No._____

IN THE

SUPREME COURT OF THE UNITED STATES

CARTER VINCENT ANDERSON – PETITIONER

vs.

DARREL VANNOY, WARDEN -- RESPONDENT(S)

APPENDICES IN SUPPORT OF PETITION FOR CERTIORARI

APPENDIX "A"	United States Court of Appeal, Fifth Circuit, denial of COA
APPENDIX "B"	Petitioner's Motion for Certificate of Appealability
APPENDIX "C"	United States District Court, Eastern District of Louisiana, denial of Writ of Habeas Corpus Relief
APPENDIX "D"	Petitioner's Writ of Habeas Corpus with attached exhibits.

EXHIBIT "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 14, 2020
Lyle W. Cayce
Clerk

No. 19-30397

CARTER VINCENT ANDERSON,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-7977

Before SMITH, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Carter Vincent Anderson, Louisiana prisoner # 418030, was convicted by a jury of armed robbery and being a felon in possession of a firearm. Following his adjudication as a third felony offender he was sentenced to life imprisonment. He now requests a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 petition, which he filed to challenge his convictions and his multiple offender adjudication.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

To obtain a COA, a prisoner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). An applicant satisfies the COA standard "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Where the district court denies relief on the merits, an applicant must show that reasonable jurists "would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484.

Anderson renews several claims raised in the district court. He argues that his rights under *Batson v. Kentucky*, 476 U.S. 79 (1986), were violated because the prosecution used peremptory challenges on the three prospective black jurors and because the trial court failed to articulate a specific finding as to whether the prosecution's use of a peremptory challenge as to one of the jurors was based on her race. He asserts that his appellate counsel was ineffective for failing to raise a *Batson* challenge. Anderson contends that his confession should have been suppressed because it was obtained in violation of his constitutional rights. Asserting prosecutorial misconduct, Anderson claims that his rights were violated because the prosecution failed to preserve evidence and was permitted to elicit testimony about the missing evidence. Anderson also contends that his rights under the Double Jeopardy Clause were violated in connection with his adjudication as a multiple offender. As to the above claims, Anderson fails to the make the showing required to obtain a COA. *See Miller-El*, 537 U.S. at 337; *Slack*, 529 U.S. at 483-84.

Finally, Anderson contends that the district court erred by denying his § 2254 petition without conducting an evidentiary hearing. Anderson is not

required to obtain a COA to appeal the denial of an evidentiary hearing; therefore, to the extent he seeks a COA on this issue we construe his COA request "as a direct appeal from the denial of an evidentiary hearing." *Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016). Because Anderson's underlying claims fail, we need not address the merits of his evidentiary hearing claim. *See id.*

Consistent with the foregoing, Anderson's motion for a COA is DENIED, and the district court's denial of an evidentiary hearing is AFFIRMED.

19-30397

Mr. Carter Vincent Anderson
#418030
Louisiana State Penitentiary
General Delivery
Angola, LA 70712-0000

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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NEW ORLEANS, LA 70130

April 14, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 19-30397 Carter Anderson v. Darrel Vannoy, Warden
USDC No. 2:18-CV-7977

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Laney Lampard

By: _____
Laney L. Lampard, Deputy Clerk

Enclosure(s)

Mr. Carter Vincent Anderson
Mr. Matthew B. Caplan

EXHIBIT "B"

Case No. 19-30397

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CARTER VINCENT ANDERSON,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
USDC NO. 2:18-CV-7977

MOTION FOR A CERTIFICATE OF APPEALABILITY FROM THE DENIAL OF HABEAS CORPUS RELIEF

RESPECTFULLY SUBMITTED

CARTER VINCENT ANDERSON
418030, MAGNOLIA—4
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

REQUEST FOR CERTIFICATE OF APPEALABILITY

ANDERSON V. VANNOY—Case No. 19-30397

NOW INTO COURT comes, Carter Vincent Anderson ("Anderson") pro se petitioner-appellant, respectfully requesting the Court to issue a certificate of appealability on the ground that he has shown jurists of reason would find it debatable that: (1) the trial court denied Anderson's *Batson* motion in error; (2) the trial court committed reversible error when it failed to proceed to *Batson's* third-step and articulate reasons for denying Anderson's *Batson* motion when the prosecutions reason for dismissing one juror was not inherently race-neutral; (3) he was entitled to have his coerced and false confession suppressed as a result of threat, force, or intimidation; (4) his adjudication as a third felony offender and resultant life sentence was the result of an impermissible double enhancement resulting in double jeopardy; and (5) the federal district court erred when it dismissed his habeas petition without an evidentiary hearing.

Respectfully submitted this 14th day of June, 2019.

Carter Vincent Anderson
418030, Magnolia—4
Louisiana State Penitentiary
Angola, LA 70712

AFFIDAVIT/CERTIFICATE OF SERVICE

I do hereby swear and affirm that the foregoing is true and correct to the best of my knowledge and belief. I further certify that a copy of the foregoing has been served upon:

Opposing Counsel:

Warren Montgomery, District Attorney
Attention: ADA Matthew Caplan
701 N. Columbia Street
Covington, LA 70433

By placing a copy of same in a properly addressed envelope into the hands of the Classification Officer assigned to my unit along with a Withdrawal Form made out to the General Fund, LSP, Angola, LA 70712 for the cost of postage and a properly filled out Inmate's Request for Indigent/Legal Mail form, receiving receipt for same in accordance with the institution's rules and procedures for legal mail.

Done this 14th day of June, 2019.

Carter Vincent Anderson, Petitioner-Appellant

Case No. 19-30397

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CARTER VINCENT ANDERSON
Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,
Respondent-Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
USDC NO. 2:18-CV-7977

BRIEF IN SUPPORT OF REQUEST FOR A CERTIFICATE OF APPEALABILITY FROM THE DENIAL OF HABEAS CORPUS RELIEF

RESPECTFULLY SUBMITTED

CARTER ANDERSON
418030, MAGNOLIA—4
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

CERTIFICATE OF INTERESTED PERSONS

The undersigned certifies that he knows of no other person, associations of persons, firms, partnerships, or corporations, as described in the fourth sentence of 5th Cir. Local Rule 28.2.1, other than those listed below which have an interest in the outcome of this particular case:

Carter Vincent Anderson Petitioner-Appellant

Darrel Vannoy, Respondent-Appellee

Jeff Landry, Attorney General, Attorney for Respondent-Appellant

Warren Montgomery, District Attorney, Attorney for Respondent-Appellant

REQUEST FOR ORAL ARGUMENT

Oral argument is requested, as Anderson has not received the opportunity to present these claims, in the form of additional testimony and argument, to any court, and in light of the legal complexity of the issues raised. Oral argument will aid this Court in the resolution of these issues. Fed. R. App. P. 34(a); 5th Cir. Local Rule 34.2.

Carter Vincent Anderson, Petitioner-Appellant

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MEMORANDUM

MAY IT PLEASE THE COURT:

NOW COMES pro se habeas petitioner Carter Vincent Anderson ("Anderson") to respectfully ask the Court to grant him a certificate of appealability ("COA").

STATEMENT OF JURISDICTION

The Court has jurisdiction to entertain the instant memorandum in support of Anderson's request for a COA under 28 *U.S.C.* § 2253.

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.[1] He entered not guilty pleas to both[2] On November 15, 2012, Anderson was found guilty as charged on both counts.[3] On February 4, 2013, he was sentenced to concurrent terms of 60 years and 10 years at hard labor.[4] On

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[1] See R. pp. 25-26.

[2] See R. p. 1.

[3] R. p. 468.

[4] R. p. 476.

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.[5]

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 Court of Louisiana. On May 10, 2019, the district court dismissed Anderson's petition with prejudice and did not issue a certificate of appealability.[6] He now seeks a COA from this 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.[7] In the course of the robbery, which happened in the middle of the night, Mr. Bennett struck with a

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[5]See R. p. 490.

[6]Because the district court adopted the Magistrate's recommendation in its entirety, Anderson will reference the Magistrate's R & R.

[7]See R. pp. 307-10.

weapon and forced to cover his heard with a blanket to prevent him from identifying his attacker.[8]

Investigator's tracked Mr. Bennett's cell-phone to a home where Anderson was staying with his girlfriend and her relatives.[9] 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.[10] After Navarre was eliminated, Anderson became the primary suspect.

John Binder ("Binder") testified for the State and said he and his sisters 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 seat of the car."[11] Binder said he "could clearly see because there's a light pole nearby."[12] Binder described the

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[8]R. p. 310, 312.

[9]R. pp. 321-25.

[10]R. pp. 347-48.

[11]R. pp. 299-300.

[12]R. p. 302.

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."[13] 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.[14]

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."[15] Det. Chadwick also admitted the police lost many items of evidence.[16]

Detective Daniel Suzeneaux admitted the investigation was sloppy and that the police 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.[17] Accordingly, Anderson is entitled to habeas relief.

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[13]R. p. 303-04.

[14]R. p. 302.

[15]R. p. 325.

[16]R. pp. 326, 50, 376-77, 396.

[17]R. p. 370.

A COA should be granted in this case because Anderson will show: (1) the denial of substantial constitutional rights; (2) that reasonable jurists would find the issues presented herein are debatable; (3) that this Court could resolve the issues in a different manner; and (4) that the questions are adequate to require further proceedings.

ISSUES AND QUESTIONS PRESENTED

1. The prosecution used peremptory challenges to strike *every* African-American prospective juror from the panel. In articulating the reason for the removal of one juror in particular, the excuse was inherently discriminatory. **Was Anderson's *Batson* motion denied in error?**

2. The prosecution's excuse for peremptorily removing one prospective juror was inherently discriminatory. However, the trial court did not proceed to *Batson's* third step when it failed to articulate *any* reason for its denial of the *Batson* motion. **Did the trial court commit reversible error when it failed to address an inherently discriminatory excuse for the removal of an African-American prospective juror?**

3. When interviewing Anderson about a robbery, the police did not believe he was the perpetrator; however, the uncorroborated word of one officer cast suspicion upon Anderson. The police, not advising him of his rights after he became the primary suspect, began to lie and threaten him and forced a statement from him where he claimed to have robbed the victim in this case. **Was Anderson entitled to have his uncorroborated and coerced confession suppressed?**

REASONS WHY COA SHOULD BE GRANTED

1. Whether jurists of reason would find it debatable that *Batson's* Third Step requires a trial court to articulate reasons for the denying of a challenge especially when the reason for the exercise of a peremptory challenge is inherently discriminatory.

There are three well-defined-steps identified in *Batson*: (1) the articulated *prima facie* showing; (2) the race-neutral *explanation*; and (3) the trial court's *determination* of whether or not purposeful discrimination has been proved.[22] The district court observed correctly that *unless* a "discriminatory intent is inherent in the prosecutor's explanation, the reason will be deemed raced neutral."[23] Contrary to clearly established law, as determined by the Supreme Court in *Batson*, the district court concluded that "the prosecutor's stated reasons for striking the [only] three [black] jurors were facially neutral and not inherently discriminatory.[24]"

The district court tried to explain how the prosecution used its peremptory strikes at trial; however, there is no getting around there being only three African-American female prospective jurors and the prosecution's

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[22] See *Batson v. Kentucky*, 476 U.S. 79, 96-98, 106 S.Ct. 1712, 1723, 1724 (U.S Ky 1986).

[23] Magistrate's Report and Recommendation, p. 25, (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991)).

[24] Magistrate's Report and Recommendation, p. 25.

use of a peremptory strike against all three. The biggest contention surrounding this claim concerns the application of *Batson's* third step. The district court correctly observed that "the trial court offered a brief synopsis that *directly* addressed the defense's contention about [Ms. Cheryl Zeigler] and noted an additional reason not raised by the prosecution for [Ms. Jo Torregano]....the trial court expressly stated that it had reviewed each of the parties struck even if it then specifically commented on only two of the jurors."[25] The district court's reasoning here is misplaced. The trial court, as acknowledged by the district court, proceeded to comply with *Batson's* third step by evaluating if "the defense had carried its burden" by offering a "brief synopsis ... directly address[ing] the defense's contention ... and ... an additional reason."[26] However, where the prosecutor's reasoning for striking Ms. Katherine Liebert was *not* inherently race-neutral, there should have been an on-the-record demonstration of the trial court's determination for denying the challenge. Contrary to the district court's assertion, Ms. Liebert's concern was *more* than "doubting witness identification."[27] Ms.

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[25] Id., p. 27.

[26] Magistrate's Report and Recommendation, p. 27.

[27] Id.

Liebert, according to the prosecution, "made a comment about the mis—ID. That everyone says they look the same. And she believes that people are convicted by misidentification."[28]

The district court has tasked Anderson, a pro se litigant, with citing "Supreme Court precedent that requires express factual reasons" to support a court's third step evaluation."[29] To support this contention, the district court cited *Perez v. Smith*, 791 F. Supp.2d 291, 309-10 (E.D. N.Y. 2011). However, the dicta of *Perez v. Smith* actually supports Anderson's position. The *Perez* Court reasoned:

> While "it is error to deny a *Batson* motion **without** determining whether the prosecution's race-neutral explanations for the challenged peremptory strikes are credible," *United States v. Thomas*, 320 F.3d 315, 320 (2d Cir. 2003), there are a **variety of ways** in which a trial court can make such an adjudication. No **specific** incantation is required. See *McKinney*, 326 F.3d at 100 ("Although reviewing courts [may] prefer [ ] [a] trial court to provide express reasons for **each credibility determination**, no clearly established federal law require[s] the trial court to do so."); *Hernandez*, 500 U.S. 3567 n. 2, 111 S.Ct. 1859 (recognizing that step three may be implied, noting that "[t]he trial judge **appears** to have accepted the prosecutor's reasoning as to his motivation").

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[28]R. p. 222.

[29]Magistrate's Report and Recommendation, p. 28.

In Anderson's case, the trial court denied the *Batson* motion without determining whether the prosecutor's use of a peremptory strike against Ms. Liebert was credible. Also, because the prosecutor's reasons for striking Ms. Liebert was, whether intentional or not, inherently discriminatory. And, because there is more than one way to articulate thoughts, there cannot be one "specific incantation" to express acceptance or rejection. If for no other reason than there being a split which has to be reconciled, the Court should grant a COA because there are debates concerning this very issue. In fact, the district court has admitted the claim presented here is "one upon which 'fairminded jurists' could disagree[.]"[30]

Concerning a *Batson* violation, one may logically argue that under step one, the defense must articulate "that the prosecutor exercised a peremptory challenge on the basis of race." Step two then requires the prosecutor to also articulate "a race-neutral explanation for striking the juror in question." And step three would, of a necessity, require the reviewing court to also articulate "whether the defendant has established purposeful discrimination."[31] The prosecution's articulated reason for striking

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[30]Magistrate's Report and Recommendation, p. 29 (citing *Harrington v. Richter*, 562 U.S. 86, 101, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011)).

