No. 20-1777

IN THE SUPREME COURT OF THE UNITED STATES

WILLARD HALL,

Petitioner,

Versus

EDWARD DUSTIN BICKHAM, Warden,
B.B. "Sixty" Rayburn Correctional Center,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED SATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Willard Hall #595605
Rayburn Correctional Center
27268 Hwy 21 N.
Angie, La 70426

(Pro-Se Litigant)

QUESTIONS PRESENTED

(1) Whether the United States Fifth Circuit Court of Appeals and United States District Court for the Eastern District of Louisiana properly concluded the petitioner was not deprived of his right to a fair and impartial trial due to his jury not representing a fair cross-section of his community.

(2) Whether the United States Fifth Circuit Court of Appeals and United States District Court for the Eastern District of Louisiana properly concluded the petitioner received effective assistance of counsel by counsel's actions of (a) failing to procure a pre-trial hearing on probable cause and (b) failing to challenge the composition of the jury.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

INDEX TO APPENDICES

"F" Fifth Circuit Court of Appeals denial of COA dated 04/09/21 under Case No.: 20-30058.

TABLE OF AUTHORITIES CITED

CASES

STATE CASES
None

FEDERAL CASES

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Willard Hall, respectfully prays that this Court issue a Writ of Certiorari to review the judgment of the United States Fifth Circuit Court of Appeals below.

OPINIONS BELOW

The United States Court of Appeal for the Fifth Circuit denied the petitioner's request for Certificate of Appealability on April 9, 2021 under Case No. 20-30058, *Hall v. Bickham*. It appears at *Appendix F* attached to the petition. It has been designated for publishing, but not yet reported.

The opinion of the United States Fifth Circuit Court of Appeals appears at *Appendix F* attached to petition. It has not been designated for publication.

The opinion of the United States District Court, Eastern District of Louisiana, appears at *Appendix E* attached to the petition. It has been designated for publication and reported at *Hall v. Tanner*, 2019 WL 6895569 (12/18/19).

JURISDICTION

The date on which the United States Court of Appeals, Fifth Circuit, decided petitioner's case was April 9, 2021. No petition for rehearing was timely filed in instant case.

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

- *28 U.S.C. § 1254(1)*
- *28 U.S.C. §1257(a).*
- ***U.S. Const., Amend. VI***
  In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense.
- ***U.S. Const., Amend. XIV***
  Section 1. All persons born or 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.
- ***28 U.S.C. § 2253***

  (a) In a habeas corpus proceeding . . . before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceedings is held.

  (b) There shall be no right of appeal from a final order in proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

  (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may

not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;

- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).
- ***Louisiana Constitution Article I, § 2, 13, and 16.***

STATEMENT OF THE CASE

On January 10, 2011, the Petitioner was charged by way of Bill of Information in Washington Parish with two counts of attempted first degree murder of a police officer. He entered pleas of not guilty on February 14, 2011. On March 12 and 13, 2012, Petitioner was tried before a jury and was found guilty of the lesser charges of aggravated battery of Deputy Evans and attempted manslaughter of Deputy Lee. On May 7, 2012, the trial court denied Petitioner's motions for new trial and for post-verdict judgment of acquittal. After waiver of legal delays, the court sentenced Petitioner to serve concurrent sentences of eight years on count one and fifteen years on count two. The court also denied Petitioner's motion to reconsider the sentences.

On direct appeal to the Louisiana First Circuit Court of Appeal, Petitioner's counsel asserted that the evidence was insufficient to support the verdicts and that the sentences were excessive. On June 11, 2013, the Louisiana First Circuit affirmed Petitioner's convictions and sentences finding the claims meritless.

The Louisiana Supreme Court denied Petitioner's related writ application without stated reasons on February 7, 2014. Petitioner's convictions were final under federal law ninety (90) days later, on May 8, 2014, when he did not file a writ application with the United States Supreme Court.

On July 8, 2014, Petitioner's counsel filed an application for post-conviction relief with the state trial court which asserted two grounds for relief: (1) Petitioner was denied effective assistance of counsel, because counsel failed to consult with him, obtain his input, or use peremptory challenges to place men on the jury, and (2) the jury was comprised of elven women in violation of the cross-section requirement, which systematically excluded men. On August 11,

2014, the state trial court advised Petitioner and his retained counsel that the application was deficient and would not be considered by the court until corrected. Neither the attorney nor Petitioner responded to the letter.

More than two-years and seven months later, on March 24, 2017, Petitioner newly retained counsel filed a motion requesting the court address the duplicate-copy of the deficient 2014 application for post-conviction attached to the motion. On May 12, 2017, the state trial court denied the motion and the application finding that the 2014 writ application was never corrected and the copy provided was still uncorrected and untimely.

