the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently." 384 U.S., at 444. There are two inquiries to determine whether an accused has voluntarily and knowingly waived his Fifth Amendment privilege against self-incrimination. *Moran v. Burbine,* 475 U.S. 412, 421 (1986). First, the waiver of the right must be voluntary in that it was not the product of intimidation, coercion, or deception. *Id.* Second, the relinquishment must be made with a full awareness of the nature of the right being waived. *Id.* The admis-

sion of an involuntary confession is trial error subject to a harmless error analysis. *Arizona v. Fulminante,* 499 U.S. 279, 310 (1993).

For a defendant to establish that his confession was involuntary, he must demonstrate that it resulted from coercive police conduct and it is essential that there be a link between the coercive conduct of the police and the confession of the defendant. *Colorado v. Connelly,* 479 U.S. 157, 163–65 (1986). Any evidence that the accused was threatened, tricked, or cajoled into a waiver will show that the defendant did not voluntarily waive his privilege. *Miranda v. Arizona,* 384 U.S., at 476. Trickery or deceit is only prohibited to the extent that it deprives the defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them. *Soffar v. Cockrell,* 300 F.3d. 588, 596 (5th Cir. 2002). "Neither mere emotionalism and confusion, nor mere trickery will alone necessarily invalidate a confession." *Self v. Collins,* 973 F.2d 1198, 1205 (5th Cir. 1992) (internal quotations and citation omitted).

The standard for determining whether a confession is voluntary is whether, taking into consideration the "totality of the circumstances," the statement is the product of the accused's "free and rational" choice. *United States v. Ornelas–Rodriguez,* 12 F.3d 1339, 1347 (5th Cir. 1994) (quoting *Martinez v. Estelle,* 612 F.2d 173, 177 (5th Cir. 1980)). A confession is not rendered involuntary simply because a suspect is advised that "there are advantages to cooperating." *United States v. Ornelas–Rodriguez,* 12 F.3d 1339, 1348 (5th Cir. 1994). "It is reasonable to assume that the cooperation of an arrested person often is prompted by a desire for leniency for himself or others," and statements made in such circumstances are not per se

involuntary. *United States v. Robertson,* 582 F.2d 1356, 1368 (5th Cir. 1978).

Prior to trial, the petitioner filed a Motion to Suppress, which did not include a claim that he had requested an attorney. The petitioner's Motion was denied by the state trial court, and that decision was affirmed on appeal where the petitioner's additional claim was considered. *See State v. Edwards,* 08-2011 (La. App. 1 Cir. 6/12/09), 2009 WL 1655544.

In reviewing the trial court's decision, the appellate court summarized the evidence pertaining to the petitioner's confession as follows: "Sergeant Tillman Cordell Cox of the Baton Rouge City Police Department (BRPD) testified at the motion to suppress hearing that he was the first officer to interview the defendant after he turned himself in. Sergeant Cox read the defendant his Miranda rights. The defendant indicated that he understood his rights and did not initially give a statement, except to say that he did not have anything to do with the offenses. The interview was terminated, and the defendant was booked. The State asked Sergeant Cox if the defendant requested an attorney, and he responded negatively. Sergeant Cox testified that the defendant was not threatened, not made any promises, and did not appear to be under the influence of alcohol or drugs.

The defendant was subsequently interviewed by Detective Greg Fairbanks of the BRPD. Detective Fairbanks testified at the motion to suppress hearing that he read the defendant his Miranda rights, and a waiver of rights form was executed. The defendant confessed to involvement in the armed robberies and the rapes, including details that had not yet been released to the public. During direct examination by the State, Detective Fairbanks specifically testified

that the defendant did not ask for an attorney at any point. The second half of the interview with Detective Fairbanks was recorded. On cross-examination, the defense attorney asked Detective Fairbanks if the defendant was offered an attorney or advised of his right to an attorney, and Detective Fairbanks responded positively. The defense counsel further asked if the defendant rejected that right, and Detective Fairbanks stated that the defendant signed the waiver of rights form acknowledging that he understood he had the right to counsel and chose to make statements in the absence of counsel. The defense counsel then asked if the defendant understood that he had the right to counsel at the time of the interview after his arrest, and Detective Fairbanks stated that he made that point very clear to the defendant. Detective Fairbanks also testified that there were no promises or threats and that the defendant did not appear to be under the influence of drugs or alcohol.

Lieutenant John Attuso of the BRPD, who was present during the untaped portion of Detective Fairbanks' interview of the defendant and participated in the questioning of the defendant, testified at the motion to suppress hearing. Lieutenant Attuso confirmed that the defendant was informed of his rights and that he indicated he understood them. Lieutenant Attuso also testified that the defendant did not invoke his right to counsel. Lieutenant Attuso testified that the defendant was not threatened or coerced, that no promises were made, and that the defendant did not seem to be under the influence of alcohol or drugs.

Sergeant Cox further questioned the defendant after the interview by the other officers, and the defendant made further statements at that point. Although the

defendant was concerned with the length of incarceration that he was subject to, no promises were made. During the argument portion of the motion to suppress hearing, the defense counsel stated that the basis for the motion to suppress was to show that the evidence did not support the confession and that the defendant was given information that he admitted. Based on the testimony presented at the hearing and the defendant's demeanor on the videotape, the trial court found that the confession was not coerced and was freely and voluntarily given.

During the defendant's trial testimony, the defendant testified that he confessed to the instant offenses because, "it was more of a force and being naive and soft-hearted, [I] really wanted to help at the same time." The defendant further testified that the portion of the interview when force was used was not recorded. The defendant specified that Detective Fairbanks and another officer, whose name he could not recall, took him in a room, chained him to a wall, read his Miranda rights, and asked if he wanted an attorney. The defendant added, "I told him, yeah, but they act[ed] like they was [sic] ignoring me." The defendant also testified that he was informed that he would not need an attorney if he cooperated.

The defendant did not reference in the motion to suppress, nor argue before the trial court, that he was questioned after asserting his right to counsel. At the motion to suppress hearing, the defense counsel only questioned one of the three witnesses as to whether the defendant asked for an attorney, and this witness replied that the defendant did not. The defendant did not testify or offer any testimony regarding an assertion of his right to counsel.