[31]*State v. Jacobs*, 07-887, (La. App. 5 Cir. 5/24/11), 67 So.3d at 544-

prospective juror Katherine Liebert was inherently discriminatory. It would also be negligent if Anderson fails to mention that the trial court should have tried to rehabilitate the African-American prospective jurors as it did with prospective juror Mr. Jared Panks, who happened to be white. Moreover, where Anderson's appellate counsel failed to argue the foregoing in appeal, his direct appeal of right was adversely affected because of counsel's deficient performance. Accordingly, Anderson is entitled to habeas relief concerning this claim.

2. Whether jurists of reason would find it debatable whether Anderson's confession was knowingly and voluntarily given or the product of police intimidation.

This Court has held that states are precluded from "securing criminal convictions resulting from coercive police conduct."[32] More importantly, there is no evidence to support Anderson's false confession. Also, there *is* a difference between a *cajoled* confession and a *coerced* confession. Again, Anderson was not even the suspect at the time he was being interviewed. It was on the word of an officer who knew the initial suspect personally that caused suspicion to fall on Anderson after the officer removed his high-

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555 (citing *Batson v. Kentucky*, 476 U.S., at 96-98, 106 S.Ct. at 1723, 1724.

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

school-pal from the light of suspicion. At the very least, the officers had a duty to inform Anderson he was now their suspect and to re-read him the *Miranda* warning.

The district court erroneously claimed "Vinny, who was Anderson's roommate [was] a potential suspect at the time."[33] According to the investigating officers, Vinny was *the* suspect at the time.[34] Although the district court noted the shift in the investigation, it nevertheless failed to expose the detectives unlawful tactics and simply excused their sloppy work. By noting Anderson's fear, whether or not it is of "going back to jail, [and] not fear of the police or Vinny," is irrelevant. Not only was Anderson mentally *exhausted*, he was further precluded from making *any* intelligent decisions because of his fear—regardless of the source.

As the district court correctly noted, a person who waives or relinquishes the right to remain silent must do so willingly and "with full awareness of the nature of the right being waived, and not the result of

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[33]Magistrate's Report and Recommendation, p. 18.

[34]R. pp. 347-48 (Anderson was not provided with a copy of the Record submitted by the State and therefore can only cite the pages submitted by him in his original habeas petition.

intimidation, coercion or deception."[35] The district court then claimed Anderson knew what he was doing when he waived his right to remain silent because he has "prior convictions for which he served time in prison and knew precisely how the criminal justice system worked."[36] The district court's conclusions are severely misplaced and contrary to truth and justice. Anderson would not have waived falsely confessed to a crime he did not commit had the detectives not threatened to prosecute his girlfriend and take her child away. It is important for the Court to understand that Anderson did not execute a valid waiver as a *suspect* in this case. He did not confess until he was threatened concerning his girlfriend and her child. Whether or not his girlfriend would be charged is of no consequence; however, to use the more-than-probable prosecution as leverage to coax cooperation and/or a confession from Anderson is. The district court acknowledged as much in the MJ's Report and Recommendation:

> *False promises may be evidence of involuntariness, at least when paired with more coercive practices* or especially vulnerable defendants as part of the totality of the circumstances. *E.g., Lynumn v. Illinois*, 372 U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963) (pre-*Miranda confession found involuntary based on*

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[35]Magistrate's Report and Recommendation, p. 13 (citing *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (emphasis added).

[36]Magistrate's Report and Recommendation, p. 17.

> *false promise of leniency to indigent mother with young children, with threats to remove her children* and to terminate welfare benefits, along with other factors). But the Supreme Court allows police interrogators to tell a suspect that "a cooperative attitude" would be to his benefit. *Fare v. Michael C.*, 442 U.S. 707, 727, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979) (reversing finding that confession was involuntary). Supreme Court precedents do not draw bright lines on this subject.[37]

Under the totality of the circumstances of this case, it would be a complete miscarriage of justice to reward police work that was not only sloppy but also ran afoul of the United States Constitution. Accordingly, Anderson is entitled to habeas relief concerning this claim.

3. Whether jurists of reason would find it debatable that the prosecution made its case on evidence that was not preserved or did not exist.

The district court claimed that "Anderson has not presented any evidence of perjured testimony or shown that the prosecutor knowingly permitted officers to perjure themselves."[38]However, this is simply not true. The police and the prosecution conceded that alleged items of evidence were collected and lost. They further admitted that there were, allegedly, some other items of evidence that were viewed by the police that was not

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[37]Magistrate's Report and Recommendation, p. 15 (citing *Dassey v. Dittmann*, 877 F.3d 297, 304 (7th Cir. 2017) (emphasis added)).

[38]Magistrate's Report and Recommendation, p. 34.

preserved. This amounts to less than circumstantial evidence because it was *not* preserved for the defense or the jury. Contrary to law, however, they *heard* all about it. The district court also admitted that the alleged evidence was lost or missing. Still, the district court excused this incompetence and injustice because "they regretfully, in hindsight, did not return to secure the evidence that seemed less important once Anderson confessed to the crime[] [although they] could not explain why the traffic ticket and photographs they had collected were missing from the evidence."[39] Contrary to the district court's assertion, the "missing evidence" concerns more than the "weight to be afforded the [detectives] testimony" because the prosecution could not "conclusively establish that the testimony was [*not*] false."[40] And, unlike situations where officers are *forced* to make split second decisions, the officers, and by extension the prosecution, cannot prevail from the benefit of hindsight. Because the prosecution did not have the evidence it relied on to wrangle this conviction, it should not have been able to talk about it in its case-in-chief. Because the prosecution was allowed to do so rendered Anderson's trial constitutionally unfair and the verdict unreliable.

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[39] Magistrate's Report and Recommendation, p. 35.

[40] Id., p. 35 (emphasis added).

The prosecution had the burden of presenting the evidence it claims was there and not the other way around. The district court's claim that the burden was on Anderson to present evidence of bad faith on the part of the police in failing to retrieve and preserve evidence is severely misplaced.[41] The burden does not belong to Anderson to prove the State withheld favorable evidence when the very evidence in question was not only withheld but still harped on at trial. Accordingly, the district court's assertion that the alleged "copy of the surveillance recording [ ] did not appear helpful to Anderson in any event" is contrary. Therefore Anderson is entitled to habeas relief, especially where there was no offered "explanation [ ] for why the traffic ticket and photographs were missing from the evidence collected[.]"[42]

The credibility of people testifying may be something for the jury to consider; however, whether Anderson was or was not the primary suspect from the beginning of the investigation of this case is not left to subjective speculation. Vincent Navarre was the primary suspect in this case and not Anderson. Thus the district court's belief that Detective Suzeneaux's and

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[41] Id., p. 37.

[42] Magistrate's Report and Recommendation, pp. 37-38.

Chadwick's testimonies were simply conflicting is misplaced. Again, all the investigators suspected Navarre; therefore, this is a matter of fact and not opinion being testified to. And it is established fact that Anderson was not the primary suspect. Accordingly, Anderson is entitled to habeas relief concerning this claim.

4. Whether jurists of reason would find it debatable that Anderson was subjected to double jeopardy as the result of an impermissible double enhancement.

The district court correctly observed that Anderson's issue here is that "the underlying felony conviction used to charge him as a convicted felon in possession of a firearm in this case was also used to support the multiple-offender adjudication and sentence he received."[43] However, the district court somehow misconstrued Anderson's argument by claiming his complaint is only a sentencing issue. Anderson complaint is not simply about an enhanced sentence or second punishment. It is however, what the district court overlooked although it was spelled-out by the MJ:

> Here, Anderson appears to argue that **the State used his previous 2005 convictions** for possession of cocaine **and** *for being a convicted felon in possession of a firearm* **to support the current charge of being a convicted felon in possession of a firearm,** *and then used the same firearm conviction* as part of the multiple bill of information charging him as a third-felony offender. He

[43] Id., p. 39.

> contends that the state sought multiple enhancement of his sentence based on the same set of prior convictions. However, **the bill of information reflects that *only* the prior 2005 conviction for possession of cocaine was used for count two** (possession of a firearm by a convicted felon), *see State v. Anderson*, 2014 WL 647913, at *1 n. 1, whereas the multiple bill of information listed the underlying predicate convictions as the 2004 simple burglary of an inhabited dwelling and 2005 convicted felon in possession of a firearm.[44]

It does not get any clearer than that. The district court recapitulated Anderson's argument and then claims it was not an impermissible double enhancement. Again, the first conviction the prosecution 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 prosecution 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 prosecution relied on the same underlying felony it used to prosecute him as a convicted felon in possession of a firearm. Accordingly, Anderson's adjudication and enhanced life sentence,

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[44] Id.

as a third felony offender under *La. R.S.* 15:529.1 is the result of an impermissible double enhancement.[45]

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 in possession of a firearm and was sentenced to serve ten years at hard labor. In its felony bill of information, the prosecution's count two against Anderson reads:

> R.S. 14:95.1 CONVICTED FELON POSSESSING 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.

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.* 14:95.1, respectively. To support the charge of felon in possession of a firearm against him, the prosecution used the convictions cited above—possession of cocaine and possessing or having upon his person a weapon as the underlying felony. However, the prosecution's

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[45] *State v. Dauzart*, 02-1187 (La. App. 5 Cir 3/25/03), 844 So.2d 159, 168.

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 Louisiana Supreme Court said "the state may not seek multiple enhancement of a defendant's sentence on the basis of the same set of prior convictions."[46] However, that is exactly what the prosecution did in this case. The prosecution knew Anderson had a previous conviction for felon in possession of firearm. That is what prompted the prosecution to file a bill of information charging 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 prosecution used the same underlying felony, twice, to adjudicate Anderson a third felony offender.[47]

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.[48] However, Anderson's right of equal protection has been violated because the very provisions designed to protect

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[46] *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.

[47] *La. Const. art.* I, § 15; *U.S. Const. amend.* V; *U.S. Const. amend.* VIII; *U.S. Const. amend.* XIV.

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

him were violated by an impermissible double enhancement when he was subjected to "multiple punishment for the same conduct."[49] Accordingly, Anderson is entitled to habeas relief concerning this claim.

CONCLUSION

WHEREFORE, considering the claims asserted above, Petitioner, Carter Vincent Anderson asks the Court to grant the requested COA.

Respectfully submitted this 14th day of June, 2019.

Carter Vincent Anderson, pro se
418030, Magnolia—4
Louisiana State Penitentiary
Angola, LA 70712

[49] *State v. Holloway*, supra; citing *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969); *State v. Vaughn*, 431 So.2d 763, 767 (La. 1983); *State v. Warner*, 94-2649, p. 4 (La. App. 4 Cir. 3/16/95), 653 So.2d 57, 59.

AFFIDAVIT/CERTIFICATE OF SERVICE

I do hereby swear and affirm that the foregoing is true and correct to the best of my knowledge and belief. I further certify that the foregoing has been served upon:

Opposing Counsel:

Warren Montgomery, District Attorney
Attention: ADA Matthew Caplan
701 N. Columbia Street
Covington, LA 70433

By placing a copy of same in a properly addressed envelope into the hands of the Classification Officer assigned to my unit along with a Withdrawal made out to the General Fund, LSP, Angola, LA 70712 for the cost of postage and a properly filled out Inmate's Request for Indigent/Legal Mail form, receiving receipt for same in accordance with the institution's rules and procedures for the sending of legal mail.

Done this 14th day of June, 2019.

_____

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Pursuant to 5th Cir. R. 32.2.7(c), the undersigned certifies this brief complies with the type volume limitations of Fed. R. App. P. 32(a)(7).

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Carter Vincent Anderson, Petitioner-Appellant

Case No. 19-30397

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CARTER VINCENT ANDERSON
Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,
Respondent-Appellee

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I declare under penalty that the foregoing is true and correct.

Carter Vincent Anderson, Petitioner-Appellant

Signed on June 14, 2019.

EXHIBIT "C"

U.S. District Court - Eastern District of Louisiana

Carter Vincent Anderson #418030
Louisiana State Penitentiary
General Delivery
Angola, LA 70712

Case: 2:18-cv-07977 #18
4 pages.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON	**CIVIL ACTION**
VERSUS	**NO. 18-7977**
DARREL VANNOY, WARDEN	**SECTION: "I" (5)**

ORDER

The Court, having considered the petition, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the objection by plaintiff, Carter Vincent Anderson, which is hereby **OVERRULED**, approves the Magistrate Judge's Findings and Recommendation and adopts it as its opinion in this matter. Accordingly,

IT IS ORDERED that the petition of Carter Vincent Anderson for issuance of a writ of habeas corpus under 28 U.S.C. § 2254, is hereby **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, this 10th day of May, 2019.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

U.S. District Court - Eastern District of Louisiana

Carter Vincent Anderson #418030
Louisiana State Penitentiary
General Delivery
Angola, LA 70712

Case: 2:18-cv-07977 #17
4 pages.
Fri May 10 9:01:53 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON	**CIVIL ACTION**
VERSUS	**NO. 18-7977**
DARREL VANNOY, WARDEN	**SECTION: "I"(5)**

JUDGMENT

The Court having approved the Report and Recommendation of the United States Magistrate Judge and having adopted it as its opinion herein;

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment against petitioner, Carter Vincent Anderson, dismissing with prejudice his petition for issuance of a writ of habeas corpus under 28 U.S.C. § 2254.

New Orleans, Louisiana, this 10th day of May, 2019.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON	**CIVIL ACTION**
VERSUS	**NO. 18-7977**
DARREL VANNOY, WARDEN	**SECTION: "I"(5)**

REPORT AND RECOMMENDATION

This matter was referred to the undersigned United States Magistrate Judge to conduct a hearing, including an evidentiary hearing, if necessary, and to submit proposed findings and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), and as applicable, Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts. Upon review of the entire record, the Court has determined that this matter can be disposed of without an evidentiary hearing. *See* 28 U.S.C. § 2254(e)(2). For the following reasons, **IT IS RECOMMENDED** that the petition for habeas corpus relief be **DISMISSED WITH PREJUDICE.**

Procedural History

Petitioner, Carter Anderson, is a convicted inmate currently incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. On March 21, 2011, Anderson was charged by bill of information with armed robbery and being a convicted felon in possession

of a firearm.[1] On November 15, 2012, a jury found him guilty as charged.[2] His motions for post-verdict judgment of acquittal and new trial were denied. On February 4, 2013, the trial court sentenced him to 60 years at hard labor with the first 20 years to be served without benefit of probation, parole or suspension of sentence, and 10 years at hard labor without benefit of probation, parole or suspension of sentence, respectively.[3] His motion to reconsider the sentence was denied. The State filed a multiple bill of information.[4] On April 16, 2013, his original sentences were vacated, and the trial court sentenced him as a third-felony offender to life imprisonment on each count, to run concurrently.