Despite the accuracy of that ruling, on October 16, 2017, the Louisiana First Circuit granted Petitioner's pro se writ application with instructions for the state trial court to consider the new application for post-conviction relief attached to his writ application and which was construed by the circuit court as an attempt to correct the timely filed 2014 application for post-conviction relief.

Apparently unsure of how to execute the remand instructions, the state trial court reiterated Petitioner's failure to timely correct the 2014 application and despite this, reviewed the claims presented in the original 2014 application finding them to be meritless. The court further noted that newly asserted issues in the corrected 2017 application were procedurally barred under *La. C. Cr.P. art. 930.4* and untimely under *La. C.Cr.P. art. 930.8*. Out of an abundance of caution, however, the state trial court also considered those claims which were delineated as follows: (1) the state trial court exceeded its jurisdiction when it refused to hold a preliminary examination to determine probable cause for his arrest and the illegal search and seizure or hold an evidentiary hearing on the admissibility of the police report; (2) The petitioner received ineffective assistance of counsel when counsel's failure to challenge the search and seizure created a conflict of interest,

and (3) appellate counsel was ineffective when he failed to assert on direct appeal that there was a jurisdictional defect, a Fourth Amendment violation, and the ineffective assistance of trial counsel. After review, the state trial court found these claims conclusory and meritless, and also noted that Petitioner was not entitled under state law to a writ of habeas corpus.

The Louisiana First Circuit denied Petitioner's related writ application without stated reasons on April 9, 2018. On April 22, 2019, the Louisiana Supreme Court denied Petitioner's subsequent writ application holding that Petitioner failed to show ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), and as to the other claims, failed to satisfy his burden of proof under *La. Code Crim. P. art. 930.2.*

Petitioner filed a writ for habeas corpus relief, and the magistrate judge recommended that it be denied with prejudice. On December 18, 2019, the District Court Judge adopted the magistrate's findings and denied and dismissed with prejudice. Petitioner filed an appeal into the United States Court of Appeal for the Fifth Circuit, which was denied on Petitioner's request for Certificate of Appealability on April 9, 2021. Petitioner is filing a Petition for Writ of Certiorari into this Honorable Court seeking for a COA in the Fifth Circuit in order for the claims to be reviewed on their merits.

A BRIEF OVERVIEW OF THE FACTS

The record reflects that, around midnight on November 12, 2010, Sergeant Randy Revere with the Washington Parish Sheriff's Office received a call from Hall's then-wife Deborah, because Hall had locked her out of their house for the second night and refused to let her back inside. Upon their arrival at the scene, Sergeant Roy Lee and Deputy Timothy Evans met with Mrs. Hall, and she asked them to assist her in getting inside the house. Deputy Evans slightly

opened the storm door to knock on the wooden front door. He announced his presence and that he was with the Washington Parish Sheriff's Office. After the first or second knock, Hall called out, "I don't give a f*** who you are, get off my property." Hall then opened the wooden door, but not the storm door and was standing there naked holding a gun at his side. Deputy Evans told Hall at least twice to drop his weapon, and he did not comply. The officers collectively ordered Hall four or five times to drop his weapon and he did not comply. Sergeant Lee then told Hall that if he did not drop his weapon, he would be tasered. Hall, who appeared agitated and irate, cursed and told the officers to get off of his property.

Sergeant Lee thought Hall was preparing to shoot, because he appeared jittery. With both doors open, Sergeant Lee deployed his taser. Hall, however, closed the wooden door which broke the leads to the taser. When the storm door closed, Deputy Evans heard a loud bang, saw the glass in the storm door shatter, and felt a burn in his right thigh. He discovered that a round came through his pants made a rash on his skin and nicked his magazine pouch. Approximately thirty-five seconds later, Sergeant Lee heard a second shot and realized the defendant shot again. Almost immediately after hearing the second shot, Sergeant Lee's middle finger on his right hand was grazed by a bullet and went completely numb. Both officers retreated to their units to take cover and call for additional units.

In the meantime, Hall called 9-1-1 from inside the house and reported that the officers shot him with a taser. He demanded that state troopers report to the scene. Hall also spoke with Sergeant Revere over the phone, and Sergeant Revere convinced him to go outside without his firearm to talk to Sergeant Lee and Deputy Evans. When Detective Glen McClendon reported to the scene to investigate, Hall was in the officers' custody.