Although the defendant subsequently presented trial testimony regarding an assertion of his right to counsel, this testimony was in direct conflict with testimony presented by all three officers at the motion to suppress hearing. Moreover, although the defendant claims otherwise, his trial testimony regarding his request for an attorney was rebutted during the trial. During the trial, on cross-examination, the defense attorney asked Detective Fairbanks if the defendant ever asked for an attorney, and he responded, "No, ma'am."

During the videotaped confession, the defendant expressed hesitancy only to the extent that he was concerned about the number of years of incarceration he would receive. There was no indication that the defendant asked for an attorney. The confession contained ample, unprompted, highly detailed facts that were consistent with statements given by the victims herein, including timelines and locations. Further, there was no indication that the confession was being made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises." *See State v. Edwards,* 08-2011 (La. App. 1 Cir. 6/12/09), 2009 WL 1655544.

This Court has independently reviewed the record provided to the Court, and consideration of the evidence before the state trial courts supports the finding that the petitioner has not carried his burden to rebut the presumption of correctness of the trial court's factual findings by clear and convincing evidence, as he is required to do by § 2254(e)(1).[1] The petitioner's confession claim is without merit.

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[1] The Court was not provided with a copy of the recorded portion of the petitioner's confession; however, the recorded portion

Due Process Violation

Claim 6: Vouching for Credibility of Witness

The petitioner asserts that his due process guarantees were violated when the prosecutor made inflammatory and prejudicial comments by vouching for the credibility of detective Fairbanks, and insinuating that the jury served a representative function. During closing arguments the prosecution, echoing the statements of defense counsel, stated: "When we started this trial, in opening statement, counsel for the defense said this was a journey for justice. I don't usual agree with defense counsel, but in that statement, I do, this is a journey for justice." During rebuttal argument on closing, the prosecutor, in response to the defense's statement in closing that Detective Fairbanks was a chaplain and a liar, stated: "Does Detective Fairbanks have any reason at all to convict an innocent man? Absolutely not. He's a chaplain. He's been a Detective for a long time. He's got a good career. He's not going to get up there – He's out for justice like the rest of us."

Considering the prosecution's conduct within the context of the entire trial, the Court does not find that such conduct rises to the level of error that rendered the petitioner's trial fundamentally unfair. Pursuant to *Brecht v. Abrahamson*, 507 U.S. 619 (1993), "a constitutional trial error is not so harmful as to entitle a defendant to habeas relief unless there is more than a mere reasonable possibility that it contributed to the verdict." *Nixon v. Epps*, 405 F.3d 318, 329-30 (5th Cir. 2005). It is only when the record is so evenly balanced that there is grave doubt as to whether the error had

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was shown to the jury and testimony was elicited regarding the same.

a substantial and injurious effect or influence in determining the jury's verdict that the error is not harmless. *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995). *See also Anderson v. Warden, Louisiana State Penitentiary*, 2013 WL 1405423, *3 (W.D. La. Mar. 19, 2013) ("[E]rrors in the form of improper prosecutorial comment or jury instructions are subject to harmless error analysis [under *Brecht*] ... which asks whether the error had a substantial and injurious effect or influence in determining the jury's verdict"). Based upon a review of the record, the Court does not find that the prosecutor's comments, evaluated in the context of the entire trial, rendered the petitioner's trial fundamentally unfair. The evidence adduced at trial, provided ample evidence of the petitioner's guilt, and the offending comments complained of by the petitioner were not focused upon or emphasized and did not have a substantial injurious effect or influence in determining the verdict.

First, with regard to the petitioner's assertion that the prosecution vouched for the credibility of detective Fairbanks, during closing argument, the Court finds, based upon the totality of the circumstances in this case, that the conduct of the prosecution in seemingly vouching for Fairbanks' credibility was not so persistent and pronounced as to render the petitioner's trial fundamentally unfair, and that the evidence was not so insubstantial that in all probability, but for the prosecutor's remarks, the petitioner would not have been convicted. While it is true that a prosecutor is not generally allowed to vouch for the credibility of a witness where there is an underlying implication that the prosecutor's statements are based on additional personal knowledge about the witness or about facts not in evidence, such comments are not necessarily improper if it is apparent to the jury that the views are

based on an interpretation of the evidence presented at trial rather than on personal knowledge of facts outside the record. *See Nicolos v. Scott*, 69 F.3d 1255 (5th Cir. 1995). *See also Tyler v. Cain*, 2016 WL 1594609, *13 (W.D. La. Mar. 24, 2016), *citing United States v. Ellis*, 547 F.2d 863, 869 (5th Cir. 1977) ("The proper inquiry into this issue should be 'whether the prosecutor's expression might reasonably lead the jury to believe that there is other evidence, unknown or unavailable to the jury, on which the prosecutor was convinced of the accused's guilt.") In the instant matter, detective Fairbanks was questioned at trial regarding his position as a chaplain. The fact that he was a chaplain was also noted by the defense during closing arguments. There was no underlying implication that the prosecutor's statements were based on additional personal knowledge about the witness.

In addition, the petitioner's complaint relates to a comment made by the prosecution during rebuttal argument on closing. In this regard, it is well-recognized that the prosecution is granted greater leeway in bolstering the credibility of a witness during rebuttal argument when the prosecution is responding to attacks on such credibility by the defense. *United States v. Ajaegbu*, 139 F.3d 898 (5th Cir. 1998) ("[T]he government may present a bolstering argument 'in rebuttal to assertions made by the defense counsel in order to remove any stigma cast' upon a witness"). *See also United States v. Young*, 470 U.S. 13 (1985) (recognizing that comments made by the prosecution to "right the scale" and respond to attacks upon credibility by the defense will not necessarily warrant reversal). Inasmuch as it was clear in this case that the petitioner's principal defense was that he was coerced into giving a confession by detective Fairbanks, and that the testimony of detective

Fairbanks, was not credible, the prosecution was entitled to respond.