Anderson appealed and asserted one claim of error. He argued that the trial court erred in denying his motion to suppress his confession. On February 18, 2014, the Louisiana First Circuit Court of Appeal affirmed the convictions and sentences.[5] He filed an application for writ of certiorari with the Louisiana Supreme Court. On October 24, 2014, the Louisiana Supreme Court denied his writ application.[6]

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[1] State Rec., Vol. 1 of 7, Bill of Information, 22nd JDC for St. Tammany Parish.

[2] State Rec., Vol. 1 of 7, Minute Entry, 11/15/12.

[3] State Rec., Vol. 1 of 7, Minute Entry, 2/4/13.

[4] State Rec., Vol. 1 of 7, Multiple Offender Bill of Information.

[5] *State v. Anderson*, 2013-KA-0836, 2014 WL 647913 (La. App. 1st Cir. 2/18/14); State Rec., Vol. 4 of 7.

[6] *State v. Anderson*, 2014-KO-0591 (La. 2014), 151 So.3d 599; State Rec., Vol. 3 of 7.

On December 28, 2015, Anderson submitted an application for post-conviction relief to the state district court.[7] In that application, he asserted the following claims: (1) the prosecution purposefully excluded all African-American prospective jurors, rendering his trial fundamentally unfair; (2) prosecutorial misconduct rendered his trial fundamentally unfair; and (3) he was denied the right to effective assistance of appellate counsel for failing to raise a *Batson* claim on direct appeal. On July 20, 2016, the district court denied relief.[8] On October 17, 2016, his related writ application with the Louisiana First Circuit was denied.[9] On August 3, 2018, the Louisiana Supreme Court denied his application for supervisory writs.[10] The Louisiana Supreme Court concluded that Anderson failed to show that he received ineffective assistance of counsel under *Strickland* and that he failed to satisfy his burden of proof as to the remaining claims.

During the time he was seeking supervisory relief from the post-conviction ruling with the appellate courts, Anderson also submitted to the state district court a motion to vacate an illegal habitual-offender sentence.[11] In that motion, he argued that his

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[7] State Rec., Vol. 4 of 7, R.p. 619, Uniform Application for Post-Conviction Relief.

[8] State Rec., Vol. 4 of 7, R.p. 708, District Court Ruling denying PCR, 7/20/16.

[9] State Rec., Vol. 5 of 7, *State v. Anderson*, 2016-KW-1048, 2016 WL 6092938 (La. App. 1st Cir. Oct. 17, 2016).

[10] State Rec., Vol. 6 of 7, *State ex rel. Anderson v. State*, 2016-KH-2137 (La. 2018), 249 So.3d 822.

[11] State Rec., Vol. 4 of 7, Motion to Vacate an Illegal Habitual Offender Sentence signed

adjudication and enhanced sentence as a third-felony offender was the result of an impermissible double enhancement, because the underlying offense the State used to charge him as a convicted felon in possession of a firearm was also used to have him adjudicated as a third-felony offender. On June 7, 2017, the trial court denied the motion to vacate because it was untimely, successive and the sentence had been reviewed on appeal.[12] On August 21, 2017, his timely filed supervisory writ application was denied by the Louisiana First Circuit without stated reasons.[13] On August 3, 2018, the Louisiana Supreme Court issued a one-word denial of his related supervisory writ application.[14]

On August 20, 2018, Anderson filed a federal application for relief in this Court. In that application, he raises the following combined five grounds for relief asserted on direct appeal and collateral review: (1) the trial court erroneously denied the motion to suppress his confession; (2) the trial court erred in overruling his *Batson* challenge to the prosecutor's use of peremptory challenges to remove the only three prospective African-American jurors; (3) ineffective assistance of appellate counsel in failing to assert the *Batson* claim on direct appeal; (4) the prosecutor engaged in misconduct by presenting a case based on speculation

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and dated 6/1/17.

[12] State Rec., Vol. 4 of 7, R.pp. 757-60, Ruling Denying Motion to Vacate, 6/7/17.

[13] State Rec., Vol. 7 of 7, R.p. 1230, *State v. Anderson*, 2017-KW-0865, 2017 WL 6603954 (La. App. 1st Cir. Aug. 21, 2017).

[14] State Rec., Vol. 7 of 7, *State ex rel. Anderson v. State*, 2017-KH-1530 (La. 2018), 250 So.3d 888.

and hearsay unsupported by any tangible evidence; and (5) the enhanced sentence is the result of an impermissible double enhancement.[15] In its response to the federal application, the State does not allege untimeliness, failure to exhaust, or procedural default.[16] Anderson submitted a Reply to the State's Response.[17]

Facts

On direct appeal, the Louisiana First Circuit Court of Appeal summarized the facts adduced at trial as follows:

> On December 30, 2010, between midnight and 1:00 a.m., Larry Bennett (the victim) was in a Wal–Mart parking lot in Slidell, Louisiana, when an African–American male approached his 1993 Cadillac Seville. The victim, a retired truck driver from Toledo, Ohio, who came to Slidell to purchase a part for his antique airplane, was set to spend the night in his vehicle when the perpetrator suddenly smashed his rear window. When the victim turned towards the back, the perpetrator pointed a gun at the victim's face and told him to get out of the car. When the victim attempted to take the keys out of the ignition, the perpetrator told him to leave the keys in the ignition and get out of the car, and he began striking the victim in the back of his head. Before fleeing the scene in the victim's vehicle, the perpetrator forced the victim to place a blanket that was in his vehicle over his head, as blood from his head injury began to cover his neck. John Binder, a bystander who was in the Wal–Mart parking lot at the time, witnessed the robbery and contacted the police. Binder described the perpetrator as a short, African–American male with dreadlocks. The victim was taken to Ochsner Hospital where he received stitches in the back of his head.
>
> After being released from the hospital, the victim provided the Slidell Police Department (SPD) with the telephone number for the cell phone that he left in

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[15] Rec. Doc. 3, Petition.

[16] Rec. Doc. 12.

[17] Rec. Doc. 14.

the vehicle and with the clothing that he was wearing at the time of the incident. The police accessed the cell phone records and determined that the cell phone was used to call Laura Bolden. Bolden was defendant's girlfriend, with whom he was living at the time in a duplex apartment building at the corner of 11th Street and Cousin Street in Slidell. The victim's vehicle was recovered from an apartment complex within walking distance of the residence. SPD Detectives Daniel Suzeneaux[18] and Brian Brown observed surveillance footage[19] from the apartment complex showing that, shortly after the robbery, the vehicle was dropped off by an individual who fit the description provided by Binder. The victim's cell phone was found at the residence on Cousin Street, and defendant and the others who were present at the residence were asked to come to the police station for questioning. Defendant, before being questioned, initially denied any knowledge or involvement. Defendant was advised of his *Miranda* rights at the scene and again at the police station where a waiver of rights form was executed. Defendant made incriminating statements during an audio-recorded interview at the police station. SPD executed a search warrant for Bolden's vehicle that was at the residence on Cousin Street and found a bag containing a handgun and a traffic ticket in defendant's name. The victim's DNA was found during the testing of swabs processed from the recovered handgun. Defendant fit the basic description depicted on the surveillance footage and given by Binder; however, at the time of his arrest he had a short haircut with remaining twists, as opposed to full dreadlocks. During the audio-recorded interview, defendant admitted that his girlfriend recently styled his hair in dreadlocks, but due to the "good" texture of his hair he could not maintain the locks. During the trial, the victim identified defendant as the perpetrator, noting that he was able to focus on the perpetrator's eyes and nose as the gun was being held between the perpetrator's face and the victim's face.[20]

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[18] The detective's name is alternatively spelled as "Seuzeneau" in the record.

[19] The apartment manager had limited knowledge on the operation of the surveillance system. After the police viewed the surveillance footage, they unsuccessfully attempted to download the footage.

[20] *State v. Anderson*, 2013-KA-0836, 2014 WL 647913, at *1 (La. App. 1st Cir. 2/18/14) (footnotes in original).

Standards of Review on the Merits

Title 28 U.S.C. § 2254(d)(1) and (2), as amended by The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), provides the applicable standards of review for pure questions of fact, pure questions of law, and mixed questions of both. A state court's purely factual determinations are presumed to be correct and a federal court will give deference to the state court's decision unless it "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2); *see also* 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence."). With respect to a state court's determination of pure questions of law or mixed questions of law and fact, a federal court must defer to the decision on the merits of such a claim unless that decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

The "'contrary to' and 'unreasonable application' clauses [of § 2254(d)(1)] have independent meaning." *Bell v. Cone*, 535 U.S. 685, 694 (2002). A state court decision is "contrary to" clearly established precedent if the state court applies a rule that contradicts the governing law set forth in the United States Supreme Court's cases or if the state court

confronts a set of facts that are materially indistinguishable from a decision of the United States Supreme Court and nevertheless arrives at a result different from United States Supreme Court precedent. *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000); *Wooten v. Thaler*, 598 F.3d 215, 218 (5th Cir.), *cert. denied*, 131 S.Ct. 294 (2010). An "unreasonable application" of [United States Supreme Court] precedent occurs when a state court "identifies the correct governing legal rule... but unreasonably applies it to the facts of the particular state prisoner's case." *Williams*, 529 U.S. at 407-08; *White v. Woodall*, 572 U.S. 415, 426 (2014).

It is well-established that "an unreasonable application is different from an incorrect one." *Bell*, 535 U.S. at 694. A state court's merely incorrect application of Supreme Court precedent simply does not warrant habeas relief. *Puckett v. Epps*, 641 F.3d 657, 663 (5th Cir. 2011) ("Importantly, 'unreasonable' is not the same as 'erroneous' or 'incorrect'; an incorrect application of the law by a state court will nonetheless be affirmed if it is not simultaneously unreasonable."). "[E]ven a strong case for relief does not mean the state court's contrary conclusion was unreasonable" under the AEDPA. *Harrington v. Richter*, 562 U.S. 86, 102 (2011). Section 2254(d) preserves authority to issue the writ in cases where there is "*no possibility* fairminded jurists could disagree that the state court's decision conflicts with [United States Supreme Court] precedents." *Id.* at 102 (emphasis added); *see also Renico v. Lett*, 559 U.S. 766, 779 (2010) ("AEDPA prevents defendants—and federal courts—from using federal habeas corpus review as a vehicle to second-guess the reasonable

decisions of state courts.").

Claims for Relief

I. Admission of Involuntary Confession

Anderson claims that the trial court improperly denied the motion to suppress his statement. He asserts that his confession was involuntary and coerced with threats, promises and falsehoods. The confession was audio-recorded. The compact disc recordings and executed statements regarding his *Miranda* rights were introduced as evidence at the suppression hearing and submitted as part of the instant state-court record.[21]

The Louisiana First Circuit rejected the claim on direct appeal as follows:

> In his sole assignment of error, defendant argues that the trial court erred in denying his motion to suppress his confession. He asserts that detectives threatened him and his girlfriend in order to get him to incriminate himself. Defendant contends that there was no eyewitness identification or DNA evidence linking him to the armed robbery offense. Defendant argues that the convictions should be reversed due to the police's use of coercion, threats, and promises to induce the confession. Defendant contends that the trial court should have granted the motion to suppress after hearing the detectives threatening him on the recording. Defendant notes that he was not the only person who had access to the vehicle and further contends that the police investigation was faulty because they lost evidence and they failed to identify the owner of the items seized from the vehicle that was searched. Defendant contends that he emotionally collapsed under the notion that his girlfriend could be falsely accused of this crime. Defendant notes that the detectives lied about his fingerprints being found in the victim's vehicle and about having a witness who already identified defendant as the perpetrator. Defendant also claims that the detectives promised to help his girlfriend, knowing that they intended to prosecute her.

The Fourth Amendment to the United States Constitution and article I, § 5 of

[21] Rec. Doc. 12-2, Notice of Manual Attachment, Exhibit 2.

the Louisiana Constitution protect persons against unreasonable searches and seizures. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. LSA-C.Cr.P. art. 703A. The State bears the burden of proving the admissibility of a purported confession or any evidence seized during a search without a warrant. LSA-C.Cr.P. art. 703D. Louisiana Revised Statute 15:451 provides that before a purported confession can be introduced in evidence, it must be affirmatively shown to be free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his or her *Miranda* rights. *State v. Plain*, 99-1112 (La. App. 1 Cir. 2/18/00), 752 So .2d 337, 342. The State must specifically rebut a defendant's specific allegations of police misconduct in eliciting a confession. *State v. Thomas*, 461 So.2d 1253, 1256 (La. App. 1 Cir. 1984), *writ denied*, 464 So.2d 1375 (La.1985).

Whether a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. *State v. Benoit*, 440 So.2d 129, 131 (La. 1983). The trial court must consider the totality of the circumstances in deciding whether a confession is admissible. *State v. Hernandez*, 432 So.2d 350, 352 (La. App. 1 Cir.1983). Testimony of the interviewing police officer alone may be sufficient to prove a defendant's statements were freely and voluntarily given. *State v. Maten*, 04-1718 (La. App. 1 Cir. 3/24/05), 899 So.2d 711, 721, *writ denied*, 05-1570 (La. 1/27/06), 922 So.2d 544.

A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. *State v. Jones*, 01-0908 (La. App. 1 Cir. 11/8/02), 835 So.2d 703, 706, *writ denied*, 02-2989 (La. 4/21/03), 841 So.2d 791. Correspondingly, when a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. *See State v. Green*, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-81. However, a trial court's legal findings are subject to a de novo standard of review. *See State v. Hunt*, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. When reviewing a trial court's ruling on a motion to suppress, the entire record may be considered, including trial testimony. *State v. Martin*, 595 So.2d 592, 596 (La. 1992).

The following evidence was presented at the hearing on the motion to suppress. Detective Suzeneaux testified that everyone present at the duplex apartment on the day of the robbery, including defendant, was asked to come to the station for questioning regarding the robbery, and everyone agreed. After Bolden was interviewed, Detective Suzeneaux and SPD Detective Luke Irwin interviewed defendant. Detective Suzeneaux denied that defendant was coerced or forced into making a statement at the hearing and again during the trial.

