No 20-5023

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CARTER VINCENT ANDERSON – PETITIONER

vs.

DARREL VANNOY, WARDEN -- RESPONDENT(S)

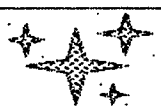
ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

CARTER VINCENT ANDERSON #418030
CAMP C BEAR 1
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

Prepared By:

	CAMP C – LITIGATION TEAM
	DR. ERIC M. DENET, PH.D., TH.D., DIV.D., C.ED.D. #380958 CAMP C WOLF-2 CERTIFIED PARALEGAL / OFFENDER COUNSEL III

QUESTION(S) PRESENTED

Whether the District Court and Court of Appeal erred in review of claim presented which clearly show ineffective assistance of counsel on both trial and appellate counsels?

Was there a *Batson* violation which was unchallenged by trial counsel?

Did appellate counsel failure to bring a *Batson* challenge on direct appeal violate Petitioner's right to effective assistance of counsel?

Whether the District Court and Court of Appeal erred in failing to recognize Petitioner's rights were violated when the confession was not suppressed?

Is there prosecutorial misconduct resulting from "alternative facts" offered by the prosecutor which were never shown by evidence?

Was there a violation of Petitioner's rights when the prosecutor failed to preserve evidence and also elicit testimony about the missing evidence?

Did the District Court and Court of Appeal err in failing to hold an evidentiary hearing in order to have the taking of testimony and gaining further evidence in support of his claims?

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Carter Anderson #418030
Camp C Bear 1
Louisiana State Prison
Angola, Louisiana 70712

Darrel Vannoy, Warden
Administration Building
Louisiana State Prison
Angola, Louisiana 70712

Warren Montgomery, District Attorney
701 N. Columbia Street
Covington, Louisiana 70433

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

[X] reported at **Anderson v. Vannoy, Warden, US Fifth Circuit Court of Appeals No. 19-30397**; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix "C" to the petition and is

[X] reported at **Anderson v. Vannoy, Warden, USDC No. 18-7977**; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix "D" to the petition and is

[X] reported at **State ex rel. Anderson v. State, 249 So.3d 822 (La. 8/3/18)**; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Louisiana First Circuit Court of Appeal appears at Appendix "D" to the petition and is

[X] reported at **State v. Anderson, 2017 WL 6603954 (La. App. 1st Cir. 8/21/17)**; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was **April 14, 2020**.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

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

[X] For cases from **state courts:**

The date on which the highest state court decided my case was **August 3, 2018**. A copy of that decision appears at Appendix "A".

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution

Sixth Amendment to the United States Constitution

Eighth Amendment to the United States Constitution

Fourteenth Amendment to the United States Constitution

STATEMENT OF THE CASE

Course of Proceedings

Anderson was charged by bill of information with one count of armed robbery and one count of being a felon in possession of a firearm. He entered *not guilty* pleas to both. On November 15, 2012, Anderson was found *guilty* as charged on both counts. On February 4, 2013, he was sentenced to concurrent terms of 60 years and 10 years at hard labor. On April 16, 2013, he was adjudicated a third felony offender and re-sentenced to life imprisonment at hard labor without the possibility of parole, probation, or suspension of sentence.

Anderson timely appealed his convictions and sentences without success. He also launched a timely, yet unsuccessful collateral attack on his convictions and sentences. Anderson also filed a Motion to Correct an Illegal Habitual Offender Sentence which was ultimately denied by the Louisiana Supreme Court.

On August 20, 2018, Anderson filed a timely petition for writ of habeas corpus in the Eastern District of Louisiana. On May 10, 2019, the district court dismissed Anderson's petition with prejudice and did not issue a certificate of appealibility. He then sought COA from to the United States Court of Appeal for the Fifth Circuit. On April 14, 2020, the Court denied Anderson's COA and the district court's denial of an evidentiary hearing was affirmed.

Petitioner Carter Anderson now seeks Writ of Certiorari to this Honorable United States Supreme Court.

Facts of the Offense

Larry Bennett ("Mr. Bennett") was robbed of his vehicle after he was startled awake in a Wal-Mart parking lot. In the course of the robbery, which happened in the middle of the night, Mr. Bennett was struck with a weapon and forced to cover his head with a blanket to prevent him from identifying his attacker.

Investigator's tracked Mr. Bennett's cell-phone to a home where Anderson was staying with his girlfriend and her relatives. The police initially believed Vincent Navarre, the boyfriend of the relative of Anderson's girlfriend, was the perpetrator of this crime. Navarre, however, was eliminated as a suspect without any investigation because a police officer went to high school with him. After Navarre was eliminated, Anderson became the primary suspect.

John Binder ("Binder") testified for the State and said he and his sister were leaving Wal-Mart when he observed glass on the ground and "a short black man, standing with a car door open. And there was an older looking man sitting in the driver seal of the car." Binder said he "could clearly see because there's a light pole nearly." Binder described the perpetrator as "maybe five-five. Kind of on the shorter side for a male." He described the victim as being "around five nine or five 10." Although Binder claimed to have saw everything clearly with the aid of the lighting in the parking lot, he also admitted he could not identify the black male who robbed Mr. Bennett.

According to Detective Robert Chadwick, Vincent Navarre was not really a suspect. He told the jury the prime suspect was "Ms. Laura Bolden's boyfriend ... Carter Anderson." Det. Chadwick also admitted the police lost many items of evidence.

Detective Daniel Suzeneaux admitted the investigation was sloppy and that the polce failed to properly collect evidence. In fact, the police failed to preserve most of the alleged evidence referred to at Anderson's trial; moreover, the police did not even try to conduct any type of identification procedure with Mr. Bennett.

Accordingly, Anderson is entitled to have this Certiorari granted.

REASONS FOR GRANTING THE PETITION

LAW AND ARGUMENT

Claim No. 1: The trial court erred when it denied Anderson's motion to suppress statements. The statements were used in Anderson's trial and rendered it fundamentally unfair in violation of the Fifth, Sixth, and Fourteenth Amendment to the United States Constitution.

The Court of Appeals for the Fifth Circuit has said that the "Fifth Amendment provides that no person 'shall be compelled in any criminal case to be a witness against himself.'" [1] The Fifth Circuit has also said that the privilege against self-incrimination also applies to state prisoners. Pointing to the United States Supreme Court jurisprudence, the Fifth Circuit has held that states are precluded from "securing criminal conviction resulting from coercive police conduct."

The district court improperly denied Anderson's motion to suppress his statement. Anderson's trial counsel argued that the detectives investigating the robbery used several threatening and coercive tactics and caused Anderson to make an incriminating statement. What makes this bad is that there is not any evidence to support the false confession wrangled from Anderson. The photographs taken by the police when they executed their search warrant was lost. The alleged traffic ticket, which supposedly connected Anderson to the vehicle a gun was founed, was also lost.

