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No. \_\_\_\_\_

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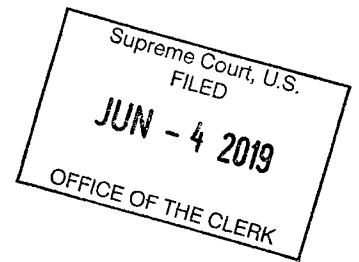
IN THE

SUPREME COURT OF THE UNITED STATES

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STATE OF LOUISIANA -- RESPONDENT(S)

VS.

MARLON R. CARTER, PETITIONER, PRO SE

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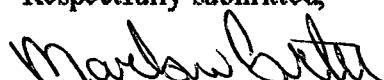
ON PETITION FOR WRIT OF CERTIORARI  
TO: THE LOUISIANA SUPREME COURT  
COURT NUMBER: 19-K-0105

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PETITION FOR WRIT OF CERTIORARI

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Respectfully submitted,



Marlon R. Carter #321909  
Camp-D, Falcon Unit Two  
La. State Penitentiary  
Angola, LA 70712

**QUESTION(S) PRESENTED**

- I. Whether the State of Louisiana misapplied Jackson v. Virginia sufficiency of evidence test when holding, to the contrary, the evidence was sufficient to find Marlon Carter guilty of constructive possession of firearm by a conviction felon?
- II. Whether the State courts' decisions went behind the scope of Jackson v. Virginia when there was absolutely no evidence connecting Marlon Carter to the firearm found near the area he was arrested?

**PARTIES TO THE PROCEEDING**

The parties to the proceeding before the Louisiana Supreme Court is Petitioner, Marlon R. Carter, and respondent, State of Louisiana. Before the Court now are Marlon R. Carter, and respondent, State of Louisiana, Jeff Landry, Atty. Gen, State of Louisiana. There are no parties to this action within the scope of Supreme Court Rule 29.1.

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**OPINIONS BELOW**

Marlon Carter, was convicted by a jury in the 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, Louisiana. There is no associated report. The opinion of the Louisiana First Circuit Court of Appeal is reported at *State v Carter*, 2018-KA-0078, \_\_\_ So.2d \_\_\_ (La.App. 1<sup>st</sup> Cir. 12/17/18). See Appendix A. The opinion of the Louisiana Supreme Court is reported at *State v. Carter*, \_\_\_ So.2d \_\_\_ (La. 4/22/19). See Appendix B.

*State v. Carter v. State*, No 18-KA-0078 (under review by the Court pursuant to the decision in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Certiorari in the Supreme Court Docket No. 18-K-0105. On April 22, 2019, Carter received the Louisiana State Supreme Court decision one “Word Denial.” See (Appendix “B”)

**JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Article VI, Clause 2 under the authority of the United States, shall be the supreme Law of the Land. It states:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Sixth Amendment of the United States Constitution jury trials for crimes, and procedural rights. It states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment of the United States Constitution deprive any person of life, liberty, or property, without due process of law. It states:

All person who are naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

### **STATEMENT OF THE CASE**

**Marlon Romaine Carter**, was charged by Bill of Information with possession of a firearm by a convicted felon, La. R.S.14:95.1 after jury trial **Carter**, was found guilty as charged. On July 29, 2016, he pled not guilty and on March 7, 2017, trial by jury commenced. The following day, the jury returned a guilty verdict. On August 31, 2017, Carter was adjudicated a third felony offender and sentence to life in prison without benefit of parole, probation, or suspension of sentence.

On November 6, 2017, a motion for appeal was granted. The original brief of Carter was filed April 3, 2018, and the appellee's brief filed May 14, 2018. The First Circuit affirmed the conviction, habitual offender adjudication, and sentence on December 17, 2018, in State v. Carter, 2018-0078 (La. App. 1 Cir. 12/17/18); 2018 La. App. Unpub. LEXIS 375.

On January 16, 2019, Carter's appellate counsel sought writ of certiorari in the Louisiana Supreme Court in case No. 2019-K-0105. On April 22, 2019, the Louisiana State Supreme Court denied writ.

### **FACTS**

On July 23, 2014, Marlon Romaine Carter was riding his bike when two Baton Rouge Police officers elected to stop him for not having headlights or taillights. R.P. 330, 331. Officer Brandon Blackwell stepped out of his police car and ordered Carter to stop. R.P. 332. Carter rode onto the sidewalk, dropped the bike in a parking lot, and ran down an alley. R.P. 332. Officer Jory Guidry chased Carter on foot while Blackwell drove around the corner in an attempt to cut him off at the opposite end of the alley. R.P. 331, 333, 338.