REASON FOR GRANTING THIS PETITION

Issue One

Whether the United States Fifth Circuit Court of Appeals and United States District Court for the Eastern District of Louisiana properly concluded the petitioner was not deprived of his right to a fair and impartial trial due to his jury not representing a fair cross-section of his community.

The United States Supreme Court accepts the fair cross-section requirement as a fundamental to the jury trial guaranteed by the Sixth Amendment and is convinced that the requirement has solid foundation. The purpose of the jury is to guard against the exercise of arbitrary power to make available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps over conditioned or biased response of a judge, *Duncan v. Louisiana,* 391 U.S. 145, 88 S.Ct. 1444. The jury of 11 women violates the Due Process and Equal Protection Clauses of the *Fifth*, *Sixth,* and *Fourteenth* Amendments of the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 (1984).

LAW AND ARGUMENT

A person who happens to be a lawyer and is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The *Sixth* Amendment recognizes the right to the assistance of counsel, because it envisions counsels playing a vote that is crucial to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. The *Gideon v. Wainwright* court has recognized that the *Sixth* Amendment right to counsel exists and is needed in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a trial largely

through the several provisions of the *Sixth* Amendment including, the counsel clause.

The Louisiana Supreme Court's per curiam opinion was on unreasonable application of the United States Supreme Court's precedents. A state court decision is "contrary to" federal law established by the Supreme Court "if the state court arrives at a conclusion opposite to that reached by the U.S. Supreme Court on a question of law or if the state court decides a case differently than the U.S. Supreme Court has on a set of materially indistinguishable facts". *Williams v. Taylor*, 529 U.S. 362, ---, 120 S.Ct. 1495, 1523, 146 L.Ed. 2d 389 (2000). The state courts rejections of the defendant's *Sixth* and *Fourteenth* Amendments argument failed to extend a clearly established legal principle to a new context in a way that is objectively unreasonable. The Supreme Court of the United States has held that "the deprivation of the right to the assistance of counsel in a criminal trial proceeding...shall warrant reversal." *Strickland v. Washington*, 466 U.S. 686-697-698, 104 S.Ct. 2052 (1984) according to *United States v. Cronic*, 766 U.S. 648, 104 S.Ct. 2039, 2044 n.11, 80 L.Ed. 2d 657 (1984) *Evitts v. Lucey*, 372 U.S. 335, 9 L.Ed. 2d 799, 83 S.Ct. 792, 93 ALR 2d 733 (1963) held that the *Sixth* Amendment right to counsel was "so fundamental and essential to a fair trial, and so to due process of law, it is made obligatory upon the states by the *Fourteenth* Amendment." *Id.* at 340, 9 L.Ed. 2d 799, 83 S.Ct. 792, 23 Ohio Ops 2d 258, 93 ALR 2d 733 (1963); quoting *Betts v. Brady*, 316 U.S. 455, 465, 86 L.Ed. 1595, 62 S.Ct. 1252 (1942); *Johnson v. Zerbst*, 304 U.S. 458, 82 L.Ed. 1461, 58 S.Ct. 1019, 146 ALR 357 (1938); *Powell v. Alabama*, 287 U.S. 45, 77 L.Ed. 158, 53 S.Ct. 55, 84 ALR 527 (1932).

The Courts prior cases are instructive. Both in the cause of exercising supervisory powers over trials in federal courts and in the constitutional context, the court has unambiguously declared that the American concept of the jury trial contemplates a jury drawn from a fair cross section of the community. A unanimous court stated in *Smith v. Texas*, 311 U.S. 128, 130, 85 L.Ed. 84, 61

S.Ct. 164 (1940) that, "it is part of the established tradition on the use of juries as instruments of public justice that the jury be a body truly representative of the community". Additionally, I was deprived of the constitutional right to a fair and impartial trial because the trial court erroneously impaneled a total of eleven (11) women who were sworn in to serve as jurors. The jury impaneled by the trial court in this case was not a cross-section as it systematically excluded men. A criminal defendant has a *Sixth* Amendment right to a fair cross-section on his jury. *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed. 690 (1975).

The United States Supreme Court accepts the fair cross-section requirement as fundamental to the jury trial guaranteed by the *Sixth* Amendment and is convinced that the requirement has solid foundation. The purpose of a jury is to guard against the exercise of arbitrary power to make available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps over conditioned or biased response of a judge. *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444.

Habeas petitioner carried his burden to establish his claim that a witness's false testimony at his trial violated his *Fourteenth* Amendment right to due process, because he made the "reasonable likelihood" showing required. *Haskell v. Superintendent Greene Sci*, 866 F.3d 139, 3rd Cir. (2017).