The detectives in this case repeatedly gave Anderson false and misleading information to convince him that an armed robbery conviction was inevitable. The worst part, however, is that the detectives told Anderson they would pursue charges against his girlfriend, Lauren

1 *Self v. Collins*, 973 F.2d 1198, 1205 (C.A. 5 Tex. 1992)

Bolden, if he did not tell them what they wanted to hear. Not stopping there, the detectives went on to tell him that they would also take his girlfriend's child away. Seeing no way out of the situation, Anderson not only answered the detectives' questions as best as he could, he also confessed to a crime he did not commit. The *confession*, however, is not supported by any evidence presented to the jury. The State further failed to produce any evidence that connects Anderson to the robbery or the weapon that was found. It is obvious that Anderson gave a false confession to appease the detectives.

Accordingly, Anderson's conviction and sentence for both offenses should be reversed and set aside because the district court committed reversible error when it denied his motion to suppress.

It is undeniable, what happened to Mr. Bennett was unfortunate and horrible; however, officers of the law are not permitted to resort to the unlawful methods they employed when forcing a false *confession* from Anderson. Apparently, the detectives were more concerned with getting a suspect than with how they got a suspect. In total, the investigation was deplorable. Many pieces of evidence was lost, and a lot of mistakes were made; nevertheless, these detectives claimed that their manipulative and coercive ways were justified because Anderson eventually incriminated himself.

Neither Mr. Bennett or Binder could identify Anderson. There is no DNA evidence that links Anderson to the robbery; moreover, there were several people who had access to the vehicle where the gun suspected to have been used in the robbery was recovered. Still, on the uncorroborated word of one police officer, the primary suspect was cleared and Anderson became the *perpetrator*. Thus, Anderson requests that the Court, at the very least, hold an

evidentiary hearing to help decide if his conviction for armed robbery and for possession of a firearm are the direct results of the police's use of coercion, threats and promises to get him to incriminate himself in this offense. Given the totality of the circumstances, Anderson requests that his conviction be reversed.[2]

Before the trial court could consider admitting what purposes to be a confession, the court must be satisfied that the statement was given freely, voluntarily, and not under any form of duress, intimidation, menaces, threats, inducements or promises.[3] When a defendant desires to make a statement during custodial interrogation, the State must prove that the accused was advised of his or her ***Miranda*** rights and *voluntarily* waived those rights in order to establish the admissibility of a statement.[4]

Not only must the State show that the defendant was advised of his rights, but that the defendant was responsive and aware of that was happening; however, when the evidence shows that the statement was the product of fear, duress, intimidation, threats or promises, a trial court is constitutionally compelled to strike the statement and prohibit the jury from hearing the contents thereof.

Because there was so many obstacles in the investigation, the trial court should have granted Anderson's motion to suppress immediately after hearing the audiotape of Anderson being threatened by the detectives. Items were allegedly photographed, but the photographs were conveniently lost. The contents of the vehicle was searched, but the actual owners of these

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2 See generally, ***State v. West***, 408 So.2d 1302, 1308 (La. 1982).

3 See ***State v. Labastrie***, 96-2003 (La. App. 4th Cir. 11/19/97), 702 So.2d 1194, *writ denied*, 98-0250 (La. 6/26/98), 719 So.2d 1048.

4 See ***Miranda v. Arizona***, 340 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

items remain a mystery to this day. There were a number of people who may have had access to the vehicle – not just Anderson. In essence, access to this vehicle was not limited to Anderson or Bolden.

Threats were lodged against Anderson's girlfriend while he was in the interrogation room. For Anderson, this is when he emotionally collapsed under the weight of realizing that his girlfriend could also be falsely accused of this crime. He wept and the thought of his girlfriend being marched away to jail while the State took custody of their child was too much for him to handle.

The detectives told him how they found his fingerprints in Mr. Bennett's car; however, Anderson's fingerprints were not found in his car. Anderson was told that the eyewitnesses selected his picture during a photographic lineup – another lie. In fact, the eyewitness, Binder, told detectives that the perpetrator had his hair in dreadlocks, but Anderson's booking photo showed that he did not have his hair in dreadlocks. Anderson knew all of this was not true, but telling the truth did not matter to these detectives. It did not matter because Anderson was simply trying to guarantee his family's safety. These detectives had the audacity to tell Anderson that they would help his girlfriend, knowing that they were intending to fully prosecute her for this offense. The detectives' method of interrogation was devised solely to get Anderson to incriminate himself.

This entire investigation was constitutionally defective. The trial court erred in finding that Anderson's statement was inadmissible in light of every deficiency listed above. Thus, Anderson requests that his conviction and sentence be reversed on the grounds that the evidence used against him should have been suppressed and declared constitutionally

inadmissible. Anderson was convicted because of his criminal past, not because there was admissible evidence linking him to the robbery perpetrated against Mr. Bennett.

According to the Court of Appeals, Fifth Circuit, the United States Supreme Court has long established the test to determine voluntariness:

> Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically, the use of his confession offends due process.[5]

The trial court did not conduct this view during the suppressing hearing. As a result, an evidentiary hearing, at the very least must be ordered to determine if the procedural safeguards established in ***Miranda v. Arizona***, the number have been contravened.

Claim No. 2: Anderson's trial was rendered fundamentally unfair in violation of the Fifth, Sixth, and Fourteenths to the United States Constitution.

The United States Supreme Court has "consistently and repeatedly reaffirmed that racial discrimination by the State in jury selection offends the Equal Protection Clause." [6] The Supreme Court also said that a State "denies a black defendant equal protection of the laws when it puts him on trial before a jury from which members of his race have been purposefully excluded." [7] Our system of justice affords every criminal defendant "the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria." [8] Because of equal

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5 ***Self v. Collins***, *supra*, (quoting) ***Schneckloth v. Bustamonte***, 412 U.S. 218, 225-26, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854 (1973).

6 ***Miller-El v. Dretke***, 545 U.S. 231, 125 S.Ct. 2317, 2319, 162 L.Ed.2d 196 (quoting ***Georgia v. McCollum***, 505 U.S. 42, 44, 112 S.Ct. 2348, 120 L.Ed.2d 33.

7 ***Batson v. Kentucky***, 476 U.S. 79, 85, 106 S.Ct. 1712, 1716, 90 L.Ed.2d 69.

8 ***Id.***, 476 U.S., at 86-87; see also ***Martin v. Texas***, 325 U.S. 398, 403, 65 S.Ct. 1276, 1279, 89 L.Ed. 1692

protection, every defendant has the guarantee "that the State will not exclude members of his race from the jury venire on account of race, or on the false assumption that members of his race group are not qualified to serve as jurors." [9] In the process of choosing a jury, racial discrimination not only injuries "the accused whose life or liberty" is to be decided; it also affects the juror whose competence to serve was not based "on an assessment of individual qualifications and ability" to consider the evidence presented at trial impartially.[10]

Discriminatory jury selection cause damage to more than a criminal defendant and the juror who has been dismissed because of their race. It affects the entire community and "undermine[s] public confidence in the fairness of our system of justice.[11] In Anderson's case, the State peremptorily challenged and excluded one-hundred percent of eligible blacks from the jury panel.