Officer Guidry pursued Carter, who climbed over a fence and into an enclosed alleyway between two buildings, where he was forced to stop. R.P. 334, 333, 334. Guidry testified that as he climbed over the fence, he heard the sound of metal hitting metal. R.P. 334. He also saw the illumination of a cell phone being thrown onto the metal roof of one of the buildings. R.P. 338. Guidry detained Carter but because the officer did not have a key to the fence, uncuffed him to allow him to climb back over.

Carter attempted to climb back over the fence, but was unable to. R.P. 340. Guidry searched the area and located the cell phone and then found a gun stuck in mud near an air conditioning unit within a foot or two from where Carter had been standing. R.P. 340, 377. A plastic bag that appeared to have been chewed was located on Carter's person. R.P. 342.

The officers obtained ladders from a bakery next door to assist Carter in getting back over the fence. R.P. 340. At that time, Carter became less alert to the extent the EMS was called to assess him and bring him to the hospital. R.P. 358.

Officer Guidry's dash cam recorded the event. It did not show Carter with a weapon, nor did it reveal him throwing a gun onto the roof. R.P. 338. Further, no prints of value were found on the gun, and a DNA swab taken from the gun was never tested. R.P. 389, 391.

Amanda Moore-Collins of the State Police was stipulated as an expert in the identification and comparison of fingerprints. R.P. 397. She testified that she compared Carter's prints to certified records from a 2007 conviction for possession of a schedule II drug and determined he was the same person convicted of the prior offense. R.P. 405.

#### REASON THE COURT SHOULD GRANT WRIT

Writ of certiorari should be granted in this matter because there was never an iota of

direct or circumstantial evidence to convict Marlon Carter of constructive possession of a firearm. Yet, the State trial jury found Carter guilty of evidence more favorable to the accused than the prosecution, contrary to the principle of *Jackson v. Virginia*.

There are two questions raised in this petition: (1), did the Louisiana supreme court violate Marlon Carter's constitutional right to a fair trial when it upheld the circuit court's opinion denying Carter on the evidence being insufficient to convict him of constructive possession of the firearm by a convicted felon? (2), did the Louisiana supreme court, by upholding the lower court decision, went behind the scope of *Jackson v. Virginia* when there was absolutely no evidence connecting Carter to the gun found near the area he was arrested, to uphold Marlon Carter's conviction and sentence? That is, did the State of Louisiana produced sufficient evidence to convict Carter of constructive possession of the firearm by a convicted felon? And if not, did the State of Louisiana go behind the scope of *Jackson v. Virginia* to convict Carter of the crime when there was absolutely no evidence connecting Carter to the firearm found near the area he was arrested?

**I. THE EVIDENCE WAS INSUFFICIENT TO CONVICT HIM OF CONSTRUCTIVE POSSESSION OF THE FIREARM BY A CONVICTED FELON?**

**II. THE STATE COURTS' DECISIONS TO UPHOLD THE JURY'S VERDICT WENT BEYOND THE SCOPE OF JACKSON V. VIRGINIA WHEN THERE WAS ABSOLUTELY NO EVIDENCE CONNECTING CARTER TO THE FIREARM FOUND NEAR THE AREA HE WAS ARRESTED?**

**ARGUMENT**

This Court has made it clear in *Jackson v. Virginia* that a lower court must determine whether the evidence, viewed in the light most favorable to the prosecution, "was sufficient to

convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

The Court has held when reviewing a claim of insufficiency of evidence a lower court must determine whether the evidence, viewed in the light most favorable to the prosecution, “was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt.”

Carter was convicted pursuant to Louisiana Revised Statutes 14:95.1(A), which makes it illegal for a person who has been convicted of certain felonies to possess a firearm. To prove a violation of this statute, the State have to prove: (1) Carter had a prior conviction as a felon; and (2) that he was found in possession of a firearm. Louisiana “does not make ‘actual’ possession of necessary element of the offense or specifically require that the defendant have the firearm on his person to be in violation. See *State v. Carter*, 2018 KA 0078, p. 9, (La. App. 4<sup>th</sup> Cir. 12/17/18); La. R.S. 14:95.1.

According to the State appellate court, “constructive possession satisfies the possessory element of the offense” if the defendant has dominion and control over the evidence in question. *Id.*, p. 9. (Quoting) (*State v. Day*, 410 So.2d 741, 743 (La. 1982) and (*State v. Plain*, 99-1112 (La. App. 1<sup>st</sup> Cir. 2/18/00), 752 So.2d 337, 340.