In *Lambert v. Blackwell*, 387 F.3d 210 (3rd Cir. 2004), the Court noted that when "the prosecution's case includes perjured testimony and the prosecution knew, or should have known, of the perjury . . . [or] when the government, although not soliciting false evidence, allows it to go uncorrected when it appears at trial, . . . the conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."

The U.S. Supreme Court has long counseled that "a deliberate deception of court and jury

by the presentation of testimony known to be perjured . . . is inconsistent with the rudimentary demands of justice." *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935). Put differently, "it is a well-established rule that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair." *U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985). In *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710 (1993), itself the Court recognized "the writ of habeas corpus has historically been regarded as an extraordinary remedy, a bulwark against convictions that violate fundamental fairness." *507 U.S. at 633* (internal quotation marks omitted). Thus it is difficult to see how concerns of finality would trump rudimentary demands of justice and fundamental fairness when those are precisely the values the writ of habeas corpus is intended to protect.

Second, when the state knowingly presents perjured testimony, we are not presented with a "good-faith attempt to honor constitutional rights," *Id.* at 635, but instead with a bad-faith effort to deprive the defendant of his right to due process and obtain a conviction through deceit. After all, courts apply *Napue's* "strict standard of materiality" to perjured-testimony cases "not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process" by the state itself. *U.S. v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392.

Third, there is little chance that excluding perjured testimony claims from *Brecht* analysis will "degrade the prominence of the trial itself." *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710 (1993). A defendant will usually be unable to litigate his claims of perjured testimony at "the trial itself" because the trial is where the perjury occurs. And it is possible, even likely, that petitioners will not know of the prosecution's use of perjured testimony until after the opportunity for direct review has passed.

Finally, the *First* and *Sixth* Circuits note that, without Brecht review, perjured testimony faces a lower bar than suppression claims. *Gilday v. Callahan*, 59 F.3d 257 (3rd Cir. 1995); *U.S. v. Clay*, 720 F.3d 1021 (3rd Cir. 2013). But to us that seems to be a feature, not a bug. If suppression of evidence (and thereby, the truth) is a serious constitutional error, its fabrication is a greater error still. That is why the Supreme Court set out differing materiality standards for the three types of error that implicate Brady: (1) the government's knowing presentation of or failure to correct false testimony, (2) its failure to provide requested exculpatory evidence, and (3) its failure to volunteer exculpatory evidence never requested. See *Agurs*, 427 {866 F.3d 152} U.S. at 103-06. Presenting false testimony cuts to the core of a defendant's right to due process. It thus makes sense that "the materiality standard for false testimony is lower, more favorable to the defendant, and hostile to the prosecution as compared to the standard for a general Brady withholding violation." *Clay*, 720 F.3d at 1026.

At root is how can a defendant possibly enjoy his right to a fair trial when the state is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness's supposed honesty in its closing? As the Supreme Court recited in Napue, it is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. 360 U.S. at 269-70 (quoting *People v. Savvides*, 1 N.Y. 2d 554, 136 N.E. 2d 853, 854-55, 154 N.Y. S.2d 885 (N.Y. 1956)) (internal ellipses omitted).

For these reasons, we hold that the actual-prejudice standard of *Brecht* does not apply to claims on habeas that the state has knowingly presented or knowingly failed to correct perjured testimony. A reasonable likelihood that the perjured testimony affected the judgment of the jury is

all that is required.

Haskell has demonstrated that there is a reasonable likelihood that Blue's false testimony could have affected the judgment of the jury. Hence he is entitled to relief. "He need not go on to show that this error had a substantial and injurious effect or influence in determining the jury's verdict because, when the state has corrupted the truth-seeking function of the trial by knowingly presenting or failing to correct perjured testimony, the threat to a defendant's right to due process is at its apex and the state's interests are at their nadir. Accordingly, we grant Haskell's habeas petition and remand for further proceedings consistent with this opinion." *Haskell*, supra.

The Petitioner believes he had ineffective assistance of counsel, because he believes he should have had a pre-trial hearing. The Petitioner believes he and counsel could have proven they had no probable cause for the arrest. Petitioner also believes he and counsel could have brought additional information of Mens Rea that reads you have to show and prove intent before you can charge them with attempt. In the case of attempted murder, you have to prove they sat and waited or stalked someone and tried to kill them and failed. So I should not have been facing attempted first degree murder when I went to trial. And I told him I wanted men on the jury and I end up with 11 women jury. He keeps telling me "I believe we will be alright." I believe if I had men on the jury they would have known that a bullet can not stop and change direction in the course of its flight. In court I tried to get my lawyer to ask how they could get grazed on their right side when they testified they were standing to the left side of the door in a bladed position and their right side turned away from the door. They were not in the path of the bullets, the bullets past in front of them from their left to their right. There is no way they could have been grazed by a bullet.