(A). The State purposefully excluded all blacks from the jury contrary to the Supreme Court's ruling in ***Batson v. Kentucky***.

In the very first panel, the State used its peremptory challenged to exclude every African-American prospective juror from the venire. The State removed Cheryl Ziegler, Jo Torregano, and Katherine Liebert. Anderson's trial counsel promptly objected and asked for "a race neutral reason for [the] exclusion of each of the African American jurors." The State asked the trial court if it believed that the Defense had made a prima facie case of discrimination. The

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(1945).

9 *Id.*, 476 U.S., at 86; see also *Norris v. Alabama*, 294 U.S. 587, 55 S.Ct. 579, 584, 79 L.Ed. 1074 (1935); *Neal v. Delaware*, 13 Otto 370, 397, 103 U.S. 370, 397, 26 L.Ed. 567 (1881).

10 *Id.*, 476 U.S., at 87; see also *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 223-24, 66 S.Ct. 984, 987-88, 90 L.Ed. 1181 (1946).

11 *Id.*, 476 U.S., at 87; see also *Ballard v. United States*, 329 U.S. 187, 195, 67 S.Ct. 261, 265, 91 L.Ed. 181 (1946); *McCray v. New York*, 461 U.S. 961, 968, 103 S.Ct. 2438, 2443, 77 L.Ed.2d 1322 (1983).

court responded that it did "appear [as if] there were three minority members of the jury" struck by the State.

(1). The State struck Cheryl Ziegler ("Ziegler") for being afraid that "she would not be paid while serving as a juror." The State said Ziegler was a concern because she "may not be focused on the case and that she may not want to be there." Even so, the State's race-neutral reason is unfounded. Ziegler did not say anything during voir dire that would cause concern about her ability to serve as a fair and impartial juror to either the State or the Defense. In fact, Ziegler said she would be an analytical juror who "would follow the rules," and on a scale of one-to-ten, she would be a "five" in terms of her willingness to serve.

There is a marked contrast between the State's concerns and Ziegler's. In response to the State's comments, Anderson's trial counsel pointed-out that Ziegler's concern was about "losing money, she said that she was willing to be here. She did not indicate at a later time, when asked about her willingness to serve, that she was unwilling to serve because of financial hardship.

Neither the trial court or the State made any attempt to rehabilitate Ziegler although she allegedly cause the State some concern. According to the court, Ziegler seemed concerned about not being paid for her service. If the court observed this simple concern, then rehabilitation would have been simple. At any rate, Ziegler did not give any impression of partiality to the State or the Defense.[12] It would have been easy to inform her that, if chosen, she would be compensated for her service. She was not rehabilitated, however, because the court believed that "the race neutral reasons given by the State [were] reasonable."

12 See *State* v. *McIntyre*, 381 So.2d 408 (La. 1980); *State* v. *Webb*, 364 So.2d 984 (La. 1978); La. C.Cr.P. Art. 797.

On the other hand, it appears as if the trial court was biased against Anderson. When Anderson's trial counsel sought to remove prospective juror Jared Panks ("Panks") for cause, the court refused. Anderson's trial counsel informed the court that Panks "clearly stated that he would hold it against [Anderson] if he did not testify." The State intervened and told the court that Panks had been rehabilitated when the court questioned him after the Defense's voir dire. The court sided with the State and denied the cause challenge.

The court's rehabilitation of Panks was simple; and, the very thing done with him could also have been done with Ziegler:

> Mr. Panks ... expressed concerns about the fact that the defendant might not testify in this case. And the law is that if the defendant does not testify in this case, you cannot hold that against him. So Mr. Panks are you going to be able to do that and act as a fair and impartial jury?

Panks answered in the affirmative and was immediately deemed rehabilitated. There is a remarkable difference in how the court handled prospective jurors Panks and Ziegler. With Panks, the court observed he was in need of rehabilitation, exercised its discretion to remedy the matter. The same, however, is not true concerning Ziegler.

In the matter concerning prospective juror Panks, Anderson's trial counsel asked the court to note the Defense's objection for the record, she still failed to articulate her reasons for objecting. However, it will be fairly articulated here. It does not appear fair that the court took its time to rehabilitate a prospective juror who happens to be white and is clearly biased against Anderson; but then utterly fails to rehabilitate a prospective juror who happens to be black and clearly stated that she "would follow the rules." It is not fair, and it violates Anderson's equal protection and due process rights.

(2). The State struck Jo Torregano ("Torregano") because she allegedly "had a number of issues, including that she said that she was more of an emotional decision" maker. A careful and honest look at Torregano's responses during voir dire cast serious doubt on the State's excuse for removing Torregano from the panel. Torregano's responses were anti-Defense and pro-State; however, it was not enough to stop the State from mischaracterizing Torregano's remarks. The State said that Torregano did not want to be there and that she clearly did not want to take part in the trial process. However, the State failed to mention that Torregano said she is biased toward guns, and that she does not "like them in the house ... even if they are put up." If considered honestly, Torregano's responses during voir dire makes it clear that the State dismissed her from the jury because she is black. Torregano's responses reveal that she was inclined to be more sympathetic to the State's case than Anderson's defense.

(3). The State struck Katherine Liebert because "she made a comment about the mis-ID. That everyone says they look the same. And she believes that people are convicted by misidentification. Liebert's concern was valid and relevant. She should not have been removed from the panel because she was concerned about the possibility that Anderson would be convicted because he is black.

The State's reason for striking Liebert from the panel was *not* race-neutral. Liebert was concerned that Anderson would be convicted because he is black. The State did not want to have Liebert rehabilitated became the prosecuting attorney did not want any blacks on the jury. Especially when a black prospective juror expressed concerns about a racist astigmatism that cause all black folk to look alike to some white folk. Even if Liebert's opinion is wrong, the court or the State should have asked her if she would have a problem returning a guilty verdict

if the State met its burden of proving beyond a reasonable doubt that Anderson committed the instant offense. Although the trial court and the State rehabilitated other prospective jurors who happened to be white, the same was not done with Liebert. It appears that the State did not want Liebert rehabilitated because she is black. It is as Anderson's trial counsel told the court: the State's reasons for striking prospective jurors Ziegler, Torregano, and Liebert are *not* "adequate basis to excuse the pattern and practice of excluding African American jurors from the potential jury." Although there were not any blacks on Anderson's jury, the court still excused the State's prejudicial practice:

The Court has viewed each of these parties that were struck by the State. Ms. Ziegler, when she made that comment about the fact that she would not be paid, seemed very concerned about that. Ms. Torregano did indicate that she would not want to decide someone's face [sic] fate. She also indicated that she had difficult with weapons. And had concerns about weapons. The Court feels that the race neutral reasons given by the State are reasonable in their decision making. And is going to deny the ***Batson*** challenge.