With regards to the prosecutor's "justice" comments, the Court does not find that the prosecutor's comments were so persistent or pronounced that they permeated the entire atmosphere of the trial, violated the petitioner's substantial rights, or infected the trial with unfairness. Further, to the extent that these comments were objectionable, the Court is unable to conclude that they rendered the petitioner's trial fundamentally unfair. "A criminal defendant seeking a reversal of his conviction for prosecutorial misconduct 'bears a substantial burden,'" and the Fifth Circuit has declined to reverse convictions even where the prosecutor's comments were admittedly inflammatory. *United States v. Delgado*, 672 F.3d 320, 337 (5th Cir. 2012), *quoting United States v. Virgen-Moreno*, 265 F.3d 276, 290 (5th Cir. 2001). As stated in *United States v. Delgado, supra*:

> Overturning a jury verdict for prosecutorial misconduct is appropriate only when, taken as a whole in the context of the entire case, the prosecutor's comments prejudicially affect[ed the] substantial rights of the defendant. In determining whether the defendant's substantial rights were affected, we consider three factors: (1) the magnitude of the prejudicial effect of the prosecutor's remarks, (2) the efficacy of any cautionary instruction by the judge, and (3) the strength of the evidence supporting the conviction. If the evidence to support a conviction is strong, then it is unlikely that the defendant was prejudiced by improper arguments of the prosecutor and reversal is not required. *Id.* at 337 (citations and internal quotation marks omitted).

In the instant case, the magnitude of any prejudicial effect is insubstantial. The prosecutor echoed the statements made by the defense during opening argument. Further, although no cautionary instruction was requested or given, the jury was informed by the court that statements made by the prosecution were not evidence. *See United States v. Ramirez*, 61 F. App'x. 121 (5th Cir. 2003); *Ayo v. Cain*, 2015 WL 8475523 *31 (E.D. La. Oct. 26, 2015) ("The jurors were properly instructed that they were not to consider the prosecutor's arguments as evidence, and '[j]urors are presumed to follow their instructions' "). Finally, the evidence against Petitioner was significant. Accordingly, in evaluating the prosecutor's comments in the context of the trial as a whole, this Court is unable to conclude that the comments had a substantial injurious effect upon the verdict in this case or that the state court made an unreasonable determination in concluding that this claim did not have merit.

RECOMMENDATION

It is recommended that the petitioner's application for habeas corpus relief be denied, with prejudice. It is further recommended that, in the event that the petitioner seeks to pursue an appeal, a certificate of appealability be denied.

Signed in Baton Rouge, Louisiana, on April 24, 2018.

/s/ Richard L. Bourgeois, Jr.
RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[Filed June 5, 2018]

CIVIL ACTION
NO. 15-CV-305-JWD-RLB

THEDRICK EDWARDS

versus

BURL CAIN, et al.

OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION

Now into Court, through undersigned counsel, comes the petitioner, Thedrick Edwards, who files his objections to the Report and Recommendation of Magistrate Judge Richard L. Bourgeois (Doc. 16). In so doing, Mr. Edwards requests a review of that recommendation from this Honorable Court and prayers for habeas corpus relief. In the event that this Court denies any part of the petitioner's claim, it is further requested that a certificate of appealability be granted.

OBJECTION TO CLAIM ONE: CONFRONTATION VIOLATION

Mr. Edwards' Habeas Petition raised two viable claims for confrontation rights violations. The first violation raised concerned the State's use of a hearsay witness to lay out the interview of the victim during the sexual assault examination along with the findings of said examination in violation of established

federal jurisprudence established by Crawford v. Washington, 124 S.Ct. 1354 (2004) and as discussed in Bullcomings v. New Mexico, 131 S.Ct, 2705 (2011). As stated in the habeas petition, The Confrontation Clause does not permit the prosecution to introduce a forensic report through the in-court testimony of an analyst who did not personally perform or observe the performance of the test reported in the certification.

In Edwards' case, the State presented testimony from Wanda Pezant who purported to be the Director of Education at Ochsner Medical Center in Baton Rouge and a Sex Assault Nurse Examiner coordinator. As a SANE coordinator, Pezant reviewed the "Rape Kit" for [redacted] [redacted]-the prosecution's victim. Pezant's testimony divulged the contents of the examiner's interview of [redacted], [redacted]'s demeanor and forensic findings following a physical examination and scientific testing. None of that testimony concerned first hand observations by Pezant.

In denying relief, the Magistrate Court references a 2016 5th Circuit case that, in essence holds that *Bullcomings* failed to establish a categorical rule when offering lab report testimony. See: Grim v. Fisher, 816 F.3d 296 (5th Cir. 2016). That may be so, however, the testimony elicited at trial falls clearly within the prohibitions forbidden by *Crawford* and its progeny. Here, we had more than just hearsay testimony of a lab result. We also had hearsay testimony of another's observation and interview of a patient and the observer was never tendered for cross examination. This testimony was particularly devastating because it was used to bolster and corroborate [redacted]'s trial testimony. Edwards' attorney could not effectively cross examine on the Rape Kit because the actual examiner was never tendered for cross examination.

This error is a clear violation of Edwards' constitutional rights and, as such, violated his due process rights.

The second confrontation rights violation raised by the petitioner concerns the State's violation of its duty to disclose impeachment evidence as part of its "*Brady-Giglio*" obligation. Mr. Edwards' petition took issue with the State's failure to disclose an imminent and intended plea deal with one of its witnesses. Mr. Edwards would supplement his claim with a letter from that witness' lawyer to the prosecution discussing a strategy of keeping "pending charges over his head" but now requesting a dismissal. It is settled federal law that a witness' agreement with the Government must be tendered to the defense for cross examination and, when as here, a witness' trial testimony misleads the jury, it is considered a constitutional violation. Giglio v. United States, 405 U.S. 150 (1972). Napue v. Illinois, 360 U.S. 264 (1959). As stated in Mr. Edwards' habeas petition, the State presented testimony of Jacquin James who was considered a co-defendant and had pending armed robbery and kidnapping charges when he testified against Edwards. At trial, James stated that there were no deals and that he wanted to "get this over with." In light of James' attorney letter, we now know his testimony was not completely accurate. There was an orchestrated agreement with the State to have charges holding over his head while he testified with real efforts made at gaining him a dismissal. This wasn't simply a matter of "getting over with it."