In their testimony Deputy Timothy Evans claims he was grazed on his right thigh when he heard the report of the first shot. Deputy Roy Lee claims he was grazed by a bullet when he heard

the report of the second shot. I tried to get my lawyer to ask how this was possible and he did not. When I was being tased my gun went off two times, and one of the bullets went into the front bumper of Deborah's truck that was parked straight in front of the door. That makes only one bullet that was not accounted for. This too proves they are lying and my lawyer would not question them about any of these lies, and I tried to get him to ask questions so the women jury could see the lies and understand and he did not ask anything. I was in my house and had pushed my door to close it and when I did see Roy Lee shot me with the taser. I was removing myself from the situation, because I have had 3 heart attacks and I know they like to tase people, you see it in the newspaper all the time where they have tased someone. And when I opened the door, Deputy Roy Lee already had the taser pointed at the door. From the testimony of Deborah Hall, she had them expecting trouble. From the testimony of the two deputies they could have told her to go back to the motel and come back in the day time or talk to a lawyer, but they did not do that. And from Deborah's testimony she told them "When he comes to the door it wasn't going to be pretty" and they still came pounding on my door when they should have told her to leave. The reason she thought things may not be pretty being she came by the night before at 12:30 she was drunk and pilled up, and woke me up so she could get in, and curse me for everything she could think of. And she knew I would think it was her again, but what she done was set the two deputies up. If I had known, they were going to tell the lies they did I would have brought the door with the bullet holes and a laser pointer to shine through the holes and prove they could not be grazed by a bullet. I talked with my lawyer about 4 times before court for just a few minutes each time, and every time we talked he would tell me everything is fine, I had done nothing wrong and it was the two deputies that was in the wrong they had no lawful business at my house and no cause to arrest me. I will be 68 years old in June and I have been here 8 years, because of the lies the two deputies

told in court. And when I filed my case in the Easter District Court the assistant district attorney Matthew Caplan falsified the response to my petition and said, The Facts: a brief overview. The petitioner shot two police officers who were responding to a domestic incident. Now I have the assistant D.A. telling lies to the court. And as you can see the testimony of Deputy Timothy Evans, and Deputy Roy Lee the two arresting officers and Randy Revene the dispatcher, that it was a call to assist not a domestic incident. I believe this is why Lewis V. Murray the assistant D.A. at the time wanted the women jury, so they would not understand the testimony and would not know when they were telling lies. Lewis Murray refers to the call as a domestic call a lot of times in the case, and my lawyer never objects to it being used. The D.A. knows the two deputies are wrong and doing everything they can to keep me in here even if it means them telling lies too. I'm not a prosecuting attorney but I know with the bullet in the bumper of the truck and only two shots went off both deputies could not be grazed by bullets as they claim. Lewis Murray knew it too, and he knowingly used the perjured testimony and failed to correct their testimony and even vouched for their veracity in closing argument. I believe from the questions and answers from the transcript I sent with this you can plainly see the lies. And as you can see they did not go to the hospital or take me to the hospital. And I believe they are required to take anyone to the hospital that has been tased.

TRANSCRIPTS

On direct-examination by assistant district attorney Lewis V. Murray and criminal defense attorney Roy K. Burns of the arresting officers, Timothy Evans and Roy Lee and the dispatcher Randy Revene.

By Mr. Murray questions to Randy Revene Transcript Page 179-180, 20-22, 29-30, 32-1

Q. Did you first get a call from a Deborah Hall do you remember that?

A. Yes, Sir.

Q. Was it a 911 call or was it just a call?

A. From Mrs. Hall, it was just a regular landline call

Q. Okay. There was no – she didn't – no 911 type of emergency?

A. No, Sir.

On cross-examination by Roy Burns Transcript page 190, 23-26

Q. So in terms of a crime being committed, you did not dispatch anyone, any place, due to a crime being committed, is that correct?

A. That's correct.

On direct examination of Timothy Evans by Lewis Murray Tr. p. 218, 30-32, P. 219, 1-19, 26-29, p. 220, 31-32

Q. Did you and he both meet with her before doing anything?

A. Yes.

Q. And did she describe to you what was she wanted or what was her problem?

A. Yes. Yes. She explained to us that for whatever reason he was not allowing her to gain entry into the dwelling and requested that we assist her with that.

Q. And what were you and Deputy Lee going to do?

Did you all talk about what you were going to do?