(B). The court's decision to deny Anderson's claim fails to satisfy ***Batson***'s third and final step.

Batson has three well-defined steps. The first step requires the defendant to make "a prime facie showing that the prosecutor exercised a peremptory challenge on the basis of race." Once the prima facie showing has been made, the second step requires the State "to present a race-neutral explanation for striking the juror in question," and the reason cannot be 'inherently discriminatory." ***Batson***'s third and final step requires the trial court to "determine whether the defendant has established purposeful discrimination." [13]

13 *State v. Jacobs*, 07-887, (La. App. 5th Cir. 5/24/11), 67 So.3d at 544-555 (*citing Batson v. Kentucky*, 476

In the instant case, the court's scrutiny of the State's explanation for peremptorily striking every black person from the jury panel was cursory. Also, the court *failed* to address the State's reasons for striking prospective juror Katherine Liebert. There were only three blacks on the panel to begin with the State struck all three. The court did not evaluate the State's demeanor and neither did it determine if the State was being intentionally discriminatory or "whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor.[14]

Sadly, Anderson is a victim of a system that has been disenfranchising blacks for centuries. It is not an uncommon practice in Louisiana that blacks are systemically struck from juries. According to the United States Supreme Court, "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." [15]

In ***Hunter v. Underwood***, the Supreme Court affirmed the Eleventh Circuit's dissolution of an Alabama law that disenfranchised persons convicted of certain misdemeanors. The Court concluded that although the law was facially neutral with respect to race, it still violated equal protection because it was passed in the Alabama Constitutional Convention of 1901 and "was part of a movement that swept the post-Reconstruction South to disenfranchise blacks and, at which, the zeal for white supremacy ran rampant." [16] The Supreme Court also held in ***Strauder***

U.S., at 96-98, 106 S.Ct. at 1723 1724.

14 See *State v. Shannon*, 10-580, (La. App. 5th Cir. 2/15/11), 61 So.3d 706, 719 (internal citations omitted).

15 *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

16 *Hunter v. Underwood*, 471 U.S. 222, 229, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985).

v. West Virginia, that the Fourteenth Amendment prohibits states from excluding persons from jury service based upon race.[17] It was against this backdrop and "a desire of Louisiana's reactionary oligarchies to disenfranchise blacks and poor whites, [that] prompted the Constitutional Convention of 1898." [18]

The 1898 Constitutional Convention was designed to produce a constitution that would entrench white power once and for all. Sweeping changes to election laws were passed immediately prior to the convention. The effect was that when the people were asked by referendum to vote on whether to have a Constitutional Convention and to nominate delegates, black voter registration had dropped by ninety percent. As a result of this legislative disenfranchisement, the 134 delegates at the 1898 Convention were all white and the resulting constitution was ratified without being submitted to a popular vote. As in ***Hunter***, the historical background of the offending Louisiana law clearly demonstrates discriminatory intent.

The United States Constitution requires that Anderson be afforded protection against discrimination from the St. Tammany Parish District Attorney's Office. The Fourteenth Amendment to the United States Constitution prohibits the State from creating a "jury list pursuant to neutral procedures but then resort to discrimination at 'other stages in the selection process." [19] Anderson's claim is not only meritorious, it also qualifies as a structural error. In ***Miller-El***, the U.S. Supreme Court said:

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17 ***Strauder v. West Virginia***, 100 U.S. 303, 10 Otto 303, 25 L.Ed. 664 (1880).

18 See Lanza, Michael L., "Little More Than A Family Matter: The Constitution of 1898" *In Search of Fundamental Law*. pp. 93-109.

19 *Id.*, 476 U.S., at 88, (quoting *Avery v. Georgia*, 345 U.S. 559, 562, 73 S.Ct. 891, 893, 97 L.Ed. 1244 (1953)).

> A ***Batson*** challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have shown up as false.[20]

Because of the State's purposeful discrimination against African-American prospective jurors during jury selection, and the court's failure to completely follow ***Baton***'s three step analysis, Anderson is entitled to a new trial.

Claim No. 3: Anderson's trial was rendered fundamentally unfair as a result of prosecutorial misconduct, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

The United States Supreme Court has several times underscored the "special role played by the American prosecutor in the search for truth in criminal trials." [21] Sadly, before Anderson's trial ever began, assistant district attorney Jason Cuccia revealed that his interest was not that justice should be done but that Anderson be convicted at any cost.

In Anderson's case, the State wrangled a conviction without the evidence that was supposedly obtained and some that was allegedly viewed by investigators. The State's alleged "evidence" was never presented to the jury and over Anderson's trial counsel's objection, the State was allowed to present a case based on speculation and hearsay. As a result, Anderson was denied his constitutional right to a fair and impartial trial because the court allowed the State to circumvent justice by presenting its theory to the jury unsupported by any tangible evidence.

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20 *Miller-El v. Dretke*, 545 U.S., at 252, 125 S.Ct., at 2332.

21 *Banks v. Dretke*, 540 U.S. 668, 696, 124 S.Ct. 1256, 1275, 157 L.Ed.2d 1166 (2004).

In this case, ADA Cuccia's unprofessional behavior, lack of concern for justice, and his total disregard of Anderson's rights caused Anderson's trial counsel to render ineffective assistance in her preparations to defend Anderson in this case. The State's allegations to the jury that Anderson was the person who assaulted and robbed the victim in this case was not supported by any of the evidence presented. On the other hand, ADA Cuccia consistently proved he would go to any length to trample on Anderson's due process and equal protection rights.

Comparatively speaking, under ***Brady***, due process is violated when evidence that is favorable to the accused is withheld from him.[22] In this case, the State consistently presented testimonial evidence about physical evidence that, for some reason or another, it did not present to the jury. Evidence is considered to be material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.[23] The issue here, again, is not ***Brady*** per se; however, the State was allowed to *point* the jury to evidence it did not actually possess. In ***Kyles v. Whitley***, "[t]he question is not whether the defendant would more likely than not received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial." [24]

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22 ***Brady v. Maryland***, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

23 ***United States v. Bagley***, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

24 ***Kyles v. Whitely***, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (U.S. La. 1995) (*citing* ***Bagley***, 473 U.S., at 687).