The audio-recorded interview revealed that defendant's rights were read to him, and he stated that he understood his rights and further stated that he wished to make a statement. Defendant denied that he had been physically or verbally abused and confirmed that he was making the statement of his own free will. Defendant initially denied having specific information regarding, or being involved in, the robbery. He implicated his male roommate before eventually making incriminating statements that pointed to his personal involvement, but he did not initially make a full-blown confession. The police relayed some of the information that they had regarding the offense and admittedly used falsehoods. For example, the police indicated that they already knew what happened and that they had fingerprint evidence and witness statements implicating defendant. Vulgar language was also used along with repeated requests for truth, honesty, and details. The police also told defendant that he was not helping himself by lying and that he was being given the chance to tell the truth. Defendant eventually admitted to handling the gun, having personal contact with the stolen vehicle, and knowing that it had been stolen. Defendant ultimately stated that he hit the victim out of fear. The police informed defendant that if he continued to cooperate they would let his cooperation be known. The police reminded defendant that his child and girlfriend loved him and suggested that defendant may have committed the offense for them, as they continued to question defendant. Before defendant finally confessed, he again admitted that he was not being forced to make the statements. Defendant's emotional breakdown came after he confessed and became even more concerned about the consequences of his actions.

As to the voluntariness of defendant's statements, we note that the police testimony indicated that there were no promises or abuse to induce defendant's agreement to make a statement, and defendant indicated as such during the interview. As noted, defendant was fully advised of his rights and executed a waiver of rights form. We note that statements by the police to a

defendant that he would be better off if he cooperated are not promises or inducements designed to extract a confession. *State v. Lavalais*, 95-0320 (La. 11/25/96), 685 So.2d 1048, 1053, *cert. denied*, 522 U.S. 825, 118 S.Ct. 85, 139 L.Ed.2d 42 (1997). A confession is not rendered inadmissible by the fact that law enforcement officers exhort or adjure a defendant to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or one which implies a promise of reward. Further, a defendant's confession is not inadmissible merely because in making it he may have been motivated by a desire to protect his girlfriend. *See State v. Lee*, 577 So.2d 134, 143-44 (La. App. 1 Cir.), *writ denied,* 580 So.2d 667 (La. 1991); *State v. Weinberg*, 364 So.2d 964, 969-71 (La. 1978); *State v. Brown*, 504 So.2d 1025, 1031 (La. App. 1 Cir.), *writ denied*, 507 So.2d 225 (La. 1987). As did the Louisiana Supreme Court in *Lavalais*, we find in this case that, rather than being promises or inducements designed to extract a confession, the comments in question herein were more likely musings not much beyond what this defendant might well have concluded for himself. *Lavalais*, 685 So.2d at 1053-54. The totality of the interview clearly conveys that the statements were not being made according to any promises, coercion, or threats.

Regarding certain falsehoods used by the police during questioning, the issue is whether or not such tactics were sufficient to make an otherwise voluntary confession or statement inadmissible. *See State v. Lockhart*, 629 So.2d 1195, 1204 (La. App. 1 Cir. 1993), *writ denied*, 94-0050 (La. 4/7/94), 635 So.2d 1132. In *Lockhart*, a detective misled the defendant into believing that the police knew more about the case than they really did by telling him that the victims had identified him. Another detective stated that he would inform the district attorney's office that the defendant contended the shootings were accidental. This court found that the detectives' statements to the defendant were not sufficient inducements "to make an otherwise voluntary confession inadmissible." *Lockhart*, 629 So.2d at 1204. Similarly, in *State v. Sanford*, 569 So.2d 147, 150-52 (La. App. 1 Cir.1990), *writ denied*, 623 So.2d 1299 (La. 1993), this court determined that a defendant's confession was not rendered involuntary, although the detective apparently misled the defendant into believing that one of his cohorts had confessed by informing him that the other suspects were "singing like birds." *Sanford*, 569 So.2d at 151.

We have carefully reviewed the evidence presented at the suppression hearing and at trial and conclude that the lower court's ruling is supported by the record. While the officers admittedly utilized confrontational language, defendant, who had a criminal record, seemed to be more concerned about his

> realization that he was a multiple offender and admitted to being terrified in that regard. We find that the totality of the circumstances surrounding the making of the confession by defendant and his responses as a whole show that the confession was made freely and voluntarily. Considering the above, we further find that the trial court did not err or abuse its discretion in denying the motion to suppress. The assignment of error is without merit.

The Louisiana Supreme Court likewise denied relief.

The admissibility of a confession is a mixed question of law and fact. *Miller v. Fenton*, 474 U.S. 104, 112 (1985); *ShisInday v. Quarterman*, 511 F.3d 514, 522 (5th Cir. 2007) (citing *Miller*, 474 U.S. at 112). On federal habeas review, this Court must determine if the state court's ruling on voluntariness was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." 28 U.S.C. § 2254(d)(1); *Barnes v. Johnson*, 160 F.3d 218, 222 (5th Cir. 1998). If the underlying facts as determined by the state court indicate the presence of some coercive tactic, the impact that factor had on the voluntariness of the confession is a matter for independent federal determination and is ultimately a legal determination. *Miller*, 474 U.S. at 117, 106 S.Ct. 445; *ShisInday*, 511 F.3d at 522.

Under *Miranda v. Arizona*, 384 U.S. 436 (1966), a statement made by a person in custody is inadmissible unless that person was informed that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney." *Id.* at 444-45. Waiver or relinquishment of these rights must be knowing and voluntary, that is, made with full awareness of the nature of the right being waived, and not the result of intimidation, coercion or deception. *Moran v.*

Burbine, 475 U.S. 412, 421 (1986). The court must consider the "totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

"Coercive police conduct is a necessary prerequisite to the conclusion that a confession was involuntary, and the defendant must establish a causal link between the coercive conduct and the confession." *United States v. Blake*, 481 Fed. Appx. 961, 962 (5th Cir. 2012) (citing *Colorado v. Connelly*, 479 U.S. 157, 163–67, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986)). In the absence of evidence of official coercion, a defendant cannot establish that his confession was involuntary. *Carter v. Johnson*, 131 F.3d 452, 462-63 (5th Cir. 1997).

The United States Seventh Circuit Court of Appeals recently reviewed Supreme Court precedent regarding psychological interrogation tactics and coercion:

> Interrogation tactics short of physical force can amount to coercion. The Court has condemned tactics designed to exhaust suspects physically and mentally. Such tactics include long interrogation sessions or prolonged detention paired with repeated but relatively short questioning. *Davis v. North Carolina*, 384 U.S. 737, 752, 86 S.Ct. 1761, 16 L.Ed.2d 895 (1966) (finding coercive the practice of repeated interrogations over sixteen days while the suspect was being held incommunicado).
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> The Supreme Court has not found that police tactics not involving physical or mental exhaustion taken alone were sufficient to show involuntariness. In several cases, the Court has held that officers may deceive suspects through appeals to a suspect's conscience, by posing as a false friend, and by other means of trickery and bluff. *See, e.g., Procunier v. Atchley*, 400 U.S. 446, 453–54, 91 S.Ct. 485, 27 L.Ed.2d 524 (1971) (suspect was deceived into confessing to false friend to obtain insurance payout to children and stepchildren); *Frazier v. Cupp*, 394 U.S. 731, 739, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (deceiving suspect about another suspect's confession). False promises to a suspect have similarly not been seen as *per se* coercion, at least if they are not

> quite specific. *See Arizona v. Fulminante*, 499 U.S. 279, 285, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (rejecting language in *Bram v. United States*, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897), stating that a confession could not be obtained by "any direct or implied promises," *id.* at 542–43, 18 S.Ct. 183, but finding promise to protect suspect from threatened violence by others rendered confession involuntary); Welsh S. White, *Confessions Induced by Broken Government Promises*, 43 Duke L.J. 947, 953 (1994).
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> False promises may be evidence of involuntariness, at least when paired with more coercive practices or especially vulnerable defendants as part of the totality of the circumstances. *E.g., Lynumn v. Illinois*, 372 U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963) (pre-*Miranda* confession found involuntary based on false promise of leniency to indigent mother with young children, combined with threats to remove her children and to terminate welfare benefits, along with other factors). But the Supreme Court allows police interrogators to tell a suspect that "a cooperative attitude" would be to his benefit. *Fare v. Michael C.*, 442 U.S. 707, 727, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979) (reversing finding that confession was involuntary). Supreme Court precedents do not draw bright lines on this subject.

Dassey v. Dittmann, 877 F.3d 297, 304 (7th Cir. 2017). Similarly, the United States Fifth Circuit Court of Appeals has analyzed instances of alleged coercive conduct in varying contexts:

> Such conduct includes official overreach and direct coercion, as well as promises and inducements. See *United States v. Blake*, 481 Fed. Appx. 961, 962 (5th Cir. 2012) (unpublished) (per curiam). Trickery or deceit only constitutes coercion "to the extent [the defendant is deprived] of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." *Hopkins*, 325 F.3d at 584. "Neither mere emotionalism and confusion, nor mere trickery will alone necessarily invalidate a confession." *Self v. Collins*, 973 F.2d 1198, 1205 (5th Cir. 1992) (internal quotations marks omitted). For instance, this Court found that coercion occurred when a defendant confessed to a murder after being assured by police that the conversation was confidential. *Hopkins*, 325 F.3d at 584–85. The defendant had been isolated for fifteen days and was even interviewed by a close friend in order to help elicit a confession. *Id.* at 584. Likewise, coercion was found when a mother confessed only after police threatened to cut off her state

> financial aid and take custody of her children. *Lynumn v. Illinois*, 372 U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963).

Byrom v. Epps, 518 Fed. Appx. 243, 256-57 (5th Cir. 2013). In *Byrom*, the Fifth Circuit acknowledged that officers used deception and cajoling, but rejected the assertion that the confessions were coerced, reasoning:

> Having reviewed the transcripts of these interviews, it is clear that Byrom's confessions were not coerced. While the sheriff's statements were certainly intended to cajole Byrom into confessing using her emotions and a measure of deception, they did not constitute coercion. Byrom first implicated herself after the sheriff implored Byrom to not leave Junior "hanging out there to bite the big bullet." The sheriff made that statement early during the interview, after a series of denials from Byrom. While the statement certainly suggested that Junior was facing serious legal consequences regarding Edward's murder, the police did not make any threats, promises, or other coercive statements. Insofar as the sheriff made other, subsequent statements, Byrom had already confessed and continued to do so. In any event, Byrom was not promised leniency and she was not threatened in any capacity. The sheriff merely utilized an appeal to emotion and urged her to confess to spare Junior harsher legal consequences, a permissible tactic since Byrom was not thereby deprived of knowledge essential to an understanding of her rights and the consequences of waiving them. *Hopkins*, 325 F.3d at 584.[22]

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[22] The Fifth Circuit reviewed the claim in the context of the following statements:

At the beginning of her second interview, the sheriff told Byrom that [her son] Junior had already confessed and warned Byrom against letting Junior bear the full weight of Edward's murder on his own: "He's already given us a statement on this. Don't let him be out here by himself on this." The sheriff reiterated the point later when he told Byrom that she was "trying to leave him out there by himself." The sheriff also told Byrom that she and Junior would be in danger as long as the triggerman remained free. Finally, the sheriff warned Byrom that he would tell the judge whether and to what extent Byrom cooperated: "There are [sic] stuff you are leaving out here. Now I'm going to tell you. Once we get to the point where we have to talk to the Judge and everything. All that's going to matter. He's going to ask me how did she cooperate? ... Well I'm gonna have to tell him that you had a memory lapse on some 'stuff,' we had to pick it out of her. Now the Judge ain't going to like it." Byrom claims that these statements deceived her and exploited her emotions, thereby constituting

Id. at 257-58.

Anderson does not dispute that his rights were read to him and that he stated he understood those rights and wished to make a statement. However, he asserts that the confession was involuntary because his will was overborne by police misconduct. *Self v. Collins*, 973 F.2d 1198, 1205 (5th Cir. 1992) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 225–26, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854 (1973)). He contends the police used a variety of coercive tactics to compel an involuntary confession. First, he argues that police intentionally misled him by telling him they had witnesses and physical evidence that pointed to Anderson as the perpetrator of the armed robbery when no such evidence existed.[23] Second, he asserts that the police threatened to charge his girlfriend and take her child away if he did not confess and implied they would help her if he did confess.

Here, the Louisiana First Circuit considered the totality of the circumstances, which included not only the pressure and tactics used by police, but also Anderson's personal characteristics, including his familiarity with the criminal justice system. *Schneckloth v. Bustamonte*, 412 U.S. at 226. Quite the opposite of being vulnerable, Anderson had prior convictions for which he served time in prison and knew precisely how the criminal justice system worked. His admitted fear was going back to jail for "life" and not the officers'

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coercion that tainted her subsequent confessions. *Id.* at 257-58.

[23] Detective Suzeneaux admitted during trial that they told him some things during the interview that were false. *See* State Rec., Vol. 1 of 7, Transcript, pp. 114-122.

interrogation tactics. He already knew that his girlfriend, who had come to the station with him, was being questioned by police regarding her involvement in the crime and could face possible charges. He signed the form stating he understood his *Miranda* rights and wanted to talk to detectives.

Detectives Suzeneaux and Irwin interviewed Anderson at the station. During the first part of the interview, detectives urged Anderson to cooperate and tell the truth about Vinny, who was Anderson's roommate and a potential suspect at the time. They said generally they could not help him unless he was truthful about what happened. They truthfully told him that the focus of the investigation was not on him, but on Vinny—at that time. Their statements that they did not care about Anderson's involvement were hardly promises of leniency. In fact, they informed him they did possess information and had recovered a gun that could potentially implicate Anderson, if not for the armed robbery, then for being an accessory after the fact. Clearly, based on information received thus far, however, they believed Vinny committed the armed robbery and believed Anderson was simply covering for Vinny. They hoped to get Anderson to cooperate and give them information about Vinny and suggested he had limited time in which to do so.

Anderson repeatedly expressed fear of going back to jail, not fear of the police or Vinny, which explained his withholding information and not being candid with police. Detectives falsely indicated they had his fingerprints on the gun and his girlfriend's car where they found the gun and that other people had witnessed what happened. Still,

Anderson maintained his innocence and offered explanations for the information they had. In doing so, he retreated somewhat from his position that he knew absolutely nothing about Vinny's activity that night and provided more details about what he suspected Vinny had done.