In order to qualify, a defendant must have “awareness or knowledge that the firearm is present and the general intent to possess it.” This general intent goes to the circumstances within the “ordinary course of human experience” and “must have adverted to the prescribed consequences as reasonably certain to result from his act or failure to act”, according to the Louisiana appellate court interpretation of La. R.S. 14:10(2). In Louisiana, intent is a question of

facts that can be inferred from the circumstances of the transaction.

**THE STATE APPELLATE COURT FACTUAL FINDINGS:**

According to the Louisiana appellate court: Officer Guidry and Officer Blackwell were traversing the area on foot when they observed Carter take off running and jumped over the fence with a cell phone illuminating in his hand. The cell phone slid down to the ground and Officer Guidry “heard an object hit the metal roof” that was “between the two buildings surrounding the alleyway.” Officer Guidry heard the object make a “metal-on-metal” impact. The gun was later found after Officer Guidry instructed Carter to jump back over the fence. In Officer Guidry’s description of the body cam footage, the State appellate court quoted Officer Guidry testifying that Carter was “*halfway through climbing his body language changes as you see me illuminate my flashlight[,] and he's mostly over the fence[,] and he goes back onto the side that I am, as opposed to coming over.*” It was at this time Officer Guidry stated he found the gun where Carter was standing” – within Carter’s personal space.” “[A] foot or two feet away from where [the defendant] was standing[.]” The gun was found in an upright position, “like it had fallen from something and stuck into the mud” because it was damp that night. Both of the above officers testified “that no one else besides the defendant and the officers were within the immediate vicinity of the evidence.”

**THE STATE COURT FINDINGS:**

The State appellate court found that the jury inferred constructive possession of the firearm and could have reasonably inferred that the gun fell or was dropped or thrown from the defendant’s person as he jumped the fence, consistent with the noise heard by Officer Guidry. The First Circuit also found that every reasonable hypothesis of innocence had been excluded.

**APPLICABLE LAW:**

The Due Process Clause of the 14<sup>th</sup> Amendment to the United States Constitution and Article 1, § 2 of the Louisiana Constitution require the court to determine whether the evidence is minimally sufficient. To determine whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The reviewing court must consider the record as a whole, and if a rational trier of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. *State v. Mussall*, 523 So.2d 1305 (La. 1988).

When circumstantial evidence forms the basis of the conviction, the evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438; *State v. Patorno*, 2001-2585 (La. App. 1<sup>st</sup>. Cir. 6/21/02), 822 So.2d 141, 144.

To uphold a conviction for possession of a firearm by a convicted felon, pursuant to La. R.S. 14:95.1, the State is required to prove that Carter had previously been convicted of one of the enumerated felonies, that he was in possession of a firearm, and that ten years had not elapsed since the completion of the sentence, parole, probation, or suspension of sentence from the prior conviction.

A person is in constructive possession of a firearm if the firearm is subject to his dominion and control. *State v. Johnson*, 03-1228, p. 5 (La. 4/14/04), 870 So.2d 995, 998. "Mere presence" is not proof in itself that a defendant exercised dominion and control over the evidence seized and therefore not sufficient to prove he had it in his constructive possession. *Johnson*, 03-1228 at p. 6, 870 So.2d at 999.

The State must prove that the subject knew the firearm was in his presence and that he had the general intent to possess the weapon. *Johnson*, 03-1228 at p. 5, 870 So.2d at 998. Guilty knowledge may be inferred from the circumstances and proved by direct or circumstantial evidence. *Id.* Whether the proof is sufficient to establish possession depends on the specific facts of the case. *State v. Harris*, 94-0970, pp. 3-4 (La. 128.94), 647 So.2d 337, 338-39; *State v. Bell*, 566 So.2d 959, 959-60 (La. 1990).

The video shows Carter riding his bike, running, and climbing over a fence, and no weapon, nor bulge of a weapon, is observed. Further, the video does not reveal Carter grabbing at his waist or anywhere else on his body where a gun may have been concealed in order to attempt to keep a gun in place while he performed these actions.

Officer Guidry testified he did not see Carter at any time in possession of a gun, including when he was running and climbing the fence, nor did he see at any time a bulging object that could have been a gun. R.P. 364, 365. Additionally, he did not see Carter throw a gun on top of the roof and did not observe a gun fall from the roof, which was his theory as to how the gun ended up stuck in the mud on the ground—that Carter had the gun concealed on his person when he fled his bike for the alley and climbed the fence. R.P. 364, 365. This theory fails to explain the logistics of how this possibly could have been accomplished.