The evidence ADA Cuccia claimed he had a right to parade to the jury *was* material to the State's case. Without the so-called evidence the State kept telling the jury about, the case against Anderson could not have been made; thus, ADA Cuccia should have been precluded from mentioning any alleged evidence that was not preserved for the Defense or the jury to inspect. To support its use of referencing the elusive evidence, the State rested heavily on the forced and coerced confession Anderson gave to officers after being verbally abused and threatened. The police also threatened Anderson's girlfriend and her child to coax a confession out of him. The physical evidence does not support Anderson's confession. In light of the evidence presented, Anderson's *confession* seems to be immaterial. Speaking of materiality, the Supreme Court said in *Agurs* that:

> The proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt. It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has committed. This means that the omission must be vacated in the context of the entire record. If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial.[25]

Because of sloppy police work and the questionable tactics of the prosecution team, the so-called evidence allegedly recovered by the State was not available at trial. In fact, one item of *evidence* actually recovered was a video depicting the incident and it does not readily identify Anderson as the perpetrator. On the day of trial, Anderson's trial counsel announced that the Defense was ready. The court however said that there were "a number of motions in the matter that were filed," and that it "would like to discuss ... the supplement request and motion for discovery, disclosure, and inspection."

25 *United States v. Agurs*, 427 U.S. 97, 112-13, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

Anderson's trial counsel, knowing the unethical dealings of the prosecution in this case, told the court that she filed "a formal motion [to follow] informal conversations had with the district attorney's office. The following ensued:

DEFENSE: I had a pretrial conference with Mr. Cuccia regarding this evidence. And it was indicated to me that these items did not exist or were not preserved, but that it was their intention to seek to elicit testimony regarding the viewing of some of these items. In response to that, we did file the formal motion and order to have it placed on the record that such items did not exist.

STATE: And Your Honor, as the Court is aware of the time that Ms. Brink and I had our informal conversation, we did not have any of those items. Since that time, as a matter of fact yesterday, we were able to locate the surveillance video from the Wal-Mart parking lot. And we have provided that to defense counsel as of this morning. As far as the other items that are outstanding, or at least that are requested in that, the State does not have them. And is unable to produce them to them at this time.

COURT: So of the seven items on the supplemental request, the only items that you have located would be the videotapes from the Wal-Mart parking lot?

STATE: Correct.

The trial court ignored the significance of counsel's request to forbid the State from using the remaining six *missing items of evidence*. The State did not have the evidence and was therefore unable to produce it to the Defense. The court's "understanding that [the defense was] providing open file discovery" does not amount to much; especially when what was still missing was the nature of counsel's motion. The State's claim that it provided Anderson's trial counsel with everything in the district attorney's file cannot satisfy due process because the State used as *evidence* information that is not *supported* by anything in the district attorney's file. ADA Cuccia used against Anderson what he called evidence without being compelled by the trial court to produce that evidence. This was a violation of Anderson's due process and

equal protection rights and served to ensure that he would *not* receive a fair trial.

With the trial court's blessing, the State presented hearsay testimony to the jury which was not supported by any physical evidence. The testimony offered by detectives, that they personally viewed items of evidentiary value which inculpated Anderson was highly inflammatory, prejudice, and completely undermined the fair administration of justice:

DEFENSE: It would be hearsay to testify as to what would be viewed on a picture or videos that were not produced to us. We cannot effectively cross-examine about what an officer said that they viewed, when they didn't preserve that evidence for our review.

STATE: That is like you can't, a witness can't come in and testify what they observed in person because you can't cross-examine them about what they observe. Frankly, that's a little bit of an inconceivable argument. The officer observed the videotape. He can testify what he observed on the videotape. And the cross-examine allows them to traverse that officer or that witness's credibility about their observations.

The State's argument is contrary to law and undermines Anderson's due process and equal protection rights. It is constitutionally unfair to allow police investigators to come into court and testify about seeing physical evidence without preserving it. As it stands, it is the word of a convicted felon against the word of the State. It is an inescapable fact that the State's word carries more weight than Anderson's word with any court. Although it is said that the State has a heavy burden of the criminal defendant, on the other hand, is much heavier. Anderson's credibility, when weighed against that of the prosecution team, is virtually non-existent. It matters little if he is actually innocent or not. The only time ADA Cuccia wanted the court to believe anything Anderson said is when he inculpated himself as a result of threats, intimidation, coercion, and the false promises of detectives who haphazardly "investigated" this matter. The weight given to the State's credibility with the court can be glimpsed from the

court's erroneous ruling concerning Anderson's trial counsel's motion in limine and supplemental discovery:

> As to the motion in limine, if the State would locate any additional items, we will have a hearing on whether or not they will be admissible. As to the witness testimony, make the proper objection at the time the witnesses testify.
>
> As to the supplemental request and motion for discovery. I'm going to allow the State to use the videotapes that have been provided to you from the Wal-Mart parking lot. As to any other item, again, if the State would locate any of those items, we will have a hearing to determine whether or not they will be admissible.

This was the first day of trial. Because the State located the video footage of the Wal-Mart parking lot before trial began, is not issue. However, allowing the State to introduce "witness testimony" not supported by any evidence is contrary to law and is at issue. The court knew the witnesses were law enforcement and therefore should not have allowed them to testify to unsubstantiated allegations. This clearly prejudiced Anderson in the presence of the jury and cannot be said to not have contributed to the verdict.

The State knew the interview conducted with Anderson was unprofessional; even so, to justify the unlawful tactics of the detectives, the State named the interrogation:

> Now when you listen to that interview, it's going to be an aggressive interview style. It is going to start of [sic] pretty peaceful. You are going to hear that he is read his Miranda rights. And are you going to hear that things start off pretty lightly to say the least.
>
> Now, this interview is going to become loud and boisterous. There's going to be a lot of cussing on it, from both sides. So folks, be prepared when that comes up.

The State know the police dropped the ball during their investigation, that is why ADA Cuccia conceded to the jury that the way the police handled this case was sloppy and unprofessional. In fact, ADA Cuccia wished he could tell the jury that "there [was] a lot more

follow up than this. Frankly, there wasn't." This is what makes this case so frightening – the State barely had a circumstantial case against Anderson. Considering that the police suspected another person of committing this crime and that person was ruled out as a suspect on the word of one police officer without any verification, it is suspect that Anderson conveniently fits the description of the unidentified perpetrator of this crime.

Considering the testimony of John Binder, it becomes even clearer that Anderson was not the person who robbed the victim in this case. Binder said he witnessed "a short black man, standing with a car door open." Binder went on to say that the perpetrator was "maybe five-five. Kind of on the shorter side for a male." Anderson, on the other hand, is approximately five feet, and ten inches tall.

Binder was an eyewitness to the robbery. He told the jury that he "could clearly see because there's a light pole near by." However, when the State asked Binder could he "make an identification of the black male," he answered, "No." ADA Cuccia's goal to win at any cost was seen with the next question. He asked Binder if it was because he was "to far away? Why is it you are unable to make an identification?" Binder answered:

> It was because when we were driving past, I didn't look until I had seen the broken glass. By that time, I can only see the back of the man. I described him to the police just from the back of what I saw.