In denying relief, the Magistrate Court made a factual determination that the letter supports James' trial testimony that there were no deals in place and that the petitioner is speculating when it comes the

merits of defense counsel pursuing a "no deal" strategy. We respectfully disagree with those findings. First, the letter indicates there was an agreement of some sort even if the precise terms were to be determined. Indeed, such is often the case with most federal trials in which government "flip witnesses" audition for mercy in the form of a robust 5k recommendation. At least, in those instances, the defense is made aware of that fact and can properly cross examine the witness on their expected gain and the parameters of the agreement. Here, Edwards could not do so because not only was the deal not disclosed, it was hidden from the defense. The Sixth Amendment to the U.S. Constitution guarantees the accused the right to cross examine adverse witnesses allowing the accused to reveal biases and ulterior motives of witnesses. In this case, the Mr. Edwards was denied that right.

OBJECTION TO CLAIM TWO:
RIGHT TO AN IMPARTIAL JURY

In his habeas petition, Mr. Edwards raises two violations of his 6th Amendment right to an impartial jury. The first violation raises concerns the State's tactics during jury selection that removed nearly every African American from the petit jury. As stated in Mr. Edwards' habeas petition, constitutional principles forbid the use of peremptory challenges as a means of eliminating jurors on the basis of race. Batson v. Kentucky, 106 S.Ct. 1712 (1986). Doing so is considered an equal protection violation. In the case at hand, the State was able to exclude ten (10) of eleven (11) African Americans from the jury. Five (5) of these exclusions were the result of peremptory challenges and five (5) were for cause. Regrettably, the State exercised only seven (7) peremptory challenges, meaning that it used 70% of its exercised challenges to

exclude African Americans from the jury. The Magistrate's ruling suggests there is nothing in the record to suggest the reasons for exclusion were pretextual and that the petitioner cannot identify a particular panelist likely struck based upon their membership in a cognizable group. However, the above data speaks for itself: 70% of the State's peremptory challenges were used the exclude a specific race of jurors that comprised a small numerical minority of the entire venire. It seems telling that the sole African American who was empaneled voted to acquit Mr. Edwards.

The second violation of the petitioner's 6th Amendment right to an impartial trial occurred with having his fate for a crime punishable by life in jail to be decided by a non-unanimous jury. The essence of the petitioner's argument is that established federal precedent mandates that incorporated Bill of Rights provisions apply equally to the states as it does the federal government notwithstanding the plurality decisions of Apodaca v. Oregon, 92 S.Ct. 1628 (1972) and Johnson v. Louisiana, 406 U.S. 356 (1972). The Magistrate Court took note of those two decisions as well as recognition of the fact that the Supreme Court has refused to address the issue any further when given a chance to do so. That said, the defense sides with Justice Alito's position referenced in *McDonald* that the Courts have not established a two track system when it comes to incorporating the Bill of Rights at the state level. Additionally, as cited in the habeas and now coming to light in legislative debate, the grounding on the non-unanimous jury rule is found at the feet of Jim Crow era policies. Since the mid-50s, federal courts have gone great lengths to strike down the southern cast system created after the

end of Reconstruction. This is simply one of the last provisions needing redress.

OBJECTION TO CLAIM 3: MIRANDA WARNINGS

The State failed to meet its heavy burden of proving that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and obtained an uncounseled inculpatory statement from Edwards despite his request for counsel. Edwards denied criminal culpability on two occasions before succumbing to coercive police techniques during an unrecorded forty-five (45) minute interrogation by two officers. The lead detective freely admits his willingness to lie and manipulate a suspect in an effort to obtain an admission. The contents of this detective's cajoling is discussed more fully below. Additionally, the defendant testified that he requested an attorney that was never provided and that he confessed to facts provided to him by the police as part of his cooperation that was to result in leniency. The police acknowledge telling the defendant that it was senseless for him to hire an attorney. Needless to say, an attorney was not provided. The police use of coercive interrogation techniques prevented a free and voluntary waiver of the defendant's Fifth Amendment rights. The failure to provide an attorney, despite the defendant's request, is a direct violation of the defendant's Sixth Amendment rights. Taken together, it appears the defendant's confession was impermissibly obtained and should have been excluded from evidence at trial.

The *Miranda* opinion is due, in large part, to the Court's concern that the rights proclaimed in the Constitution were becoming "a form of words in the hands of government officials." Miranda v. Arizona, 86 S.Ct. 1602 (1966). The Court aptly noted that modern

interrogations take place in secret which advantages the government and results "in a gap in our knowledge as to what in fact goes on in interrogation rooms." The Court's concern for secrecy stems from the police training manuals which view that secrecy as the principal psychological factor contributing to a successful interrogation and deemed it essential that the accused be deprived of every psychological advantage in an effort to create an atmosphere which "suggests the invincibility of the forces of law."

The *Miranda* Court summarized the essence of police interrogations as follows:

> "To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the investigator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.' When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick or cajole him out of exercising his constitutional rights.
>
> Even without employing brutality, the 'third degree' or specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individual."

Detective Fairbanks' testimony indicates the severity of the psychological warfare employed against Edwards in an effort to induce him into surrendering his constitutional rights. As noted above, Edwards was transported to the police station in order to obtain a DNA sample. The undersigned surmises that the true intent of the police was to transport Edwards in order to extract a confession at the police station. There is no reason why the DNA swabs could not be obtained at the parish jail. However, it is the walled interview room of the police station that provides the detective with his maximum psychological advantage. In this case, the psyche of the Edwards is further weakened by the fear and tension created by the transportation from the jail to the police station and his chained confinement to the walls of the secluded interview room where he is placed at the mercy of his interrogators.

The *Miranda* Court was wise in noting that the privacy of the interrogation rooms creates a knowledge gap as to what actually takes place inside. One supposes this concern prompted many departments, including Baton Rouge, to install recording devices in the rooms. Conveniently, the recording devices were not utilized during the first 45 minutes of Edwards' interrogation. As such, we do not definitively know what transpired from Edwards' initial denial of culpability until his confession. We must rely on the trial testimonies of the police and the defendant to piece the interrogation together.

Detective Fairbanks testified that Edwards went through an initial "denial process" that he had to get beyond before obtaining a confession. Sadly, this detective easily admits his willingness to lie and deceive in an effort to obtain a confession:

"If I need to manipulate or make false statements to get him to admit to what he did and if I have to throw a lie in to do it, I'll do it. . . . I would not use the word 'routine' but I have done it in the past[1]."