A. Yes. In fashion, the strong majority of time, we just talk to both parties involved. And if there's any kind of friction or something, we do our best to have one go separate ways until the next day or a later time when all the friction is settled.

Q. In this situation, would you – or could you legally or would you have forced him to allow her to come into the house?

A. No.

Q. Would you have forced him to do anything?

A. No.

Q. What time of day or night did you get there?

A. Shortly after midnight I want to say. Right at midnight.

Q. So, how long did Mr. Hall – did he respond to you when you first knocked at all?

P. 221, 1-9, p. 233, 6-12; p. 224, 23-28; p. 225, 7-12

A. It was I don't exactly recall if it was the first or the second knock, but he did respond and telling us some profanities involved, do you want me to say specifically what was said or?

Q. Yes.

A. Okay. We announced ourselves "Sheriff's department" and through the door, closed door, we heard Mr. Hall say through the door "I don't give a fuck who you are get off my property".

Q. Now after he came to the door and said that what happen next?

A. He open.

Q. Did you talk with him some more?

A. No. From what I recall, there were no words after that. But the door open, he stood there, a pistol at his side.

Q. And did you once he opened door, did you announce who you were again?

A. Yes Sheriff's department, drop the pistol drop the pistol, Sheriff's department

Q. Did you tell him anything other than that?

A. There was no time

Q. Okay. What's the next thing that I guess, let me ask you this; if you know, where was Sergeant Lee?

A. He was directly what we call "bladed" in other words poisoned beside me in a safe manner out of the actual opening of the door.

P. 225, 25-28; P. 226, 11-15, 18-25; p. 229, 28-30; p. 230, 9-14; p. 231, 15-17

Q. How long was this confrontation, I guess, if I can call it that?

A. Matter of seconds. Matter of seconds.

Happen very quickly

Q. Oka. All night. So what happened after Deputy Lee said what he said: If you don't put the

weapon down, I'm going to tase you, or however he said it?

A. Mr. Hall did not comply with any of our demands or requests. That's when Sergeant Lee engaged his Taser

Q. Was the storm door open or closed at this time?

A. It was open

Q. Okay. How was it open? Was it I think some of those house some sort of little latch that will prop them all the way open and then some are spring loaded I guess.

A. I forget, it happened so quickly, I forget the details on how it was open; but I know it was open.

Q. So after the door slammed, you – all made a move to which direction?

A. Even further to the left even further to the left

Q. All right, what happen next?

A. The screen door closed all the way from when it was slightly ajar, heard a loud bang, the glass shattered, fell in toward us, at which point I felt a slight burn on my right thigh just below my magazine pouch

Q. Did that break the skin as it went through your pants?

A. It just made like a rash, like a minor graze

P. 231, 18-19

Q. It didn't draw blood?

A. No, Sir, it didn't draw blood.

p. 240, 24-27, 31-32; p. 241, 21-24, 27-32; p. 242, 1-2, 28-32

On cross-examination of Timothy Evans by Roy Burns

Q. Now by your own testimony, you say that you go to those things, you were not going to force him to do anything

A. Correct.

Q. And in fact, by your statement and your policy, is that there are things that could have been done the next day such as get some court order. Is that correct?

A. Yes.

Q. When you went to his house, you were not going to force him to do anything?

A. Correct.

Q. The man asked you to leave, didn't he? I don't want you sir – he might have caused. Is profanity a crime?

A. No

Q. Okay. An the real – then the next question is, by what authority did you remain on his premises when you weren't going to force him to do anything, by what authority did you remain there and open his door?

A. It's a good faith intention as law enforcement officials, a good faith intention to try resolve it versus hostility while were there.

Q. All right. And isn't it not the fact that you are the one that opened the storm door and held it open in order for it to be tased through, because this man had

p. 242, 12; p. 243, 1-4; p. 245, 26-32; p. 246, 1-17

his hand, by your testimony, one of his hands was on the gun dropped down toward the floor?

A. Uh-huh (affirmative response)

Q. And then the other one was on the door to shut it?

A. Correct.

Q. Now, at the exact moment that you commanded him to put his gun down, what crime did he commit?

A. Noncompliance with us for our safety and everybody's safety involved

Q. Okay. The answer is: He didn't commit a crime.

He had not committed a crime. Is that correct?