Binder's answer to the State's leading question does not negate the fact that Anderson does not fit the physical description of the perpetrator. In fact, on cross-examination, Binder's description of the assailant wavered. After telling the jury that the person who robbed the victim in this case "looked like a darker black male," Binder hinted that he may have made a mistake "because it was night time." Even so, it must not be forgotten that Binder testified that

he observed the robbery clearly because of a light-post in the parking lot.

(A). The State allowed Detective Robert Chadwick ("Chadwick") to lie to the jury when he said that Vincent Navarre was not really a suspect at the time because the primary suspect was "Ms. Laura Bolden's boyfriend, which was Carter Anderson." This testimony contradicted Detective Daniel Suzeneaux's testimony that Anderson was not the primary suspect at the beginning of the investigation. Chadwick also told the jury that the police took pictures of Anderson's girlfriend's vehicle for evidentiary purposes; however, Chadwick said the pictures could not be turned over to the Defense because they were lost. Not only did Chadwick admit the pictures were lost, he also said that the police had not "been able to find those photographs since they were taken."

Chadwick was asked on cross-examination did he personally locate anything of evidentiary value in the vehicle. He answered that he "was present when items were found." Still, none of the *items* made their way to trial. The State had a burden of proving guilt beyond a reasonable doubt, but since the alleged evidence was not preserved, the State's burden was alleviated because officer's of the law swore they had seen evidence incriminating Anderson – they just conveniently failed to preserve it.

During the redirect examination of Chadwick, it seems as if ADA Cuccia became upset and said that "since we all kind of beat around the bush, may as well have it out." He asked Chadwick what "were the items of evidentiary value that were recovered from the vehicle?" Chadwick answered:

> From the trunk of the car, Detective Brown and I found a silver revolver, .357 magnum, Smith and Wesson. That item appeared to have some type of reddish brown substance on it. It was located in a black bag, duffle bag, small duffle bag.

In the passenger compartment, there was a server book for Longhorn Steakhouse. Inside it was a traffic ticket issued by the St. Tammany Parish Sheriff's Office. And the name on the traffic ticket was Carter Anderson.

For a person who was not personally involved in the search, Chadwick gave great details about the elusive evidence. Also, when he first began to say what was found he said, "Detective Brown and I found." Chadwick lied under oath, worse still, the State knew he was lying. Evidently, winning was more important to ADA Cuccia than Anderson's right to a fair trial.

(B). The State continued to solicit testimonial evidence that amounts to nothing more than unsupported hearsay. Detective Daniel Suzeneaux ("Det. Suzeneaux") was called as a witness for the State. It quickly becomes apparent that the State wanted the jury to believe that there was a legal reason the alleged evidence against Anderson was not preserved:

STATE: And Detective, after you viewed the video surveillance from the apartment complex, were you able to download that data and take it – to preserve for evidence?

WITNESS: No, we were not. And what was happening, literally, as we're watching the video at the apartment complex, Detective Chadwick is pinging the phone. So this is a very fast-paced investigation at this point. When we got in touch with the apartment manager, he did not have the knowledge on how to operate this system. And it was a system that we weren't familiar with as well. After we viewed the video, we made an attempt at that point to try to download it onto a CD or a JumpDrive. We were unable to do so because Detective Chadwick came and said: Hey we know where the phone is, it's at this house. So we all left the apartment complex, went to the house where we ended up finding the suspect. And we never went back to retrieve the video from the apartment.

STATE: Now, Detective, were you able to make an identification of the person who dropped that car at the apartment complex from the video?

WITNESS: We weren't able to make a positive ID. It wasn't a crystal clear picture, you know here's the guy who did it. We were able to get a general idea –

Anderson's trial counsel interrupted with an objection to Det. Suzeneaux testifying about "anything he allegedly viewed on that videotape since that video was not preserved and cannot be viewed by [the Defense]" Counsel accurately told the court that anything Det. Suzeneaux "observed on there would be in the nature of hearsay." The court still allowed the State to circumvent justice and trample on Anderson's due process and equal protection rights.

The State told the court that since Det. Suzeneaux was testifying about "his observation. It was not hearsay. He saying directly what he observed. Correlational to evidence does not apply here because the video is not under their control. They did not own that piece of video equipment. I can lay the foundation for that" The court, overruled counsel's objection and agreed with the State and said that it was not hearsay. The court failed to even consider that at least one of the detectives could have stayed behind to retrieve the video. Had the police really discovered evidence that could have proven Anderson was the perpetrator they would have found a way to preserve it. In any event, it is very convenient for the State to say evidence exists but not have the burden of proving that it does. Almost everything considered as evidence against Anderson was destroyed or lost in some fashion. This is why the police unconstitutionally forced a confession from him. Det. Suzeneaux testified that a video, that was never produced, depicts Anderson dumping items into a dumpster but the dumpster "unfortunately was emptied before [they] were able to obtain anything that was thrown out of the vehicle.

Det. Suzeneaux was allowed to tell the jury whatever crossed his mind. He told them that when the police knocked on the door to house where Anderson was, he (Anderson) ran and hid from them. The detective's assumptions should not have been verbalized in the presence of

the jury. The detective cannot truthfully say Anderson ran and hid, especially when he could not see through walls or the door. Det. Suzeneaux also told the jury that since the victim was robbed, Anderson's appearance had changed because he "did not have glasses, did not have a beard, and he had short dreads."

Concerning the statement Anderson was forced to make, the State asked Det. Suzeneaux if at "any time did [he] or Detective Irwin force or coerce Mr. Anderson into giving that statement?" Of course, Det. Suzeneaux answered, "No, sir. He did so on his own free will." Simply said, Det. Suzeneaux lied under oath. The police were frustrated because the person who senselessly attacked the victim eluded capture. Anderson was convenient. His arrest history and past convictions made it east for him to be charged with this senseless crime. After all, it was the word of law enforcement officers against that of an ex-felon. Because of his colorful past Anderson thought that he should cooperate with the police; however, he did not understand that he would become the scape-goat. That is why he waived his right to have an attorney present. He was not seeking to confess to a crime he did not commit. Anderson believed he would be able to clear his name by making himself available to the authorities.

Anderson respectfully asks the Court to consider something that suspiciously stands out as strange. The detectives allegedly *saw* video footage of the perpetrator of this crime. They also came into contact with Anderson and did not think or believe that he was their suspect. Only after meeting him at the beginning of their investigation did Anderson become a person of interest. He was still not considered as *the* suspect.