In the instant case, it appears that part of the unrecorded interrogation consisted of how the defendant's cooperation could help him obtain a plea, pre-sentencing investigation considerations, and the defendant's desire to attend college. The following are excerpts from Fairbanks' testimony on these topics:

"Q: Detective Fairbanks, did you promise my client that he would be able to go to college once he gave it up?

A: We talked about college. I did not promise he could go to college.

Q: You didn't make that promise?

A: I told him he could- there was a reference made to college. I didn't promise him he could go. I remember thinking, well, a lot of people take college courses in prison but I didn't tell him he could or could not go[2]."

"Q: You don't recall telling him that the judge would go light on him since he had no record?

A: No ma'am

Q: As we sit here today, do you remember that?

A: No, I know that we talked about the fact that he did not have a record and I told him that, through a presentence investigation, sometimes that is a consideration. But I was very

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[1] Record Page 974

[2] Record Page 974

careful for him to understand that I couldn't promise what the courts would do. I couldn't promise what a judge would do, it's just that those things are taken into consideration[3]."

"Q: Detective Fairbanks, did you ever advise Mr. Edwards that if he gave up information on Joshua Johnson, things would go easier on him?

A: I remember telling Mr. Edwards that it's going to be up to the courts but if there is any plea agreements, it would be beneficial for him to cooperate with the investigation. But, I made it clear that, that is up to the courts and that is not a police matter. That's a court matter[4]."

The above referenced quotes suggest that Fairbanks was willing to lure the defendant into surrendering his constitutional rights by inferring promises that cooperation would be helpful to him and that attending college was a possibility. Edwards testified that the cajoling went a bit further and that he was promised probation and the ability to attend college if he cooperated[5] and that he would not have cooperated if it were not for these promises[6]. Edwards further testified that he requested counsel and was advised that if he cooperated that he would not need a lawyer[7]. These specific allegations were not rebutted as the State opted against presenting a case in rebuttal. As this Court is well aware, once a person requests

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[3] Record Page 975

[4] Record Page 982

[5] Record page 1028

[6] Record Page 1048

[7] Record Page 1021

counsel, he is not subject to further interrogation until counsel is made available unless the accused himself initiated further communications, exchanges or conversations with the police[8]. Although Fairbanks denied that Edwards requested counsel, an interesting comment at the end of his testimony suggests otherwise:

> "A: I told Mr. Edwards that in my opinion it's in his best interest to be honest to his mother and his father as to what he did as opposed to fronting up, you know, a supposed innocence and having them expend resources and money that they may or may not have to hire an attorney. I never told him that he should not hire an attorney. I told him he needs to be truthful with his parents. That was my statement.
>
> Q: Did [the] statement include references to hiring an attorney?
>
> A: I explained to him that I thought it was senseless to hire an attorney under the [guise] that you're innocent when you know in fact that you had committed crimes. Why put your parents through all of that and expend those resources? And be honest with your parents because they're going to find out eventually that you committed a crime[9]."

Interestingly, the *Miranda* Court noted a common interrogation technique utilized by the police requiring the interrogator to suggest that the accused save his family the expense of hiring an attorney when one

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[8] *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981)

[9] Record Pages 972

is requested[10]. No doubt, Fairbanks is familiar with that tactic as evidenced by the above referenced testimony. We will never know what transpired in that interview room because the police failed to hit the record button. We do know that the police created an antagonistic environment and cajoled Edwards into surrendering his constitutional rights by inferring multiple promises regarding the outcome of his arrest if he cooperated. This compelled statement should have been excluded from trial.

The Magistrate Court, in denying the petitioner's claim, suggests he failed to carry the burden of proof rebutting the trial court's presumption of correctness concerning its factual findings. However, we ask this Court take a look at the record as a whole; including the trial cross examination of the detective. In so doing, as outlined above, we clearly see the police failed to honor Edwards' request for counsel and, even more so, referenced the costs his family would incur by getting a lawyer in clear violation of his right to appointed counsel.

OBJECTION TO CLAIM 4: DUE PROCESS VIOLATION

Mr. Edwards's final grounds for habeas relief concerns a due process violation stemming from the state's impermissible arguments at trial. More specifically, the State would vouch for the credibility of its lead detective by referencing his post as a pastor. The Magistrate Court did not believe such comments to be unfair in light of the record for the entire trial. However, the Court fails to note that, not with standing other aspects of the record, 2 jurors still voted to acquit the accused evidencing to some, that

[10] Miranda at 454

reasonable doubt did exist. To simply shun off the petitioner's claims that no one other juror would have sided for him but for the vouching is also speculation. Additionally, should this Court agree that some of the evidence raised within the application should have been excluded, this evaluation must be reconsidered as well.

Respectfully Submitted:

MANASSEH, GILL, KNIPE
& BELANGER, P.L.C.

s/ André Bélanger
ANDRÉ BÉLANGER
Louisiana Bar No. 2679
8075 Jefferson Highway
Baton Rouge, LA 70809
(225) 383-9703 Telephone
(225) 383-9704 Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing *Objections to Magistrate's Report and Recommendation* with the Clerk of Court by using the CM/ECF which will send a notice of electronic filing to opposing counsel in the United States Attorney's Office.

Baton Rouge, Louisiana this 5th day of June, 2018.

s/ André Bélanger
ANDRÉ BÉLANGER

UNITED STATES DISCRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[Filed September 13, 2018]

CIVIL ACTION
NO.: 15-003305-BAJ-RLB

THEDRICK EDWARDS

versus

BURL CAIN, et al.

RULING AND ORDER

Before this Court is the United States Magistrate Judge's **Report and Recommendation (Doc. 16)** pursuant to 28 U.S.C. § 636(b)(1). The Report and Recommendation addresses Petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which seeks to overturn his conviction for five counts of armed robbery, one count of aggravated rape, and two counts of aggravated kidnapping. *(Id.* at p. 2) Petitioner raised the following grounds for relief in his original petition (Doc. 1) and supplemental petition (Doc. 13): (1) violation of the Confrontation Clause; (2) violation of his right to an impartial jury, (3) failure to receive a *Miranda* warning, and (4) violation of due process. The Magistrate judge recommended that all of Petitioner's claims be dismissed with prejudice.