A. Other than disturbing the peace or something to that effect. I would have to say no.

Q. Okay. And the – you say the disturbing the peace is he wouldn't let his wife in nor would he want you on his property but his offense then now is disturbing the peace. But you can't articulate other than disturbing the peace a reason to have other then he didn't comply. So my idea is – do you believe that people have civil rights

A. Absolutely

Q. – to bear arms?

A. Yes.

Q. – to be secure in their own home?

A. Without a doubt

Q. – and not have to talk to policeman?

A. And not have to talk t policeman?

p. 246, 18-21; p. 247, 7-20; p. 248, 8-17, 32; p. 249, 1

Q. Right. Let's go the simplest thing. A person has Miranda rights when they commit a crime not to speak to you?

A. uh-huh (affirmative response)

Q. Don't you think you enforced you will upon him, sir when you told him he had to come out of the house and talk to you. Is that not a form of imposing your will on a person that night? You are going to make him comply with that?

A. It was more of a suggestion than an order. Can we talk to you for a minute, Mr. Hall and try to get this resolved, you know perhaps there is something we can come to terms with to where you can get along in a situation. Something along those lines.

Q. So in terms of law enforcement you weren't protecting, you were being a social worker?

A. We form many facets

Q. Okay. Now, the next question, then, would lead me to believe is, if he had not fired his weapon and he tased, what is it that you would then have done? Would you have gone in the house and stood him up and say, were sorry we tased you, but we're now going to force you to talk to us, or force his wife into the door? What would your explanation have been to him had he not fired and he was tased? What explanation would you have said?

A. He did not comply with our demand

Q. And he hadn't committed a crime and you tased him and your explanation is we're – we're not going

p. 249, 2-5; p. 252, 27-32; p. 256, 27-31

to force you to do anything, but we are going to force you to put the weapon down with the Taser, correct?

A. It's law on the force continuum

Q. So you would think that a person who has been tased has much coordination?

A. No.

Q. They don't have any coordination: is that correct?

A. As a rule, correct.

Q. Apparently, there are two holes that go through the door and two rounds that were fired. Do you know which one of them struck your leg and your duty belt?

A. No. Sir.

On direct examination with Lewis Murray on pages 230, 9-14 and page 231, 15-17, 18-19 you will see he said he felt it on the first report of the gun.

P. 261, 11-17; p. 263, 16-19; p. 262, 6-12, 31-32; p. 266, 1-5, 26-29

On direct examination of Roy Lee by Lewis Murray

Q. Did you an he talk with Mrs. Hall?

A. Yes, Sir, we did.

Q. After talking with her, what did you all do?

A. We went to the door, we advised her that we would speak to him for her, that if he refused there was nothing we could do at that time of night, she'd have to consult an attorney

Q. Okay. So did Mr. Hall come to the door immediately?

A. Within about approximately two minutes it seemed like, yes, sir, as I recall.

Q. All right. Did you – what was Mr. Hall saying or doing when you all were addressing him there after the door had opened?

A. Basically, Sir just cursing us out and telling us to get the hell off his property. He didn't want Mrs. Hall on the property. He was very irate, very agitated

Q. Did you make a decision what to do?

A. Yes. Sir. At that time I decided to go ahead and display the Taser. I fired it and almost at the immediate moment that I fired it, Mr. Hall slammed the door.

Q. Which door are you talking about?

A. The wooden door

Q. After where were you and Deputy Evans when you heard the report and the glass breaking?

A. We were still standing approximately the same

p. 267, 9-19, 27-28; p. 268, 2-10; p. 271, 22-27

position we were, bladed off to the left side.

Q. Did you – during the cause of this, did you feel anything strike your body?

A. Yes, sir, I did. I had transitioned my Taser into my left hand and was going to draw for my service weapon and my middle finger on my hand just went totally numb

Q. When did you feel that? I mean, you – you said you transitioned –

A. Almost immediately on hearing the second report.

All of this went down so instantaneously, it was all at once.

Q. Which side do you carry your service revolver?

A. On my right.

Q. Okay.

A. – when I felt it. My original though was that I had hit my thumb on my holster, or my weapon or my finger on my holster or my weapon or something and then it just sent a radiating numbness.

Q. In terms of the first report and the second report, as you have described them, then – which report did you feel the numbness?

A. The second one.

Q. You were not – there was no penetrating wounds to you?

A. No, sir, it was grazed

Q. And that was on the second, I guess simultaneous with the second report?

A. Right. At the same time.

P. 278, 17-19; p. 280, 5-16; p. 276, 16-18

Cross-examination of Roy Lee by Roy Burns

Q. All right. Now, one of the rights that he has is to have a firearm?

A. This is correct.

Q. Okay. And from the standpoint of you didn't have, in terms of her conversation with her, he was not accused of a crime of domestic abuse batter, it's the only thing is he locked her out?