The second part of the interview was conducted after detectives shifted their focus to Anderson, because they learned Vinny's physique did not match the individual they viewed on surveillance. At this point, detectives began suggesting that he may not have meant to hurt the victim and that he committed the crime to support his girlfriend and daughter, who loved him. Anderson agreed he did not intend to hurt the victim. He told the detectives that the guy jumped up and scared him when he hit the window. He also told detectives how he acquired the gun he used. The detectives continued to express that if he cooperated they would make his cooperation known. Anderson once again acknowledged that he understood his *Miranda* rights and had not been forced to make the statement. He stated that he was going to jail regardless, and the detectives "didn't even make me, I'm sinking myself on tape." After this point in the interview, when he realizes, "I'm gone," then he became more emotional.

Detectives pressed him about other robberies that he may have been involved in and suggested he could clear his conscience, but he remained skeptical that they could help him out since he doubted they were going to let him just leave. Detectives candidly informed him he was going to be charged, but they could relay to the District Attorney that he was a

good and remorseful person who deserved another chance. In an appeal to his sympathy, the detectives told him to think about his loving girlfriend and little girl, who he would be saving from having her mom go to prison.

Later, in the context of the other suspected robberies, detectives told him they had enough to charge his girlfriend as an accessory after the fact and promised to leave her alone if he started talking. By this time, however, he had already confessed to the armed robbery at issue. He steadfastly refused to confess to one of the two additional robberies they were questioning him about, despite the detective's admitted use of the "bargaining chip."

The state court's decision finding the police conduct did not render his confession involuntary is neither contrary to Supreme Court precedent nor an unreasonable application of federal law. Anderson understood his rights surrounding the statement and agreed to speak to the police. He does not claim that he was impaired in any way when he gave the statement. The interview was somewhat confrontational, but not unduly long. He was not young or new to the criminal justice system. He had multiple prior arrests and experience with law enforcement and understood his waiver and the consequences of his statements. *See, e.g., Lord v. Duckworth*, 29 F.3d 1216, 1222 (7th Cir. 1994) (identifying the fact that "[a]t the time of his interrogation, [defendant] was 35 years old and had experience with the criminal justice system by virtue of two prior felony convictions" as one of several factors that led to the conclusion that defendant's confession was voluntary).

Anderson was not forced, threatened or otherwise induced to give a confession.

The deception surrounding the available evidence implicating him and alleged promises or threats made by detectives do not constitute evidence of improper or overbearing coercion on the part of the police sufficient to render his confession involuntary. The existence of a promise constitutes but one factor in the totality of the circumstances analysis and does not render a confession involuntary *per se*. *United States v. Fernandes*, 285 Fed. Appx. 119, 124 (5th Cir. 2008) (citing *Hawkins v. Lynaugh*, 844 F.2d 1132, 1140 (5th Cir. 1988)). Detectives made no explicit promises to Anderson regarding leniency or involving his girlfriend to induce his confession to the armed robbery at issue. *Byrom*, 518 Fed. Appx. at 257-58. By the time officers sought to use a "bargaining chip," concerning his girlfriend, in an attempt to gain additional information about other robberies, he had already made the relevant incriminating statements concerning the crime of conviction.

Additionally, encouraging a suspect to tell the truth or telling him that his cooperation will be made known does not suffice to render a subsequent incriminating statement involuntary. *United States v. Ballard*, 586 F.2d 1060, 1063 (5th Cir. 1978) (citations omitted). The officers' comments to this effect during the interview did not rise to the level of coercion so as to render his statement involuntary. Similarly, "trickery or deceit is only prohibited to the extent that it deprives the defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." *United States v. Bell*, 367 F.3d 452, 461 (5th Cir. 2004) (citing *inter alia, Soffar v. Cockrell*, 300 F.3d 588, 596 (5th Cir. 2002) (en banc)). Anderson's repeated remarks throughout the

interview indicated that he was never deprived of the ability to understand his rights or the consequences he faced for voluntarily abandoning them.

The appeals to his emotion and sympathy for his girlfriend, who also voluntarily submitted to questioning, were not overtly coercive. He clearly cared for and wanted to help his girlfriend avoid consequences for the crime he committed. His comments that he is "gone regardless," but he was "not going to take her down or my little girl down" reflect this concern. It does not appear at any point during the interview that he was so distraught that his will was overborne. Under the totality of the circumstances, the comments and statements made by detectives were not so coercive as to overcome Anderson's will to resist. Accordingly, he is not entitled to habeas relief on this claim.

II. Discriminatory Jury Selection and Ineffective Assistance of Appellate Counsel

Anderson claims that he was denied the right to a fair and impartial jury. He argues that the prosecution impermissibly used peremptory challenges to remove the only three African-American prospective jurors from the venire in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed. 2d 69 (1986). In a related claim, he asserts that counsel on direct appeal was ineffective for failing to raise the claim of purposeful discrimination under *Batson*. These claims were rejected on collateral review by the state courts without any stated reasons.[24]

[24] Section 2254(d) "does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.' " *Harrington*, 562 U.S. at 100.

In the first venire panel of 20 jurors, the State used five of its peremptory challenges to exclude two white male jurors, No. 289 and No. 168, and three African-American female jurors, No. 324, No. 290 and No. 180.[25] The defense raised a *Batson* challenge based on the removal of the only three African-American jurors. The trial court agreed that a prima facie showing was made considering three minority members had been struck and required that the prosecutor provide race-neutral reasons for the peremptory challenges. The prosecutor stated that he struck Juror No. 324 because when the trial judge asked if jury service would create a problem for anyone, she replied "I'm not going to get paid," which suggested to him a lack of focus and desire to be elsewhere. He struck Juror No. 290 because she stated she was an emotional decision-maker who rated herself a 3 out of 10 for wanting to serve on the jury and said she does not like having to decide someone's fate, all of which showed she did not want to take part in the process. Finally, he struck Juror No. 180 due to her comment that she believes innocent people are convicted of crimes based on mistaken identity or being in the wrong place at the wrong time. She explained her comment by stating, "because everybody says they look the same."[26] The trial court accepted those reasons, specifically commenting only on Juror Nos. 324 and 290, adding that No. 290 also indicated she had difficulty and concerns with weapons, and denied the

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[25] State Rec., Vol. 1 of 7, Transcript, p. 159 (first venire panel). *See also*, Minute Entry, 11/13/12.

[26] State Rec., Vol. 1 of 7, Trial Transcript, p. 201-202.

defense's *Batson* challenge. The defense asked the trial court to note an objection for the record.[27]

In *Batson*, the Supreme Court held that purposeful racial discrimination in the use of peremptory strikes of prospective jurors violates the Equal Protection Clause. *Batson v. Kentucky*, 476 U.S. at 89. The United States Supreme Court has established a three-step analysis for a *Batson* challenge:

> A defendant's *Batson* challenge to a peremptory strike requires a three-step inquiry. First, the trial court must determine whether the defendant has made a prima facie showing that the prosecutor exercised a peremptory challenge on the basis of race. 476 U.S. at 96-97, 106 S.Ct. 1712. Second, if the showing is made, the burden shifts to the prosecutor to present a race-neutral explanation for striking the juror in question. *Id.*, at 97-98, 106 S.Ct. 1712. Although the prosecutor must present a comprehensible reason, "[t]he second step of this process does not demand an explanation that is persuasive, or even plausible;" so long as the reason is not inherently discriminatory, it suffices. *Purkett v. Elem*, 514 U.S. 765, 767-768, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995) (*per curiam*). Third, the court must then determine whether the defendant has carried his burden of proving purposeful discrimination. *Batson, supra*, at 98, 106 S.Ct. 1712; *Miller-El v. Dretke*, 545 U.S. [231, 251-52], 125 S.Ct. 2317, 2331-32, 162 L.Ed.2d 196 (2005). This final step involves evaluating "the persuasiveness of the justification" proffered by the prosecutor, but "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Purkett, supra*, at 768, 115 S.Ct. 1769.

Rice v. Collins, 546 U.S. 333, 338, 126 S.Ct. 969, 163 L.Ed.2d 824 (2006); *accord Stevens v. Epps*, 618 F.3d 489, 492 (5th Cir. 2010).

Anderson's arguments focus on the second and third *Batson* steps. With respect to

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[27] State Rec., Vol. 1 of 7, Trial Transcript, pp. 221-24.

step two, "[a] neutral explanation in the context of our analysis here means an explanation based on something other than the race of the juror. At this step of the inquiry, the issue is the *facial validity* of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Hernandez v. New York*, 500 U.S. 352, 360 (1991) (emphasis added). Anderson contends the prosecutor's asserted race-neutral excuses were unfounded. However, at this step, the Court need not weigh plausibility or persuasiveness, but only facial validity. Here, the prosecutor's stated reasons for striking the three jurors were facially neutral and not inherently discriminatory. When questioning began, Juror No. 324 expressed immediate concern about not being paid and raised serious questions about whether she could or would focus on the trial. Similarly, Juror No. 290's responses demonstrated she did not want to serve or decide an individual's fate. And Juror No. 180 expressed skepticism for eyewitness identifications.

Anderson faults the trial court's evaluation at the third step primarily because the record was silent as to the weight the trial court afforded the State's reasons for striking Juror No. 180. A state court's finding under *Batson's* third step is a factual determination and must be reviewed under the AEDPA's specific and highly deferential standard of review applicable to such determinations. As the Supreme Court has explained:

> Under AEDPA, ... a federal habeas court must find the state-court conclusion "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). Thus, a federal habeas court can only grant [the petitioner's] petition if it was unreasonable to credit

> the prosecutor's race-neutral explanations for the *Batson* challenge. State-court factual findings, moreover, are presumed correct; the petitioner has the burden of rebutting the presumption by "clear and convincing evidence." § 2254(e)(1).

Rice, 546 U.S. at 338-39 (2006); *accord Foster v. Chatman*, 136 S. Ct. 1737, 1747 (2016) (*Batson's* third step "turns on factual determinations, and, in the absence of exceptional circumstances, we defer to state court factual findings unless we conclude that they are clearly erroneous." (quotation marks omitted)); *Murphy v. Dretke*, 416 F.3d 427, 432 (5th Cir. 2005) ("A state trial court's finding of the absence of discriminatory intent is a pure issue of fact that is accorded great deference and will not be overturned unless clearly erroneous." (quotation marks omitted)). Therefore, even if "[r]easonable minds reviewing the record might disagree about the prosecutor's credibility, ... on habeas review that does not suffice to supersede the trial court's credibility determination." *Rice*, 546 U.S. at 341-42; *accord Wood v. Allen*, 558 U.S. 290, 301 (2010) ("[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.").

The record of voir dire shows that the prosecutor first offered specific reasons for striking each of the three jurors. The defense was given an opportunity to respond. Defense counsel did so only with respect to Juror No. 324, stating that although she initially expressed concern about losing money, she did not indicate that she was unwilling to serve or would suffer a financial hardship; thus, it was not a legitimate race-neutral excuse. The trial court then ruled as follows:

> The Court has viewed each of these parties that were struck by the State. [Juror No. 324], when she made that comment about the fact that she would not be paid, seemed very concerned about that.
>
> Juror 290 did indicate that she would not want to decide someone's face [sic] fate. She also indicated she had difficulty 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.[28]

In evaluating whether the defense had carried its burden of proving purposeful discrimination at this third step, the trial court offered a brief synopsis that directly addressed the defense's contention about Juror 324 and noted an additional reason not raised by the prosecution for Juror No. 290. As the record demonstrates, the trial court expressly stated that it had viewed each of the parties struck even if it then specifically commented on only two of the jurors.

However, Anderson argues that the trial judge did not comply with *Batson* because it failed specifically to discuss Juror No. 180 in its ruling. He also suggests that the trial court avoided the issue because of the racially charged explanation given by Juror No. 180 for doubting witness identifications. Anderson implies that the trial court did not evaluate or weigh the prosecutor's explanation to "determine if the State was being intentionally discriminatory" with respect to Juror No. 180, because the scrutiny afforded that particular race-neutral reason was not expressed on the record.

Anderson fails to cite any Supreme Court precedent that requires express factual

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[28] State Rec., Vol. 1 of 7, Transcript, p. 223.

reasons supporting the trial court's evaluation of each stricken juror at this third step. *See, e.g., Perez v. Smith*, 791 F. Supp.2d 291, 309-10 (E.D.N.Y. 2011) (third step requires determining whether the prosecution's race-neutral explanations are credible, but no specific incantation is required in doing so) (citing *McKinney v. Artuz*, 326 F.3d 87, 100 (2d Cir. 2003) and *Hernandez*, 500 U.S. at 357 n. 2, 111 S.Ct. 1859). Nor has such a requirement been recognized by the United States Fifth Circuit Court of Appeals:

> [T]here is no requirement in this circuit that a district court make explicit factual findings during *Batson's* third step. Indeed, "a district court may make 'implicit' findings while performing the *Batson* analysis." *United States v. McDaniel*, 436 Fed. Appx. 399, 405 (5th Cir. 2011) (unpublished) (collecting cases). A recent panel of this court explicitly rejected such a requirement, even when the only race-neutral reason advanced was a demeanor-based reason not otherwise reviewable based on the record. *See Thompson*, 735 F.3d at 300–01. Although some other courts disagree, failure to make explicit factual findings on the third step is not itself reversible error. *See Higgins v. Cain*, 720 F.3d 255, 268 (5th Cir. 2013) (noting a circuit split on "whether a trial judge must make explicit findings of fact at *Batson's* third step").

United States v. Ongaga, 820 F.3d 152, 166 (5th Cir. 2016) (compliance with the third step of the *Batson* analysis was adequately shown where the district court implicitly found that the government's strike was not purposefully discriminatory).

To the extent Anderson argues that the state-court decision involved an unreasonable application of *Batson* because no third-step analysis occurred for one of the stricken jurors, the claim fails. *See* 28 U.S.C. § 2254(d)(1). As the Fifth Circuit noted, there is disagreement among the circuit courts regarding the specificity required for step three of the *Batson* analysis, which certainly highlights the absence of any "clearly established federal

law as determined by the United States Supreme Court." *See Miller v. Colson*, 694 F.3d 691, 698 (6th Cir. 2012) ("a disagreement among the circuit courts is evidence that a certain matter of federal law is not clearly established."). The mere existence of the circuit court split on the issue supports a finding that the determination under *Batson* by the state courts in this case is one upon which "fairminded jurists" could disagree. *Harrington*, 562 U.S. at 101. In light of the split among circuit courts and the lack of Supreme Court precedent on the specific issue presented here, Anderson cannot show that the state court unreasonably applied "clearly established Federal law." 28 U.S.C. § 2254(d)(1).