Anderson's trial counsel questioned Det. Suzeneaux concerning the lies he told Anderson. Det. Suzeneaux claimed that it was his lying that helped Anderson; however, he did

not say how having a man convicted and sent to prison for the rest of his life for a crime he did not commit is helping him. In fact, Det. Suzeneaux went on to tell counsel something very telling. He said, "Well, if you remember, in the beginning stages of this investigation, Mr. Anderson was not the primary suspect we were looking at until we discovered further on that he was the primary suspect." Still, how Anderson was *discovered* to be the primary suspect was never disclosed.

Det. Suzeneaux went on to confess that the police investigation was sloppy, and that they did not properly collect *any* evidence. Even if Anderson's *confession* was knowingly or voluntarily given without force, threat, or any intimidation; the investigators still had a duty to collect and preserve the evidence. It is not unheard of for some to confess to a crime they did not commit; even so, there must be a factual basis for any admission of guilt. In this case, Anderson was prejudiced because no one wanted to believe that he did not have anything to do with this robbery because of his past convictions. On the other hand, the police fabricated lies that are unmistakably obvious and Anderson was *still* denied the benefit of reasonable doubt. Without any corroborating evidence, Anderson's statement is not enough. Other than the false confession, there is no evidence linking Anderson to the robbery of the victim in this case:

STATE: Now, Detective, while we are on the subject of video we earlier discussed the video from the apartment. While you were trying to begin to retrieve that, you got called out to the house on Cousin Street. Was any attempt made to go back and retrieve that video?

WITNESS: Yes, sir. We attempted – like I said before, we could not do it at the time. And just so you guys know, after the confession was received from Mr. Anderson, and we were confident that we had the right suspect in custody – it's an unfortunate thing, but as a lesson learned on my end, we did not tie up the loose ends of getting the video from the apartment complex, didn't happen. I apologize for that. And it's something that, you know,

> obviously, from sitting in this spot two years later, you wish you would have done. But, unfortunately with it being a holiday season and as busy as we were, it didn't happen that way.

This further enforces that Anderson's arrest, prosecution, and sentencing was not done according to law. His right of due process and equal protection rights were trampled and the prosecution team's behavior was excused because the police had a busy season. The police was so busy that they even forgot to conduct any type of identification procedure with the victim in this case. Amazingly, Anderson was identified by the victim in open court even after his appearance, according to Det. Suzeneaux, had drastically changed.

The State knew this case was hopeless. The only way to secure a conviction was to circumvent the demands of justice. The State also knew that the alleged *evidence* was lost or missing. Det. Suzeneaux even told the jury that the photographs taken of the victim's vehicle were lost. ADA Cuccia is obviously an intelligent person; however, justice demands fairness. This case only shows how shrewd ADA Cuccia was in carrying out this unfounded prosecution. A colloquy between Anderson's trial counsel and Det. Suzeneaux reveals that the State knew this case was tainted from the beginning:

DEFENSE: Same with the search warrant, execution of the search warrant on the vehicle where the gun allegedly was found?

WITNESS: Yes, ma'am.

DEFENSE: Photos were taken?

WITNESS: Yes, ma'am.

DEFENSE: But they were lost also?

WITNESS: Yes, ma'am. Just so you know, I was not present for that.

DEFENSE: But you were the supervising detective?

WITNESS: I wouldn't call me a supervisor but ultimately it's my case, yes.

DEFENSE: So the ultimately pieces of evidence here in this case that are still in existence are the statement we are listened to?

WITNESS: Yes, ma'am.

DEFENSE: Now, telling Mr. Anderson that you had fingerprints on a gun, that was a little information right?

WITNESS: Yes, ma'am.

DEFENSE: That was false?

WITNESS: Absolutely.

DEFENSE: So that was lie to get him to confess?

WITNESS: I wouldn't call it a lie.

DEFENSE: Did you have fingerprints on the gun?

WITNESS: No, ma'am. But may I add something to that?

DEFENSE: It's a yes or no answer.

The State objected to counsel's response and the court sustained it. Even more troubling though is that the court allowed the detective to explain jurisprudence to the jury:

The US Supreme Courts allows us to lie to suspects, give them pieces of information that might not be fully accurate, like we have DNA, we have fingerprints, to see if their response is consistent with the evidence we really do have, to see if there's anything more that will come out of that response from the suspects. So inference to that, yes, we did tell him we had his fingerprints when we did not.

Det. Suzeneaux admitted at trial that he lied about everything he told Anderson. He lied about the fingerprints on the weapon and from the victim's vehicle. The only thing Det. Suzeneauz admitted to having by way of evidence was Anderson's coerced statements. Surely, ADA Cuccia knew the detectives were lying before he chose to prosecute this matter. The officers in this case are comparable to those in ***Spano v. New York***. They "were rather concerned primarily with securing a statement from defendant on which they could convict him. The undeviating intent of the officers to extract a confession from Petitioner is therefore patent. When such an intent is shown, this Court has held that the confession obtained must be examined with the most careful scrutiny, and reversed a conviction on facts less compelling than these." [26]

The one piece of evidence allegedly connecting Anderson to the gun found in the vehicle searched by police is also conveniently missing – a traffic citation in the vehicle allegedly issued to Anderson. Again, this missing piece of evidence was not ***physically*** presented to the jury; even so, the jury still heard all about it.

"A district attorney should not harbor any personal feelings toward an accused that might, consciously or unconsciously, impair his ability to conduct the accused's trial fairly and impartially," because "[i]n our system of justice, we intrust vast discretion to the prosecutor in deciding which cases to pursue, whether to dismiss the charges, whether to offer a plea bargain, what any plea bargain will entail, and how the trial will be conducted." [27]

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26 ***Spano v. New York***, 360 U.S. 315, 324, 79 S.Ct. 1202, 1207, 3 L.Ed.2d 1265 (U.S. NY 1959)

27 ***State v. King***, 06-2383, (La. 4/27/07), 956 So.2d 562, 570; *quoting* ***In re Toups***, 00-0634 (La. 11/28/00), 773 So.2d 709, 715.

It is also well established that "a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." [28] The rule forbidding the State's use of "false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." This is because the "jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life may depend."

It does not matter if "the falsehood bore upon the witness' credibility rather than directly upon the 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." [29] Even if the "district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing as it did, a trial that could in any real sense be termed fair." [30] Consequently, Anderson is entitled to a new trial "if false testimony could, in any reasonable likelihood have affected the judgment of the jury." [31]

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28 *Napue v. People of State of Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959).

29 *Id.*; *quoting People v. Savvides*, 1 N.Y.2d 554, 557, 154 N.Y.S.2d 885, 887, 136 N.E.2d 853, 854-55.

30 *Id.*

31 *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972); *citing Napue v. People of State of Illinois*, 360 U.S. 264, 271, 79 S.Ct. 1173, 1178, 3 L.Ed.2d 1217 (1959).