A. At that time, correct.

Q. All right. And so, form the standpoint of the instances of when you arrest somebody, he was not suspected of a crime?

A. Not at that time, so sir.

Q. And he was not committing a crime in your presence?

A. No. Sir.

Q. All right. He didn't appear drunk – did he appear drunk?

A. No. sir.

p. 195, 7-13; p. 196, 23-29; p. 200, 14-18, 27-30

On direct-examination of Deborah Hall by Lewis Murray

Q. What did you ask them to do?

A. I asked them to help me get in my house, and I told them that when he come to the door it wasn't going to be pretty

Q. And by that did you mean that he was going to be angry?

A. Angry and drunk

Q. Now, you said you – you all were standing to one side of the door. Which side?

A. My truck was parked right in front of the door

Q. Uh-huh (affirmative response)

A. – over to the side just a little bit and we were standing at the left hand front of the truck

Q. Okay. What's the next thing that happened after they told him four times, I believe you said to put the gun down?

A. They told him that they were fixing to tase him

Q. Do you remember if that statement was made more then once?

A. I don't think so. I think they just told him one time.

p. 206, 14-23, 27-32; p. 210, 11-22

Q. Now, from the standpoint of the gun. When you say you saw the gun or the police saw the gun, where did you see the gun?

A. It was in his right hand

Q. And where was it pointed?

A. When I saw it, it was point – he had it down beside him, pointing to the floor.

Q. Down on the floor: is that correct?

A. He was just holding it: he wasn't point it anywhere.

Q. All right. And at the time he was tased, he was not pointing that gun at anyone: is that correct?

A. No, Sir.

Q. That's correct, my answer is: He was not pointing the gun?

A. Yes, that's correct.

Q. And from my standpoint is that the bullet came out underneath, there's a picture of it, the bullets came out underneath the standard height doorknob: is that correct?

A. Around that area, yeah.

Q. Okay. And form the standpoint, did you see anybody conduct any investigation whatsoever to determine a flight path of a bullet?

A. Yes. They were looking – after he was gone and all was over with. They were talking about how the shot came through the door and went in the front of my truck.

p. 210, 23-26' p. 212, 27-30; p. 213, 3-9

Q. Okay. So –

A. Went in the bumper.

Q. Where?

A. Went through the front bumper

Q. So straight out. Would this be a straight out shot from the door?

A. I would think so. I don't really know. But I mean, that's what I would assume.

Q. It's not lined up further down the house?

A. No, it's like a two-place parkway, where we parked at. And I always pulled up in front of the door.

Q. So you were more or less directly in front of the door?

A. Yes, sir.

Issue Two

Whether the United States Fifth Circuit Court of Appeals and United States District Court for the Eastern District of Louisiana properly concluded the petitioner received effective assistance of counsel by counsel's actions of (a) failing to procure a pre-trial hearing on probable cause and (b) failing to challenge the composition of the jury.

LAW AND ARGUMENT

It was deprived of my *Sixth* and *Fourteenth* Amendment to the United States Constitution and Louisiana Constitution *Article I, § 2, 13* and *16* Right to the Assistance of Counsel and a Fair and Impartial Trial, when trial counsel failed to conduct a procedural Pre-Trail Preliminary Evidentiary Hearing on Probable Cause and Suppression of Evidence, no evidence subjects to adversarial testing was presented to the trial court for resolution of the issues defined in advance of the trial proceeding. And I had 11 women jury that was not a representative of a fair cross-section of the community and counsel systematically excluded men from the jury selection process was not a strategic and tactical choice and violates the Due Process and Equal Protection Clauses of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 685 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 (1984) and, *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed. 690 (1975).

He could have brought additional information of Mens Rea that say you have to show and prove intent before you can charge them with attempt. In the case of attempted murder, you have to prove they sat and waited or stalked someone and tried to kill them and fail. So I should not have been facing attempted first degree murder when I went to court. And I believe if we have had a Pre-Trial Hearing and two of the witnesses for the State told the same story they told in court, and if my lawyer would have asked the questions I tried to get him to ask in court we could have proven they perjured themselves and I never would have gone to court. But when we were in court

and they were being question on the witness stand he would not ask the questions I asked him to ask them. We could have proven it there in court if he had asked the questions. And perjury can be proven now in the transcript of two of the States' witnesses if I could have my day in court.

CONCLUSION

In retrospect of all presented in this matter, the petitioner states that a Writ of Certiorari should be granted in this matter.

Respectfully Submitted,

Willard Hall

Willard Hall #595605
Rayburn Correctional Center
27268 Highway 21, North
Angie, Louisiana, 70426-3030