The Report and Recommendation notified the parties that, pursuant to 28 U.S.C. § 636(b)(1), they had fourteen (14) days from the date they received the Report and Recommendation to file written objections

to the proposed findings of fact, conclusions of law, and recommendations therein (Doc. 16 at p. 1). Plaintiff timely filed an objection to the Report and Recommendation, after the Court granted an extension of time to file objections. *(See* Doc. 18; Doc. 19).

Regarding the alleged confrontation clause violation, the Court agrees with the Magistrate Judge that Petitioner's inability to cross examine the individual who analyzed the technician who examined the victim's rape kit failed to establish a Confrontation Clause violation and that, regardless, any violation was harmless because of the many sources of evidence establishing that the victim was raped. Specifically, Petitioner fails to rebut the Magistrate Judge's harmless error analysis. The Court further agrees with the Magistrate Judge's determination that no plea deal had been reached between witness Jacquin James and the prosecutors at the time he testified. (Doc. 16 at pp. 8–9). Petitioner disagrees with the Magistrate Judge's conclusion (Doc. 19 at p. 3); however, the Court agrees that the letter between the prosecutor and the witness's lawyer filed into the record is consistent with his testimony at trial and does not establish a secret agreement to avoid a duty to disclose such a deal to Petitioner. *(See* Doc. 31-1 at p. 1).

Petitioner next objects to the Magistrate Judge's determination that his right to an impartial jury was not violated. Petitioner claims that his *Batson* challenge to the racial composition of the jury should not be dismissed because the State used 70% of its peremptory challenges to exclude African American jurors. Petitioner argues that although the Magistrate Judge noted that although "there is nothing in the record to suggest the reasons for the exclusions were

pre-textual," the Court should allow the *Batson* challenge to proceed because "the . . .data speaks for itself." However, the United States Court of Appeals for the Fifth Circuit has recently reaffirmed the strong deference given to the factual findings of state courts. *See Chamberlin v. Fisher*, 885 F.3d 832, 840 (5th Cir. 2018) (en banc). Petitioner's reliance on "bare statistics" cannot overcome the state court's determination that he failed to establish that any jurors were excluded on the basis of race.

Petitioner claims that the police used trickery to coerce him into a confession and refused to provide him with an attorney. Yet the state trial court found that the officers testified credibly that Petitioner had never requested an attorney after being advised of his rights. The Court agrees with the Magistrate Judge that Petitioner "has not carried his burden to rebut the presumption of correctness of the trial court's factual findings by clear and convincing evidence." (Doc. 16 at p. 17).

Finally, Petitioner has provided no convincing objection to the Magistrate Judge's finding that a few statements by the prosecutor in closing arguments vouching for the character of one witness because he was a chaplain did not amount to a Due Process violation. (Doc. 19 at pp. 10–11). The fact that two jurors voted to acquit does not change the analysis. *(Id.* at p. 11).

Having carefully considered the underlying complaint, the instant motion, and related filings, the Court approves the Magistrate Judge's Report and Recommendation, and hereby adopts its findings of fact, conclusions of law, and recommendation.

Accordingly,

IT IS SO ORDERED that the Magistrate Judge's Report and Recommendation (Doc. 16) is ADOPTED as the Court's opinion herein.

IT IS FURTHER ORDERED that Plaintiffs Petition for Writ of Habeas Corpus (Doe. 1) is DISMISSED WITH PREJUDICE.

Baton Rouge, Louisiana, this 13th day of September, 2018.

/s/ Brian A. Jackson
JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[Filed October 10, 2018]

CIVIL ACTION
NO. 15-CV-305-JJB-RLB

THEDRICK EDWARDS

versus

BURL CAIN, Warden

DEFENDANT'S NOTICE OF APPEAL

NOW INTO COURT comes the defendant, THEDRICK EDWARDS, who respectfully moves this Honorable Court for an Order of Appeal to the Fifth Circuit Court of Appeal, for the United States, returnable on a date to be fixed by this Honorable Court.

Undersigned Counsel submits a Writ of Habeas Corpus was filed on May 14, 2015 and was denied on September 13, 2018. Pursuant to Rule 4 of the Appellate Rules of Appellate Procedure, the petitioner has 30 days from the adverse judgement to file his Notice of Appeal which is timely accomplished by this filing.

Respectfully Submitted:

MANASSEH, GILL, KNIPE &
BÉLANGER, P.L.C.

s/ André Bélanger
ANDRÉ BÉLANGER
Louisiana Bar No. 26797

8075 Jefferson Highway
Baton Rouge, LA 70809
Tel: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

CERTIFICATE OR SERVICE

I HEREBY CERTIFY that, on the 10th day of October, 2018, I electronically filed the foregoing NOTICE OF APPEAL with the Clerk of Court by using the CM/ECF which will send a notice of electronic filing to the United States Attorney's Office.

s/ André Bélanger
ANDRÉ BÉLANGER

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed December 18, 2018]

NO. 18-31095
USDC NO. 15-cv-305

THEDRICK EDWARDS

versus

BURL CAIN, Warden

MOTION FOR CERTIFICATE OF APPEALABILITY FROM THE DENIAL BY THE U.S. DISTRICT COURT OF A WRIT OF HABEAS CORPUS

The petitioner/appellant, Thedrick Edwards moves pursuant to 28 U.S.C. § 2253 and FRAP Rule 22 for a Certificate of Appealability from the final judgment of the United States District Court for the Middle District of Louisiana entered on September 13, 2018, denying his Petition for Writ of Habeas Corpus (R.4).

WHEREFORE, the petitioner prays that a Certificate of Appealability be granted on three federal constitutional issues: violations of the petitioner's confrontation rights; right to an impartial jury and right against self-incrimination. Most of these constitutional violations have multiple errors justifying an appeal. More specifically, Louisiana violated the petitioner's confrontation rights by allowing hearsay testimony regarding a sexual assault examination and by affirming the petitioner's conviction notwithstanding the appearance of an informal plea offer extended

to a material witness; next, Louisiana failed to guarantee the petitioner's right to an impartial jury by affirming the petitioner's conviction despite the appearance of a *Batson* violation and allowing the petitioner to be convicted and sentenced to life imprisonment by a non-unanimous jury; and lastly, Louisiana denied the petitioner due process by admitting the petitioner's inculpatory statement taken in violation of his Miranda safeguards.

s/ Andre Belanger
Andre Belanger
La. Bar #26797
Manasseh, Gill, Knipe & Belanger, P.L.C.
8075 Jefferson Highway
Baton Rouge, LA 70809
Phone: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I have emailed a copy to ADA Stacy Wright.