To the extent he claims that given the evidence presented the state court unreasonably determined that the prosecutor offered legitimate racially neutral reasons for striking the three venirepersons, that claim also fails. Based on the state trial court's own observations and for the additional reasons expressed, the trial court credited the race-neutral reasons proffered by the State as legitimate reasons for striking the jurors. The determination on the issue of discriminatory intent was based on all the facts and circumstances available, and that determination is entitled to great deference. The record reasonably supports that finding in this case. Here, the trial court's ruling was based on the statements by the jurors and the implications those statements had on the criminal trial. At the outset, Juror No. 324 seemed disinclined to jury service for monetary reasons. Juror No. 290 feared weapons and expressed reluctance in serving on the jury and deciding a person's fate in an armed robbery trial. Juror No. 180 was skeptical of eyewitness

identification of black persons in general, and the State bore the critical burden of proving the identity of the perpetrator in this case with weak identification evidence. Anderson's own subjective doubt in the veracity of the reasons hardly proves that the peremptory challenges were pretextual.[29] The record in this case supports the trial court's crediting the proffered race-neutral reasons and finding no discriminatory motive behind the peremptory strikes. For these reasons, Anderson is not entitled to habeas corpus relief on his *Batson* claim.

In a related claim, Anderson asserts that he received ineffective assistance of counsel on appeal because his appointed counsel failed to assert the *Batson* claim. The United States Supreme Court has established a two-prong test for evaluating ineffective-assistance-of-counsel claims. Specifically, a petitioner seeking relief must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To prevail on the deficiency prong of the *Strickland* test, a petitioner must demonstrate that counsel's conduct fails to meet the constitutional minimum guaranteed by the Sixth Amendment. *See Styron v. Johnson*, 262 F.3d 438, 450 (5th Cir. 2001). To prove prejudice with respect to a claim that appellate counsel was ineffective, a petitioner must show a reasonable probability that he would have prevailed on appeal but for his counsel's deficient

[29] Anderson fails to identify any individual on the jury who expressed issues similar to the stricken venire members.

representation. *Briseno v. Cockrell*, 274 F.3d 204, 207 (5th Cir. 2001); *see also Smith v. Robbins*, 528 U.S. 259, 286, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000). Therefore, a petitioner must demonstrate a reasonable probability that, if appellate counsel's performance had not been deficient in the manner claimed, the appellate court would have vacated or reversed the trial court judgment based on the alleged error. *Briseno*, 274 F.3d at 210.

Appellate counsel need not "urge on appeal every nonfrivolous issue that might be raised (not even those requested by defendant)." *West v. Johnson*, 92 F.3d 1385, 1396 (5th Cir. 1996). Indeed, "[e]xperienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." *Jones v. Barnes*, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Far from evidencing ineffectiveness, an appellate counsel's restraint often benefits his client because "a brief that raises every colorable issue runs the risk of burying good arguments ... in a verbal mound made up of strong and weak contentions." *Id.* at 753, 103 S.Ct. 3308. The salient question is whether the issue ignored by appellate counsel was "clearly stronger" than the issues raised on appeal. *See, e.g., Diaz v. Quarterman*, 228 Fed. Appx. 417, 427 (5th Cir. 2007); *accord Smith v. Robbins*, 528 U.S. at 288. For the reasons thoroughly addressed above in relation to his suppression and *Batson* claims for relief, Anderson has not shown that his *Batson* claim was "clearly stronger" than the suppression issue presented on appeal and, therefore, his ineffective assistance of appellate counsel claim necessarily fails.

III. Prosecutorial Misconduct

Anderson claims that the prosecutor knowingly presented false testimony from detectives regarding so-called "elusive" physical evidence that was not preserved and could not be produced, in violation of his due-process right to a fair trial. Anderson's theory is that because the prosecutor knew from the start that he lacked the physical evidence linking Anderson to the armed robbery, he built the case instead around false testimony from detectives and a coerced confession from Anderson. Specifically, he alleges:

> [T]he 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.[30]

He contends that "had the police really discovered evidence that could have proven Anderson was the perpetrator they would have found a way to preserve it."[31] Thus, he argues that the State should have been precluded from "mentioning any alleged evidence that was not preserved for the defense or jury to inspect."[32]

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[30] Rec. Doc. 3, p. 48.

[31] Rec. Doc. 3, p. 59.

[32] Rec. Doc. 3, p. 49. The defense unsuccessfully raised objections based on the missing evidence. The defense's pretrial motion in limine to prohibit testimony regarding any missing items of evidence was denied. State Rec., Vol. 1 of 7 (Transcript November 12,

Anderson argues that the State allowed Detective Chadwick to lie when he testified that Vincent Navarre was not the primary suspect at the beginning of the investigation, and the primary suspect was Anderson. In support, he notes the conflicting testimony given by Detective Suzeneaux and Detective Chadwick regarding whether each believed Anderson was the primary suspect from the start of the investigation.[33] He also argues that the State improperly elicited false testimony about alleged missing items of evidence related to the vehicle search, including photographs taken of items in Bolden's vehicle and a traffic ticket allegedly found in the car. He asserts that the State elicited improper testimony from Detective Suzeneaux regarding surveillance video recordings, which the police watched but admittedly did not preserve as evidence. He maintains that Detective Suzeneaux testified falsely that Anderson ran and hid when they knocked on the door to the apartment when he could not actually "see through walls or the door."[34]

A state denies a defendant due process when it knowingly uses perjured testimony at trial or allows untrue testimony to go uncorrected. *Napue v. Illinois*, 360 U.S. 264, 269, 79

2012), pp. 103-06. The trial court also overruled the defense's hearsay objection at trial regarding testimony about the surveillance recording. State Rec., Vol. 2 of 7, Trial Transcript, pp. 347-49. Although he criticizes the rulings on hearsay, he has not raised a specific claim on those grounds; the claim presented involves alleged prosecutorial misconduct for presenting false testimony and failing to preserve evidence.

[33] State Rec., Vol. 2, Trial Transcript, p. 325 (Chadwick) and pp. 352-53, 360-61 (Suzeneaux).

[34] Rec. Doc. 3, p. 59.

S.Ct. 1173, 3 L.Ed.2d 1217 (1959); *Faulder v. Johnson*, 81 F.3d 515, 519 (5th Cir. 1996). To obtain relief, the defendant must show that (1) the testimony was actually false, (2) the State knew the testimony was false, and (3) the testimony was material. *Duncan v. Cockrell*, 70 Fed. Appx. 741, 744-45 (5th Cir. 2003).

Anderson has not presented any evidence of perjured testimony or shown that the prosecutor knowingly permitted officers to perjure themselves. The fact that the detectives in this case offered differing opinions as to the primary suspect of their investigation does not establish that the testimony was false or that the prosecution knew or believed that testimony to be false. *See Kutzner v. Cockrell*, 303 F.3d 333, 337 (5th Cir. 2002); *Koch v. Puckett*, 907 F.2d 524, 531 (5th Cir. 1990) (holding that conflicting testimony does not prove perjury but instead establishes a credibility question for the jury). The mere existence of a conflict in testimony and evidence does not make it false or perjured. *See United States v. Wall*, 389 F.3d 457, 473 (5th Cir. 2004), *cert. denied*, 544 U.S. 978, 125 S.Ct. 1874, 161 L.Ed.2d 730 (2005) ("Wall has not established that McDowell's testimony was actually false. He has merely shown that Ristau's testimony would establish a conflict in the testimony, a far cry from showing that it was 'actually false.' "). The differing opinions present only a credibility question and disputed issue concerning the appropriate weight to be afforded to the evidence, which frequently occurs at trial and lies within the province of the jury to resolve.

Nor does the mere fact that the evidence was lost or missing establish that the

testimony regarding that evidence is false or that the prosecutor knew the testimony was false. Here, the officers admitted they failed to follow up on the surveillance video and obtain a copy of the recording. Detective Suzeneaux candidly explained that despite their efforts, it was impossible at the time of viewing due to unfamiliarity with the technology and the rapidly unfolding investigation demanding their immediate attention, and they regretfully, in hindsight, did not return to secure the evidence that seemed less important once Anderson confessed to the crime. The detectives could not explain why the traffic ticket and photographs they had collected were missing from the evidence. While the missing evidence raises an issue as to the weight to be afforded the testimony, the absence of the evidence does not conclusively establish that the testimony was false. The defense conducted a thorough cross-examination on these issues and squarely presented the credibility issue to the jury to resolve. To create a reasonable doubt as to Anderson's guilt, defense counsel highlighted the missing evidence during closing argument. The jury was entitled to find the testimony credible or to reject the testimony given the absence of the demonstrative evidence to support it. There is simply no record evidence in this case to suggest the testimony was false or that the prosecutor knew it was false.

Finally, Anderson fails to establish that Detective Suzeneaux testified falsely concerning Anderson's hiding from officers. His testimony reflects his impression, based on the statements made by the other individuals in the apartment and the fact that Anderson was found in a different room, that Anderson fled to some other part of the residence when

they knocked on the door.[35] On the record presented, Anderson has not shown that the State knowingly elicited false testimony from the detectives.

Furthermore, to the extent he asserts that the prosecutor withheld evidence from the defense, he has never alleged that the material was exculpatory or favorable to the defense.[36] Indeed he maintains it was material to the State's case. Furthermore, the State informed the defense at the outset that it did not possess the items of evidence and therefore could not produce them as requested in discovery.[37] The prosecution immediately notified defense counsel when it recovered a copy of the videotape from Wal-Mart's parking lot, but the State had no other evidence in its possession to turn over to the defense.

Due process requires that the prosecution disclose exculpatory evidence within its possession. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). There are three components of a *Brady* violation: "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *see also Banks v. Dretke*, 540 U.S. 668, 691 (2004). In this case, for the reasons expressed, Anderson plainly could not establish a *Brady* claim, even

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[35] State Rec., Vol. 2 of 7, Trial Transcript, p. 351.

[36] Rec. Doc. 3, pp. 48-49. He appears to contemplate that *Brady* does not apply here, but in an abundance of caution, the Court discusses briefly the possibility of such a claim.

[37] State Rec., Vol. 1 of 7, Transcript (November 12, 2012), p. 102.

if he raised such grounds for relief. *See Brady*, 373 U.S. at 87; *United States v. McClure*, No. 90-5001, 1990 WL 180122, at *3 (4th Cir. Nov. 21, 1990) (affirming district court ruling that evidence was not *Brady* material in part because "the government did not possess the tape" and noting that merely "reviewing the evidence had not amounted to taking possession" of it).

To the extent he suggests a due process violation resulted from the failure to preserve evidence, he fares no better. A failure to preserve evidence violates a defendant's right to due process if the unavailable evidence possessed "exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *California v. Trombetta*, 467 U.S. 479, 489 (1984). A defendant must also demonstrate that the police acted in bad faith in failing to preserve the potentially useful evidence. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). The presence or absence of bad faith turns on the government's knowledge of the apparent exculpatory value of the evidence at the time it was lost or destroyed. *Youngblood*, 488 U.S. at 56-57 n. *.

Anderson has presented no evidence of bad faith on the part of the police in failing to retrieve and preserve the surveillance video. As part of their investigation, officers viewed the surveillance, but could only glean the physique and general build of the individual from the grainy, unclear footage. They did not return afterward to secure a copy of the surveillance recording, which did not appear helpful to Anderson in any event. Nor was

there any suggestion of bad faith in losing track of the ticket found in the vehicle or the photographs of the vehicle and items. No explanation was offered for why the traffic ticket and photographs were missing from the evidence collected; however, if anything, Anderson benefitted more by the absence of the evidence than he would have had the evidence been preserved and introduced at trial.[38] He has never suggested that it had any exculpatory value. Furthermore, Anderson has not alleged that deputies failed to retrieve the video or responsibly preserve the traffic ticket and photographs because of "official animus" or a "conscious effort to suppress exculpatory evidence." *Trombetta*, 467 U.S. at 488. As explained above, although the officers knew the items of evidence existed, there is no evidence to suggest that they had reason to believe that any of the items held any evidentiary value favorable to Anderson. At worst, the failure to retrieve the video and loss of evidence collected may be described as a sloppy or negligent investigation, but mere negligence in failing to preserve evidence is inadequate to show bad faith. *See Youngblood*, 488 U.S. at 58.

Accordingly, the state courts' denial of relief of this claim was not contrary to, or an unreasonable application of, federal law. Thus, Anderson is not entitled to relief on this claim.

IV. Double Jeopardy – Habitual-Offender Adjudication

Anderson asserts that his habitual-offender adjudication violates double jeopardy

[38] *See, e.g.*, State Rec., Vol. 2 of 7, Trial Transcript (Defense Closing Argument), p. 436.

because the underlying felony conviction used to charge him as a convicted felon in possession of a firearm in this case was also used to support the multiple-offender adjudication and sentence he received. Thus, he contends that his "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 state courts denied the claim on collateral review of his motion to vacate an illegal sentence.[40]

Here, Anderson appears to argue that the State used his previous 2005 convictions for possession of cocaine and for being a convicted felon in possession of a firearm to support the current charge of being a convicted felon in possession of a firearm, and then used the same firearm conviction as part of the multiple bill of information charging him as a third-felony offender. He contends that the state sought multiple enhancement of his sentence based on the same set of prior convictions. However, the bill of information reflects that only the prior 2005 conviction for possession of cocaine was used for count two (possession of a firearm by a convicted felon), *see State v. Anderson*, 2014 WL 647913, at *1 n. 1, whereas the multiple bill of information listed the underlying predicate convictions as the 2004 simple burglary of an inhabited dwelling and 2005 convicted felon in possession of a firearm.

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[39] Rec. Doc. 3, p. 69.

[40] Although the state district court (and presumably the higher courts) denied the claim on procedural grounds, the validity of which Anderson disputes, the Court will conduct a *de novo* review of the claim on the merits (as briefed by the State), without discussion of any potential procedural default, because no such defense was raised in these federal proceedings.

Furthermore, the United States Supreme Court has historically held that double jeopardy protections do not apply to sentencing proceedings. *Monge v. California*, 524 U.S. 721, 727 (1992) (citing *Bullington v. Missouri*, 451 U.S. 430, 438 (1981) and *Nichols v. United States*, 511 U.S. 738, 747 (1994)). Specifically, the Supreme Court held in *Monge* that an enhanced sentence is simply a heightened penalty for a habitual offender's latest conviction, not a second punishment for the prior offense. *Monge*, 524 U.S. at 727 (citing *Gryger v. Burke*, 334 U.S. 728, 732 (1948) and *Moore v. Missouri*, 159 U.S. 673, 678 (1895)); *see also Dolliole v. Kent*, Civ. Action 17-9655, 2018 WL 2977233, at *6 (E.D. La. May 14, 2018), *adopted*, 2018 WL 2970875 (E.D. La. June 13, 2018). Thus, for the reasons expressed, Anderson has not established a double jeopardy violation resulted under the circumstances. He is not entitled to relief on this claim.