Claim No. 4: Anderson was denied the effective assistance of appellant counsel in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Appellant counsel, Prentice L. White ("Mr. White") filed Anderson's direct appeal, raising only one issue:

> The district court's ruling which denied Anderson's motion to suppress was completely erroneous and violated his right to a fair and impartial trial under the Sixth Amendment to the United States Constitution. During this investigation, the detectives used every conceivable tactic it could to get Anderson to implicate himself in this robbery. These detectives yelled, cursed, lied and even threatened Anderson's family in order to get him to incriminate himself in the robbery. Such tactics are totally unconstitutional and any incriminating evidence derived therefrom must be declared inadmiss[i]ble.

Mr. White failed to brief Anderson's claim of purposeful discrimination to the appellate court on direct appeal. Anderson is not suggesting that the issue raised by Mr. White was not important but a successfully litigated ***Batson*** claim is a structural defect that is too important not to be raised on direct appeal. Mr. White's failure to raise the fact that the State purposefully discriminated against every African-American prospective jurors in this case and the trial court's failure to follow ***Batson***'s three steps is proof that he did not make a complete, conscientious, and thorough review of the appellate record. Had he done so, he would have briefed Anderson's ***Batson*** claim. Mr. White's direct appeal brief shows that he raised the issue that was most prominent on the face of the record, and that he failed to "act in the role of an active advocate in behalf of his client, as opposed to that of *amicus curiae*." [32]

The Louisiana Supreme Court has said that a brief filed by counsel must not only review the procedural history of a case and the evidence presented at trial. It must also provide "a

32 *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967).

detailed and reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place.[33]

A counsel's performance on appeal is judged under the two-prong ***Strickland*** test.[34] To be considered as effective on appeal, an appellate counsel is not required raise every non-frivolous issue.[35] However, it does mean, as it does at trial, that counsel perform in a reasonably effective manner.[36] The appellate lawyer must master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal." [37] "In searching for the strongest arguments available, the attorney must be zealous and must resolve all doubts and ambiguous legal questions in favor of his or her client." [38]

Claim No. 5: Anderson was adjudicated a third felony offender in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

In denying this claim. The trial court opined that Anderson's motion to correct an illegal sentence was untimely; however, under La. C.Cr.P. Art. 882, an illegal sentence may be corrected at any time by the court that imposed the sentence. Also, under La. C.Cr.P. Art. 881.5, a defendant's motion to correct a sentence that exceeds the maximum sentence may be filed at any time.

33 *State v. Jyles*, 96-2669, (La. 12/12/97), 704 So.2d 241, 242; *citing State v. Mouton*, 95-0981, (La. 4/28/95), 653 So.2d 1176.

34 *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

35 See *Evitts*, 105 S.Ct. at 835

36 *Id.*

37 *McCoy v. Court of Appeals of Wisconsin*, Dist. 1, 486 U.S. 429, 438, 108 S.Ct. 1895, 100 L.Ed.2d 440 (1988), 56 USLW 4520.

38 *Id.*, at 444.

The first conviction the State relied on in seeking to have Anderson adjudicated a third felony offender is for one count of simple burglary under docket number 375879 originating in the Twenty-Second Judicial District Court.

The second conviction the State relied on is for one count of felon in possession of a firearm in docket number 395212 also originating in the Twenty-Second Judicial District Court.

In alleging Anderson to be a third felony offender, the State relied on the same underlying felony it used to prosecute him as a convicted felony in possession of a firearm. As it stands, Anderson's adjudication and enhanced sentencing as a third felony offender under La. R.S. 15:529.1 is the result of an impermissible double enhancement.[39] The trial court erred when it adjudicated Anderson a third felony offender under the habitual offender law.

On March 29, 2004, Anderson pled guilty to one count of simple burglary of an inhabited dwelling and was sentenced to serve six years at hard labor. On October 17, 2005, Anderson pled guilty to one count of felon possession of a firearm and was sentenced to serve ten years at hard labor.

In its felon bill of information, the State's count two against Anderson reads:

> R.S. 15:95.1 CONVICTED FELON POSSESSION OF A FIREARM OR CARRYING A CONCEALED WEAPON, by being a convicted felon; having previously been convicted of POSSESSION OF COCAINE ON OCTOBER 17, 2005, IN DOCKET NUMBER 395213, IN THE 22ND JUDICIAL DISTRICT COURT IN ST. TAMMANY, and possessing or having concealed upon his person a weapon, to-wit: A GUN.

In this case, Anderson was arrested and charged with one count of armed robbery and one count of being a felon in possession of a firearm in violation of La. R.S. 14:64 and La. R.S. 14:95.4, respectively. To support the charge of felon in possession of a firearm against

39 *State v. Daugart*, 02-1187 (La. App. 5th Cir. 3/25/03), 844 So.2d 159, 168.

Anderson, the State used the above cited October 17, 2005, convictions for possession of cocaine and possessing or having upon his person a weapon as the underlying felony. However, the State's habitual offender bill of information listed the same firearm conviction to support its allegation that Anderson was a third felony offender.

In ***State v. Baker***, the State supreme court noted that "the state may not seek multiple enhancement of a defendant's sentence on the basis of the same set of prior conviction." [40] However, that is exactly what the State did in this case. The State knew Anderson had a previous conviction for felon in possession of firearm. This is what prompted the district attorney's office to file a bill of information against Anderson with being a felon in possession of a firearm in violation of La. R.S. 14:95.1.

Contrary to the state and federal constitutions, the State used the same underlying felony twice to have Anderson adjudicated a third felony offender.[41] As a result, the trial court erred when it adjudicated and sentenced Anderson as a third felony offender under La. R.S. 15:529.1.

The Fifth Amendment to the United States Constitution and Article 1 § 15 of the Louisiana Constitution guarantees that no one is to be placed in jeopardy twice for the same offense.[42] However, Anderson's right of equal protection has been violated because the very provisions that are designed to protect him were violated by an impermissible double enhancement when he was subjected to "multiple punishment for the same conduct.[43]

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40 ***State v. Baker***, 2006-2175 (La. 10/16/07), 970 So.2d 948, 957; see also ***State v. Ruiz***, 2006-1755 p. 12-13 (La. 4/11/07, 955 So.2d 81, 89.

41 La. Const. Art. 1 § 15; U.S. Const. Amend. V; U.S. Const. Amend. VIII; U.S. Const. Amend. XIV.

42 See ***State v. Holloway***, 2012-0926 (La. App. 4th Cir. 7/3/13), 120 So.3d 795, 797.

43 ***Id.***; *citing* ***North Carolina v. Pearce***, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969); ***State v. Vaugh***, 431 So.2d 763, 767 (La. 1983); ***State v. Warner***, 94-2649, p. 4 (La. App. 4th Cir. 3/16/95), 653

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CARTER VINCENT ANDERSON #418030
CAMP C BEAR 1
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

Date: **May 26, 2020**

So.2d 57, 59.