Baton Rouge, Louisiana, this 20th day of December, 2018.

Respectfully submitted:

s/ Andre Belanger
Andre Belanger
La. Bar #26797
Manasseh, Gill, Knipe & Belanger
8075 Jefferson Highway
Baton Rouge, LA 70809
Phone: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C)

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This document complies with the word limits contained in Fed R. App. 27(d)(2)(A). The Motion and Memorandum combine for 2,077 words. The Petitioner's Motion contains 395 words and the Supporting Memorandum contains 1,682 words. Combined, both documents comply with Fed. R. App. 27(d)(2)(A) which places a 5,200 word limitation on motions filed with this Court.

2. This document complies with the type face and type style requirements contained in Fed. R. App. 32(a)(5) and 32(a)(6). The Petitioner's Motion and Memorandum are typed in Times New Roman 14 point font. This proportionally spaced type face was generated by Microsoft Word version 74.0.7224.5000 (32-bit).

s/ Andre Belanger
Andre Belanger
La. Bar #26797
Manasseh, Gill, Knipe & Belanger
8075 Jefferson Highway
Baton Rouge, LA 70809
Phone: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed December 20, 2018]

NO. 18-31095
USDC NO. 15-cv-305

THEDRICK EDWARDS

versus

BURL CAIN, Warden

MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATE OF APPEALABILITY FROM THE DENIAL BY THE U.S. DISTRICT COURT OF A WRIT OF HABEAS CORPUS

A state prisoner who was denied federal habeas corpus relief must first obtain a certificate of appealability (COA) in order to reverse the district court's decision. 28 U.S.C. 2253(c)(1). However, in seeking the issuance of a COA, the petitioner is not required to show that he would have succeeded on the merits of the appeal. *Miller-El v. Cockrell*, 123 S.Ct. 1029 (2003). Rather, at the COA stage of the proceeding, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude that the issues presented are adequate to deserve encouragement to proceed further. *Rhoades v. Davis*, 852 F.3d. 422 (5th Cir. 2017). Furthermore, this threshold inquiry is not co-extensive with a merits analysis and should be decided without full consideration of the factual or legal bases adduced in support of

the claims. *Id.* As such, a COA may be granted even though every jurist of reason might agree that the petitioner will not prevail after full consideration is given to the merits. *Buck v. Davis*, 137 S.Ct. 759 (2017). As a practical matter, this means that the issuing court cannot first decide the merits of the claim and use that rationale to deny the petitioner's COA. To do so, would place too heavy of a burden on the petitioner. *Id*. In this case, the petitioner raises multiple constitutional claims whose outcomes are debatable by reasonable jurists.

One of the petitioner's claims is that Louisiana deprived him of an impartial jury. This violation is twofold. First, the petitioner can demonstrate an empirical exclusion of African American's from the jury that decided his fate. The Equal Protection clause prohibits a prosecutor from excluding jurors on the basis of their race. *Batson v Kentucky*, 106 S.Ct. 171 (1986). Here, the State excluded African Americans from the jury through its use of cause and peremptory challenges. More specifically, the State was able to exclude ten (10) of eleven (11) African Americans on the venire from the jury. Interestingly, the sole African American empaneled as a juror is the one person who consistently voted to acquit Mr. Edwards. This obvious error is compounded when viewed within the context of the non-unanimous jury requirement noted below. Obviously, since a *Batson* challenge was never raised, a race neutral reason for exclusion was never given. That said, a careful review of the record as it pertains to the voir dire of the African American jurors makes a purely race neutral basis for their exclusion debatable.

Second, the State of Louisiana is allowing the petitioner to be convicted and compelled to serve a life

sentence from a non-unanimous jury verdict of guilt. It is well settled in our national legal tradition that criminal juries require a unanimous decision to convict. Counsel believes it will be undisputed that, as a matter of federal law, unanimity is required for a criminal conviction. *United States v. Gipson*, 553 F.2d 453 (5th Cir. 1977). At the time of Mr. Edwards' trial, Louisiana and Oregon were the only two states conducting criminal jury trials that ran afoul of this tradition. And while the Supreme Court has failed to intervene, any decision to the contrary runs afoul to the jurisprudence on the issue as addressed when Utah was seeking admission into the United States. . *Springville City v. Thomas*, 17 S.Ct. 717 (1897), *Thompson v. Utah*, 18. S.Ct. 620 (1898). Louisiana's non-unanimous verdict rule was able to exist due to the concurring majority opinions in *Johnson v. Louisiana* and *Apodeca v. Oregon*. However, these cases centered upon whether the existence of a minority vote of acquittal constituted reasonable doubt. *Johnson v. Louisiana*, 92 S.Ct. 1620 (1972) and *Apodeca v. Oregon*, 92 S.Ct. 1628 (1972). As we stand today, Louisiana has changed its course and will now require unanimous juries moving forward. But, that is of no moment to the petitioner unless the federal courts intervene. In support for his request for the issuance of a COA, the petitioner notes the Supreme Court's decision in *McDonald v. Chicago*, in which the Justice Alito, in footnote 14, noted that the Bills of Rights are not selectively incorporated to the States with differing standards than those binding upon the federal government. Indeed, he characterized the *Johnson* and *Apodeca* decisions as the "result of an unusual decision among the justices" and did not serve as an endorsement of a two track approach to the incorporation doctrine. *McDonald v. City of Chicago*,

130 S.Ct. 3020 (2010). In other words, if federal jurisprudence and legal tradition require unanimous juries, shouldn't the incorporation of the Bill of Rights into state jurisprudence via the 14th Amendment require the same? Certainly, if Justice Alito noted the issue in *McDonald*, all should agree that it is at least debatable whether Mr. Edwards should spend the remaining days of his life in jail because of a non-unanimous verdict.