RECOMMENDATION

For the foregoing reasons, it is **RECOMMENDED** that Anderson's application for federal habeas corpus relief be **DISMISSED WITH PREJUDICE**.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. 28 U.S.C. § 636(b)(1); *Douglass v. United*

Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).[41]

New Orleans, Louisiana, this 26th day of April, 2019.

MICHAEL B. NORTH
UNITED STATES MAGISTRATE JUDGE

[41] *Douglass* referenced the previously applicable ten-day period for the filing of objections. Effective December 1, 2009, 28 U.S.C. § 636(b)(1) was amended to extend that period to fourteen days.

EXHIBIT "D"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON — CIVIL ACTION NO. _____

VERSUS — JUDGE _____

DARREL VANNOY, WARDEN — MAGISTRATE JUDGE _____
Louisiana State Penitentiary

DECLARATION OF INMATE FILING

I am an inmate confined in a state institution. Today, August 20, 2018, I am depositing my petition for writ of habeas corpus in this case in the institution's internal mail system to be scanned by the Legal Programs Department and electronically filed into the United States Eastern District Court.

I also declare that I have placed a properly addressed copy of the petition for writ of habeas corpus, made out to the Jefferson Parish District Attorney's Office, into the hands of the Classification Officer assigned to my unit. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty that the foregoing is true and correct (see: 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Carter V. Anderson
418030, Magnolia—2
Louisiana State Penitentiary
Angola, Louisiana 70712

Petition for Relief From a Conviction or Sentence By a Person in State Custody

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.

2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentenced to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all questions. You do not need to cite law. You may submit additional pages if necessary. If you do no fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. You must pay a fee of $5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds $_____, you must pay the filing fee.

7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.

8. When you have completed this form, send the original and _____ copies to the Clerk of the United States District Court at this address:

Clerk's Office, U.S. District Court
Eastern District of Louisiana
500 Poydras Street, Room C-151
New Orleans, LA 70130

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. CAUTION: **You must include in this petition all grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

10. CAPITAL CASES: **If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

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

United States District Court	District: Eastern
Name (under which you were convicted): Carter Vincent Anderson	Docket or Case No.: 12-1285
Place of Confinement: Louisiana State Penitentiary	Prisoner No.: 418030
Petitioner (include name under which you were convicted) Carter Vincent Anderson	Respondent (authorized person having custody of petitioner) v. Darrel Vannoy, Warden
The Attorney General of the State of Louisiana: Jeff Landry	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Twenty-Second Judicial District Court, Justice Center, 701 N. Columbia Street, Covington, LA 70434-1090.

(b) Criminal docket or case number (if you know): 503016.

2. (a) Date of the judgment of conviction (if you know): November 15, 2012.

(b) Date of sentencing: February 4, 2013.

3. Length of sentence: Life w/o benefits.

4. In this case, were you convicted on more than one count or more than one crime? [x] Yes [] No

5. Identify all crimes of which you were convicted and sentenced in this case: Armed Robbery, Possession of Firearm by convicted felon, Adjudicated as a Multiple offender.

6. (a) What was your plea? (Check one)

[x] (1) Not guilty [] (3) Nolo contendere (no contest)
[] (2) Guilty [] (4) Insanity Plea

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count, what did you plead guilty to and what did you plead not guilty to? N/A.

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

[x] Jury [] Judge only

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

[] Yes [x] No

8. Did you appeal from the judgment of conviction?

[x] Yes [] No

9. If you did appeal, answer the following:

(a) Name of court: Court of Appeal, First Circuit.

(b) Docket or case number (if you know): #2013-KA- 0836

(c) Result: Convictions and sentences Affirmed.

(d) Date of result: February 18, 2014.

(e) Citation to the case (if you know): Unpublished.

(f) Grounds raised: 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 inadmissible.

(g) Did you seek further review by a higher state court? [x] Yes [] No

If yes, answer the following:

(1) Name of court: Supreme Court of Louisiana.

(2) Docket or case number (if you know): 2014—KO—0591.

(3) Results: Cert. Denied.

(4) Date of result (if you know): October, 24 2014.

(5) Citation to the case (if you know): 2014-0591 (10/24/14), 151 So.3d 599.

(6) Grounds raised: 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 inadmissible.

(h) Did you file a petition for certiorari in the United States Supreme Court? [] Yes [x] No

If yes, answer the following:

(1) Docket or case number (if you know): N/A.

(2) Result: N/A.

(3) Date of result (if you know): N/A.

(4) Citation to the case (if you know): N/A.

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? [x] Yes [] No

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

(a) (1) Name of court: Twenty-Second Judicial District Court, Justice Center, 701 N. Columbia Street, Covington, LA 70434-1090.

(2) Docket or case number (if you know): 503016.

(3) Date of filing (if you know): December 28, 2015.

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

(5) Grounds raised: Anderson's trial was rendered fundamentally unfair in violation of Article I, §§ 1, 2, 13, 16, 17, and 22 of the Louisiana Constitution of 1974, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; The State purposefully excluded all blacks

from the jury contrary to the United States Supreme Court's ruling in Batson v. Kentucky; The trial court failed to proceed to Batson's third step concerning Katherine Liebert; Anderson's trial was rendered fundamentally unfair as a result of prosecutorial misconduct in violation of Article I, §§ 1, 2, 3, 13, 16, and 22 of the Louisiana Constitution of 1974, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; The State allowed Detective Robert Chadwick to lie to the jury; The State continued to solicit testimonial evidence that amounts to unsupported hearsay; Anderson was denied the effective assistance of appellate counsel in violation of Article I, §§ 1, 2, 3, 13, 16, and 22 of the Louisiana Constitution of 1974, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Anderson was adjudicated a third felony offender in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

(6) Did you receive a hearing where evidence was given on your petition, application or motion? [] Yes [x] No

(7) Result: The trial court denied the APCR without an evidentiary hearing.

(8) Date of result (if you know): July 20, 2016.

(b) If you filed any second petition, application or motion give the same information:

(1) Name of court: N/A.

(2) Docket or case number (if you know): N/A.

(3) Date of filing (if you know): N/A.

(4) Nature of the proceeding: N/A.

(5) Grounds raised: N/A.

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

(7) Result: N/A.

(8) Date of result (if you know): N/A.

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

(1) Name of court: N/A.

(2) Docket or case number (if you know): N/A.

(3) Date of filing (if you know): N/A.

(4) Nature of the proceeding: N/A.

(5) Grounds raised: N/A.

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

(7) Result: N/A.

(8) Date of result (if you know): N/A.

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

(1) First petition:	[x] Yes	[] No
(2) Second petition:	[] Yes	[] No
(3) Third petition:	[] Yes	[] No

(e) If you did not appeal to the highest state court having jurisdiction, explain briefly why you did not: N/A.

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

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: 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 Amendments to the United States Constitution.

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

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 where a gun was found, 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, Laura Bolden, if he did not tell them what they wanted 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 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 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. Before the trial court could consider admitting what proposes 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. 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 right in order to establish the admissibility of a statement. This claim, if established, would entitle Anderson to habeas relief. Reasonable jurist can definitely debate about it. See Memorandum in Support.

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

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? [x] Yes [] No

(2) If you did not raise this issue in your direct appeal, explain why: N/A.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? [] Yes [x] No

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

Type of motion or petition: N/A.

Name and location of the court where the motion or petition was filed: N/A.

Docket or case number (if you know): N/A.

Date of court's decision: N/A.

Result (attach a copy of the court's opinion or order, if available): N/A.

(3) Did you receive a hearing on your motion or petition? [] Yes [] No

(4) Did you appeal from the denial of your motion or petition? [] Yes [] No

(5) If you answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? [] Yes [] No

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

Name and location of the court where the motion or petition was filed: N/A.

Docket or case number (if you know): N/A.

Date of court's decision: N/A.

Result (attach a copy of the court's opinion or order, if available): N/A.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I raised the issue on direct appeal.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Louisiana Supreme Court 2014-KO-0591 filed March 20, 2014, denied October 24, 2014.

GROUND TWO: Anderson's trial was rendered fundamentally unfair in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

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

In the very first panel, the State used its peremptory challenges 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 court responded that it did "appear [as if] there were three minority members of the jury" struck by the State.

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 because the prosecuting attorney did not want any blacks on the jury. Especially when a black prospective juror expressed concerns about a racist astigmatism that causes 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'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 prima 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."

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 and 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." See Memorandum and in Support.

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

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? [] Yes [x] No

(2) If you did not raise this issue in your direct appeal, explain why: Anderson's appellate counsel did not raise the claim on direct appeal and he did not file a pro se supplemental brief because he did not know how; thus, he raised it on his APCR and under ineffective assistance of appellate counsel.

(d) **Post Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? [x] Yes [] No

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

Type of motion or petition: Application for post-conviction relief.

Name and location of the court where the motion or petition was filed: Twenty-Second Judicial District Court, Justice Center, 701 N. Columbia Street, Covington, LA 70434-1090.

Docket or case number (if you know): 503016.

Date of court's decision: July 20, 2016.

Result (attach a copy of the court's opinion or order, if available): Ruling attached.

(3) Did you receive a hearing on your motion or petition? [] Yes [x] No

(4) Did you appeal from the denial of your motion or petition? [x] Yes [] No

(5) If you answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? [x] Yes [] No

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

Name and location of the court where the motion or petition was filed: 1st Cir. C.O.A., Baton Rouge, LA.

Docket or case number (if you know): 2016-KW-1048.

Date of court's decision: October 17, 2017.

Result (attach a copy of the court's opinion or order, if available): Ruling attached.

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

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Louisiana Supreme Court 2016-KH-2137 filed November 1, 2016, denied August 13, 2018.

GROUND THREE: 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.

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

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. 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. See Memorandum and in Support.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? [] Yes [x] No

(2) If you did not raise this issue in your direct appeal, explain why: Anderson's appellate counsel did not raise the claim on direct appeal and he did not file a pro se supplemental brief because he did not know how; thus, he raised it on his APCR and under ineffective assistance of appellate counsel.

(d) **Post Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? [x] Yes [] No

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

Type of motion or petition: Application for post-conviction relief.

Name and location of the court where the motion or petition was filed: Twenty-Second Judicial District Court, Justice Center, 701 N. Columbia Street, Covington, LA 70434-1090.

Docket or case number (if you know): 503016.

Date of court's decision: July 20, 2016.

Result (attach a copy of the court's opinion or order, if available): Ruling attached.

(3) Did you receive a hearing on your motion or petition? [] Yes [x] No

(4) Did you appeal from the denial of your motion or petition? [x] Yes [] No

(5) If you answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? [x] Yes [] No

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

Name and location of the court where the motion or petition was filed: 1st Cir. C.O.A., Baton Rouge, LA.

Docket or case number (if you know): 2016-KW-1048.

Date of court's decision: October 17, 2017.

Result (attach a copy of the court's opinion or order, if available): Ruling attached.

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

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Louisiana Supreme Court 2016-KH-2137 filed November 1, 2016, denied August 13, 2018.

GROUND FOUR: Anderson's was denied the effective assistance of appellate counsel in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

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

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*. See Memorandum and in Support.

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? [] Yes [x] No

(2) If you did not raise this issue in your direct appeal, explain why: A Claim of ineffective assistance is best raised on an application for post-conviction relief.

(d) **Post Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? [] Yes [x] No

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

Type of motion or petition: Application for post-conviction relief.

Name and location of the court where the motion or petition was filed: Twenty-Second Judicial District Court, Justice Center, 701 N. Columbia Street, Covington, LA 70434-1090.

Docket or case number (if you know): 503016.

Date of court's decision: July 20, 2016.

(3) Did you receive a hearing on your motion or petition? [] Yes [x] No

(4) Did you appeal from the denial of your motion or petition? [x] Yes [] No

(5) If you answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? [x] Yes [] No

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

Name and location of the court where the motion or petition was filed: 1st Cir. C.O.A., Baton Rouge, LA.

Docket or case number (if you know): 2016-KW-1048.

Date of court's decision: October 17, 2017.

Result (attach a copy of the court's opinion or order, if available): Ruling attached.

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

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: Louisiana Supreme Court 2016-KH-2137 filed November 1, 2016, denied August 13, 2018.

GROUND FIVE: Anderson was adjudicated a third felony offender in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

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

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 felon 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. See Memorandum and in Support.

(b) If you did not exhaust your state remedies on Ground Five, explain why: N/A.

(c) **Direct Appeal of Ground Five:**

(1) If you appealed from the judgment of conviction, did you raise this issue? [x] Yes [] No

(2) If you did not raise this issue in your direct appeal, explain why: N/A.

(d) **Post Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? [x] Yes [] No

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

Type of motion or petition: Motion to Correct an Illegal Habitual Offender Sentence.

Name and location of the court where the motion or petition was filed: Twenty-Second Judicial District Court, Justice Center, 701 N. Columbia Street, Covington, LA 70434-1090.

Docket or case number (if you know): 503016.

Date of court's decision: June 7, 2017.

Result (attach a copy of the court's opinion or order, if available): N/A.

(3) Did you receive a hearing on your motion or petition? [] Yes [x]No

(4) Did you appeal from the denial of your motion or petition? [x] Yes [] No

(5) If you answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? [x] Yes [] No

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

Name and location of the court where the motion or petition was filed: 1st Cir. C.O.A., Baton Rouge, LA.

Docket or case number (if you know): 2017-KW-0865.

Date of court's decision: August 21, 2017.

Result (attach a copy of the court's opinion or order, if available): Ruling attached.

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

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Five: Louisiana Supreme Court 2017-KH-1530 filed August 28, 2017, denied April 3, 2018.

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? [x] Yes [] No

If your answer is "No," state which grounds have not been do presented and give your reason(s) for not presenting them: N/A.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? [] Yes [x] No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy or any court opinion or order, if available. N/A.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? [] Yes [x] No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised. N/A.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Melissa Brink, 402 North Jefferson Avenue, Covington LA 70433.

(b) At arraignment and plea: Melissa Brink, 402 North Jefferson Avenue, Covington LA 70433.

(c) At trial: Melissa Brink, 402 North Jefferson Avenue, Covington LA 70433.

(d) At sentencing: Melissa Brink, 402 North Jefferson Avenue, Covington LA 70433.

(e) On appeal: Prentice L. White, L.A.P., P. O. Box 74385, Baton Rouge, LA 70874.