Officer Guidry testified that he, himself, had made it over the fence with a firearm on his person with no problem. R.P. 360. However, Officer Guidry had a holster, which he referred to as a secured, with multiple security measures built into it, including a strap that prevented his firearm from falling out of the holster and a button that flapped over the gun to keep it securely in place. R.P. 361.

Officer Guidry testified that the gun found in the alley was a large silver .38 caliber weapon. R.P. 364. According to Officer Guidry, Carter did not have a holster of any type, much less a multiple security one. R.P. 366. When Carter hopped the fence, which was between six and seven feet high, he had his cell phone in one hand and his other hand was empty. R.P. 366.

It is difficult to imagine how Carter, with no holster or belt, could have secured a large .38 caliber firearm on his person while hopping a six to seven foot fence with one hand occupied with a cell phone.

While the First Circuit found that the jury could have surmised the sound Guidry heard of an object hitting the roof was the gun, Officer Guidry only actually observed the cell phone being thrown, hitting the roof, and sliding down, possibly striking the roof several times before it fell completely to the ground, which would account for the sound he heard.

Officer Guidry testified no one else was in the alley, but that the area itself was a high foot-traffic area both day and night. R.P. 362. The immediate area houses St. Vincent De Paul Mission, which is the parking lot where Carter left his bike, as well as the Bishop Ott Homeless Shelter, with a vacant lot next door, and a nearby overpass which homeless men reside underneath. R.P. 267, 362. Guidry testified that several people were outside when the stop was initiated but fled in the opposite direction, supporting that the area is heavily traveled, even at

night when this incident occurred. The State argued in closing that the area is industrial with heavy foot traffic and a constant flow of people. R.P. 420. Testimony was also presented that a Greyhound station was located half a mile away, which also suggests more transient individuals frequent the area. R.P. 362. All of this reinforces that any number of people could have previously gone into that alley and discarded the gun for any number of reasons.

While Guidry testified that a gun could not have been thrown completely over the building from the other side and ended up in the alley, at not time did he discount the theory that someone could have recently hopped the fence prior to this incident and discarded the gun.

Although Carter was in the alley at the same time as the gun, his presence alone in the area where the gun was located was not sufficient to establish constructive possession. It is not an area that he alone had access to. He was never observed with the gun, no bulge indicating a gun was observed on his person, and the only evidence presented to try to prove possession was his proximity to the gun and a sound that was just as likely attributable to his cell phone falling down the roof, an action that was actually observed.

There was no evidence presented that Carter knew the gun was on the ground in the mud. Likewise, there were no photographs presented to show how and where the gun was actually found to corroborate that the gun would have been in a position that Carter would have had to have known the gun was located there. Guidry also testified that the area was so dark he had to use his flashlight to find the gun himself, lending credence to the argument that Carter could have been standing near the discarded weapon without knowing of its presence.

The State failed to present sufficient evidence that Carter had actual or constructive possession of the gun. The State also failed to negate at least one reasonable hypothesis of

innocence in this wholly circumstantial case—that in this industrial area of heavy foot traffic and transient downtrodden, someone else discarded the weapon in the alleyway of the mission prior to the current incident.

Consequently, the Louisiana courts err in finding that the State proved constructive possession and negated every reasonable hypothesis of innocence. Accordingly, this Court should now reverse the conviction and sentence.

### CONCLUSION

Carter assert the record clearly demonstrate the evidence was insufficient to find him guilty of constructive possession of a firearm, therefore the United States Constitution is firm and does not uphold a jury guilty verdict on the lacking of evidence.

Carter faith, and liberty now set in the hands of the Supreme Court Justices who has demonstrated an incorruptible character, a firm judicial temperament, and the rare quality to know when to temper justice with mercy and the intellectual capacity to protect and illuminate the Constitution. Carter's conviction was obtained through circumstantial evidence known to be lacking in form and construction. Just because a firearm was found near where a person was arrested does not constructively put him in possession. More has to happen, such as evidence that reflects he knew it was there, or that it was impossible for him not to have known it was there. The state courts failed to reviewed the claims under the correct standard, Carter conviction should be overturned because it was obtained in violation of the U.S. Constitution.

Moreover, Carter's petition is entitled to a liberal reading in conformance with principles applicable in pro se pleadings. (See State ex rel. Egana v State 00-2351 (La. 9/22/00); (pro se filing are subject to less stringent standards than formal pleadings filed by lawyers ");( Haines v Kerner 404 U.S. 92 S.Ct 594, 596, 30 L.E.d 2d 652 (1972)).

**The petition for a writ of certiorari should be granted.**

Respectfully submitted,



Marlon R. Carter

Date: July 9, 2019