A second claim by the petitioner is that his confrontation rights were violated at trial. Again, this issue is twofold. First, the trial court allowed hearsay testimony regarding a sexual assault kit that was used to buttress the credibility of its alleged victim. The Supreme Court's holding in *Bullcoming v. New Mexico* requires the prosecution to provide testimony of the forensic examiner actually performing the examination in order for the accused to fully confront the witnesses against him. *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011). In this case, the supervisor of the examiner performing the rape kit testified as to that examiner's forensic findings, interview with the victim and demeanor of the victim. Since the supervisor lacked first-hand knowledge of the examination, such testimony was hearsay. Edwards' inability to cross examine the actual examiner is a debatable Confrontation Clause violation mandating a new trial.

Second, the conviction rests in part, upon alleged accomplice testimony that could not be fully impeached because the State failed to disclose an informal plea deal. The prosecution presented testimony from an alleged accomplice to the robberies and kidnapping. At trial that witness purportedly testified because he wanted to put the matter behind him. At the time, there were no formal deals. The witness was

represented by an esteemed lawyer and, after testifying at another related trial, pled to a felony pursuant to the provisions of Article 893 allowing the matter to be expunged in due course. Whenever the criminal consequences of a witness is determined by the subjective assessment of their testimony by the State, disclosure is warranted. In this case, it did not occur. Indeed, afterwards, a letter from trial counsel to the State requesting an upfront dismissal suggests that prior plea discussions had taken place though nothing was formalized. As such, it is debatable that a Confrontation violation occurred when the full expectation of gain sought by a witness was not fully disclosed by the State as impeachment evidence.

The third claim raised by the petitioner is that Louisiana violated his right against self -incrimination by admitting his statement to detectives into evidence contrary to the *Miranda* decision's safeguards. In this case, Mr. Edwards denied criminal culpability on two occasions before succumbing to coercive police techniques during an unrecorded forty-five (45) minute interrogation by two officers. The lead detective freely admits his willingness to lie and manipulate a suspect in an effort to obtain an admission. Additionally, the defendant testified at trial that he requested an attorney that was never provided and that he confessed to facts provided to him by the police as part of his cooperation that was to result in leniency. The police acknowledge telling the defendant that it was senseless for him to hire an attorney. Needless to say, an attorney was not provided. The police use of coercive interrogation techniques prevented a free and voluntary waiver of the defendant's Fifth Amendment rights. The failure to provide an attorney, despite the defendant's request, is a direct violation of the defendant's Sixth Amendment rights. Taken together, it

appears the defendant's confession was impermissibly obtained and should have been excluded from evidence at trial.

In closing, we simply ask this Court to allow Mr. Edwards' case to proceed further by granting the petitioner's request for the issuance of a Certificate of Appealability for the constitutional claims raised in is habeas petition. This request is not frivolous. Indeed, far from it as Mr. Edwards' case goes to the crux of what constitutes a fair trial. When all of these claims merge together we see two strands of injustice taking place. First, Mr. Edwards was denied an impartial jury by having his conviction rendered by a non-unanimous jury empaneled at the empirical exclusion of African Americans. The second strand of injustice concerns the interplay on the quality of evidence admitted in the form of concealed informal plea bargains, hearsay forensic testimony, and involuntary statements. As noted above, at this stage, the thresh-old question is whether reasonable jurists could conclude that the issues presented deserve further proceedings-that's all.

The issues presented in this request are of such magnitude, that we feel confident this Court will allow the case to proceed to an appeal on the merits.

Respectfully submitted:

s/ Andre Belanger
Andre Belanger
La. Bar #26797
Manasseh, Gill, Knipe
& Belanger, P.L.C.
8075 Jefferson Highway
Baton Rouge, LA 70809

Phone: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I have emailed a copy to ADA Stacy Wright.

Baton Rouge, Louisiana, this 20th day of December, 2018.

Respectfully submitted:

s/ Andre Belanger
Andre Belanger
La. Bar #26797
Manasseh, Gill, Knipe &
Belanger, P.L.C.
8075 Jefferson Highway
Baton Rouge, LA 70809
Phone: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C)

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This document complies with the word limits contained in Fed R. App. 27(d)(2)(A). The Motion and Memorandum combine for 2,077 words. The Petitioner's Motion contains 395 words and the Supporting Memorandum contains 1,682 words. Combined, both documents comply with Fed. R. App. 27(d)(2)(A) which places a 5,200 word limitation on motions filed with this Court.

2. This document complies with the type face and type style requirements contained in Fed. R. App. 32(a)(5) and 32(a)(6). The Petitioner's Motion and Memorandum are typed in Times New Roman 14 point font. This proportionally spaced type face was generated by Microsoft Word version 74.0.7224.5000 (32-bit).

s/ Andre Belanger
Andre Belanger
La. Bar #26797
Manasseh, Gill, Knipe & Belanger
8075 Jefferson Highway
Baton Rouge, LA 70809
Phone: (225) 383-9703
Fax: (225) 383-9704
Email: andre@manassehandgill.com
Attorney for Thedrick Edwards

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-31095

THEDRICK EDWARDS,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Middle District of Louisiana

ORDER

Thedrick Edwards, Louisiana prisoner # 533192, filed a 28 U.S.C. § 2254 petition challenging his convictions and sentences on five counts of armed robbery, two counts of aggravated kidnapping, and one count of aggravated rape. The district court denied the petition on the merits. Through counsel, Edwards now seeks a certificate of appealability (COA) to appeal that dismissal. He requests a COA as to his constitutional claims based on a *Batson* violation, his conviction by a non-unanimous jury, a Confrontation Clause violation, the non-disclosure of a witness's plea discussions, and an involuntary confession.

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional

right." 28 U.S.C. § 2253(c)(2). Where a district court has denied a claim on the merits, a petitioner must show "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Edwards fails to comply with this court's COA briefing requirements, *see McGowen v. Thaler*, 675 F.3d 482, 497 (5th Cir. 2012); *Hughes v. Dretke*, 412 F.3d 582, 597 (5th Cir. 2005); *Matchett v. Dretke*, 380 F.3d 844, 848 (5th Cir. 2004), and fails to make the requisite showing for issuance of a COA, *see Miller-El*, 537 U.S. at 327, 336. Accordingly, his motion for a COA is DENIED.

/s/ James C. Ho
JAMES C. HO
UNITED STATES CIRCUIT JUDGE