(f) In any post-conviction proceeding: N/A.

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? [] Yes [x] No

(a) If so, give the name and location of the court that imposed the other sentence you will serve in the future: N/A.

(b) Give the date the other sentence was imposed: N/A.

(c) Give the length of the other sentence: N/A.

(d). Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? [] Yes [x] No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

Although Anderson's judgment of conviction became final over one year ago, his petition is not barred by 28 U.S.C. § 2244(d) because his time tolled upon the timely filing of his APCR.

Anderson was convicted November 15, 2012, and sentenced February 14, 2013. His conviction and sentenced became final on January 22, 2015, after the state supreme court denied his application for certiorari on October 24, 2014.

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*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244 (d) provides in part that:

(1) A one year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking for such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could not have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

On December 23, 2016, Anderson timely filed his APCR in the trial court and stopped the running of his one-year to seek federal habeas review. The trial court denied Anderson's APCR on July 20, 2016. He timely exhausted his claims all the way through to the state supreme court which denied discretionary review on August 3, 2018. Thus, Anderson's habeas petition is timely in the court as he has about twenty-five days left on his one year from the Louisiana Supreme Court's denial of his APCR.

Therefore, petitioner asks that the Court grant the following relief: That his conviction and sentence Be vacated and that his immediate release from custody be ordered; or in the alternative remand his case to the Twenty-Fourth Judicial District Court, Parish of Jefferson for a full and fair evidentiary hearing; or any other relief to which petitioner may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 8/20/2018 (month, day, year).

Executed (signed) on August 20, 2018 (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

On Petition for Federal Habeas Corpus Pursuant to 28 U.S.C. § 2254; From the Twenty-second Judicial District Court, Parish of St. Tammany, State of Louisiana, Docket Number 503016

Respectfully submitted,

Carter V. Anderson
418030, Magnolia—2
Louisiana State Penitentiary
Angola, LA 70712

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APPENDIX

1. February 18, 2014, Judgment of the Appellate Court on Direct Appeal
2. October 24, 2014, Judgment of the Louisiana Supreme Court on Direct Appeal
3. July 20, 2016, Judgment of the Trial Court on Post-Conviction Relief
4. October 17, 2016, Judgment of the Appellate Court on Post-Conviction Relief
5. August 3, 2017, Judgment of the Louisiana Supreme Court on Post-Conviction Relief
6. June 5, 2017, Judgment of the Trial Court on Motion to Correct
7. August 21, 2017, Judgment of the Appellate Court on Motion to Correct
8. August 3, 2018, Judgment of the Louisiana Supreme Court on Motion to Correct

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON CIVIL ACTION NO. _____

VERSUS JUDGE _____

DARREL VANNOY, WARDEN MAGISTRATE JUDGE _____
Louisiana State Penitentiary

MEMORANDUM IN SUPPORT

MAY IT PLEASE THE COURT:

NOW INTO COURT COMES, pro se Petitioner, Carter Vincent Anderson, ("Anderson"), respectfully filing his Petition for Writ of Habeas Corpus and Memorandum of Law in Support, and shows the Court the following:

JURISDICTIONAL STATEMENT

The Federal Writ of Habeas Corpus is authorized by 28 *U.S.C.* § 2241. Under 28 *U.S.C.* § 2254, a person in custody of a state prison may seek relief through a Writ of Habeas Corpus. Anderson is a state prisoner being detained in the custody of Darrel Vannoy, Warden of the Louisiana State Penitentiary at Angola, LA. Respondent Vannoy has custody of Anderson by virtue of a St. Tammany Parish conviction and sentence imposed by the Twenty-second Judicial District Criminal Court of Louisiana. Anderson now claims that Vannoy is illegally restraining his liberty because the convictions and sentences were illegally imposed upon him by the State of Louisiana. Therefore,

Anderson seeks release from Respondent's custody through this petition for Writ of Habeas Corpus.

STATEMENT OF THE CASE

On March 7, 2011, 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.[1] On March 21, 2011, Anderson pled not guilty to the charged offenses.[2] On November 15, 2012, Anderson was found guilty as charged on both counts.[3] On February 4, 2013, Anderson was sentenced to concurrent terms of 60 years and 10 years at hard labor.[4] On April 16, 2013, Anderson was adjudicated a third felony offender, the court vacated the previously imposed sentences and re-sentenced Anderson to life imprisonment at hard labor without the benefits of probation, parole, or suspension of sentence.[5]

Anderson timely appealed his convictions and sentences without success.[6] On December 23, 2016, Anderson timely filed an application for post-conviction relief ("APCR") with memorandum in support.

On July 20, 2016, the trial court denied his APCR. On August 2, 2016, Anderson timely filed a supervisory writ of review to the First Circuit Court of Appeal. On

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[1]See R. pp. 25-26.

[2]See R. p. 1.

[3]R. p. 468.

[4]R. p. 476.

[5]See R. p. 490.

[6]Appendix 1; Appendix 2.

October 17, 2016, the appellate court denied Anderson's writ application. On November 1, 2016, Anderson timely filed his application for certiorari and/or supervisory writ of review to the Louisiana Supreme court. That court declined discretionary review on August 3, 2018.[7]

While his APCR was pending in the state courts, Anderson filed a motion to correct an illegal sentence on the grounds that his sentences and habitual offender adjudication is illegal because of an impermissible double enhancement. On June 7, 2017, the trial court—claiming that there were too many filings in this case and that the motion was untimely—denied the motion contrary to *La. C. Cr. P. art.* 881.5 and *La. C. Cr. P. art.* 882 which allows an illegal sentence to be corrected at any time.

Anderson timely filed a writ application to the appellate to seek review of the trial court's denial of his motion to correct an illegal sentence. On August 21, 2017, the appellate court denied Anderson's writ application. He then filed a timely writ of certiorari to the Louisiana Supreme Court along with a motion to consolidate. The state supreme court, however, denied Anderson's APCR and motion to correct on August 3, 2018. This petition for writ of habeas corpus under 28 *U.S.C.* § 2241 timely follows.

STANDARD OF REVIEW

The standard of review is set forth under the revised *AEDPA* 28 *U.S.C.* § 2254(d)(1)(2), furnishing new standards of review for questions of fact, questions of law, and mixed questions of law and fact for habeas petitions. If a state court has adjudicated a claim on the merits, pure questions of law and mixed questions of law and fact are

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[7]See Appendix 3; Appendix 4; Appendix 5.

reviewed under 28 *U.S.C.* § 2254(d)(1).[8] Questions of fact are reviewed under 28 *U.S.C.* § 2254 (d)(2).[9]

Regarding questions of law and mixed questions of law and fact, a federal court must defer to the state court's decision unless it was "contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States."[10] 28 *U.S.C.* § 2254(d)(1)'s "contrary to" and "unreasonable application" clauses have independent meaning. A federal habeas court may issue the writ under the "contrary to" clause if the state court applies a rule different from the governing law set forth in federal cases, or if it decides a case differently than the federal courts have done on a set of materially indistinguishable facts. The Court may grant relief under the "unreasonable application" clause if the state court correctly identifies the governing legal principle from federal decisions but unreasonably applies it to the facts of the particular case.[11] As to questions of fact, a state court's factual findings are presumed to be correct and a federal court "will give deference to the state court's decision unless it was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding."[12]

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[8] *Hill v. Johnson*, 210 F.3d 481, 485 (5th Cir. 2000).

[9] *Hill v. Johnson*, supra.

[10] 28 *U.S.C.* § 2254(d)(1).

[11] *Bell v. Cone*, 535 U.S. 685, 694, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002).

[12] See *Hill v. Johnson*, 210 F.3d at 485; 28 *U.S.C.* § 2254(e)(1).

The adjudication of Anderson's claims by the state courts is contrary to clearly established federal law as interpreted by the Supreme Court because:

The trial court claims to have reviewed the entire record and concluded that Anderson's APCR could be denied without an evidentiary hearing. In denying relief, however, the court failed to identify any specific claim or the legal principle from the federal decisions governing the claims Anderson raised in his APCR. The Court of Appeal, First Circuit, essentially followed suit and issued a one-word denial.[13]

The Louisiana Supreme Court, in denying relief, said that Anderson failed to show he received ineffective assistance of counsel under *Strickland v. Washington*.[14] The supreme court's ruling, however, is not only contrary to, but also involves an unreasonable application of *Strickland v. Washington*. First of all, the state supreme court's ruling does not make it apparent that Anderson's ineffective of assistance of counsel claim was against his appellate counsel for not raising the claims preserved for appellate review by his trial counsel. He did *not* file an ineffective assistance claim against his trial counsel. Further, the state supreme court's determination that Anderson failed to meet his burden of proof without affording him an evidentiary hearing allows this court to grant an evidentiary hearing under *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963).

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[13]See Appendix 3; Appendix 4.

[14]Appendix 5.

CLAIM RAISED ON DIRECT APPEAL

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 Amendments to the United States Constitution.

CLAIMS RAISED ON POST-CONVICTION

1. Anderson's trial was rendered fundamentally unfair in violation of Article I, §§ 1, 2, 13, 16, 17, and 22 of the Louisiana Constitution of 1974, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

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

      The trial court failed to proceed to Batson's third step concerning Katherine Liebert.

2. Anderson's trial was rendered fundamentally unfair as a result of prosecutorial misconduct in violation of Article I, §§ 1, 2, 3, 13, 16, and 22 of the Louisiana Constitution of 1974, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

   A. The State allowed Detective Robert Chadwick to lie to the jury.

   B. The State continued to solicit testimonial evidence that amounts to unsupported hearsay.

3. Anderson was denied the effective assistance of appellate counsel in violation of Article I, §§ 1, 2, 3, 13, 16, and 22 of the Louisiana Constitution of 1974, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

4. Anderson was adjudicated a third felony offender in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

TIMELINESS OF PETITION

Although Anderson's judgment of conviction became final over one year ago, his petition is not barred by 28 *U.S.C.* § 2244(d) because his time tolled upon the timely filing of his APCR.

Anderson was convicted November 15, 2012, and sentenced February 14, 2013. His conviction and sentenced became final on January 22, 2015, after the state supreme court denied his application for certiorari on October 24, 2014.

On December 23, 2016, Anderson timely filed his APCR in the trial court and stopped the running of his one-year to seek federal habeas review. The trial court denied Anderson's APCR on July 20, 2016. He timely exhausted his claims all the way through to the state supreme court which denied discretionary review on August 3, 2018. Thus, Anderson's habeas petition is timely in the court as he has about twenty-five days left on his one year from the Louisiana Supreme Court's denial of his APCR.

Carter's one-year to seek habeas relief from the finality of his conviction and sentence would be August 28, 2018. As a result, this petition for writ of habeas corpus is timely filed.

STATEMENT OF FACTS

Retiree Larry Bennett ("Mr. Bennett") came from Ohio to Louisiana during the time of Mardi Gras to buy a part for his airplane.[15] While sleeping in his vehicle in a Wal-Mart parking lot, Mr. Bennett was startled awake by the sound of shattering glass. At the time, Mr. Bennett thought his vehicle had been hit by another vehicle; however, he soon realized he was being robbed.[16] The perpetrator ordered Mr. Bennett out of his car and then hit him over the head with a weapon and ordered him to leave the keys in

[15]R. pp. 307, 309.

[16]R. pp. 309-10.

the ignition.[17] The perpetrator ordered Mr. Bennett to cover his head with a blanket as he made his escape from the parking lot in Mr. Bennett's car.[18] After the perpetrator left, Mr. Bennett made contact with a police officer at the Wal-Mart. Paramedics responded, and Mr. Bennett was taken to a local hospital.[19]

Investigator's tracked Mr. Bennett's cell-phone to a home where Anderson was staying with his girlfriend and one of her relatives.[20] 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 possible suspect without any investigation because one of the detectives went to high school with him.[21] After Navarre was eliminated, Anderson became the primary suspect in this case.

John Binder ("Binder") testified for the State.[22] Binder said he and his sisters 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 seat of the car."[23] Binder said he "could clearly see because there's a light pole

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[17]R. p. 310.

[18]R. p. 312.

[19]R. p. 312.

[20]R. pp. 321-25.

[21]R. pp. 347-48.

[22]R. p. 299.

[23]R. p. 300.

nearby."[24] Binder said the perpetrator was "maybe five-five. Kind of on the shorter side for a male." He went on to say that the victim "was around five nine or five 10."[25] Although Binder claimed to have saw everything clearly with the aid of the lighting in the parking lot, he admitted that he could not identify the black male who robbed Mr. Bennett.[26]

According to Detective Robert Chadwick, Vincent Navarre was not really a suspect. He told the jury that the prime suspect was "Ms. Laura Bolden's boyfriend ... Carter Anderson."[27] Det. Chadwick also admitted that the police lost many items of evidence.[28]

Detective Daniel Suzeneaux admitted that their investigation was sloppy and that the police 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.[29]

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[24]R. p. 302.

[25]R. p. 303-04.

[26]R. p. 302.

[27]R. p. 325.

[28]R. pp. 326, 50, 376-77, 396.

[29]R. p. 370.

ISSUES AND QUESTIONS OF LAW AND FACT PRESENTED FOR REVIEW

Issue No. 1

When interviewing Anderson about a robbery, the police did not believe him to be the perpetrator; however, the uncorroborated word of one officer cast suspicion upon Anderson. The police, not advising him of his rights after he became the primary suspect, began to lie and threaten him and forced a statement from him where he claimed to have robbed the victim in this case. Did the trial court deny Anderson's motion to suppress in error?

Issue No. 2

Anderson presented a claim of purposeful discrimination and argued that the State used peremptory challenges to strike *every* African-American prospective juror from the panel and failed to give any race-neutral for one of the prospective jurors. Did the state courts err by summarily denying the claim without conducting an evidentiary hearing?

Issue No. 3

Anderson presented a claim that the trial court committed reversible error when it failed to proceed to Batson's third step concerning the State's alleged race neutral reasoning for peremptorily challenging an African-American prospective juror. Did the state courts err by summarily denying the claim without conducting an evidentiary hearing?

Issue No. 4

Anderson presented a claim that his appellate counsel rendered ineffective assistance when he failed to raise a claim of purposeful discrimination on direct appeal. Did the state courts err by summarily denying the claim without conducting an evidentiary hearing?

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 Amendments 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.'"[30] The Fifth Circuit has also said that the privilege against self-incrimination also applies to state prisoners. Pointing to United States Supreme Court jurisprudence, the Fifth Circuit has held that states are precluded from "securing criminal convictions resulting from coercive police conduct."[31]

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 where a gun was found, 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, Laura Bolden, if he did not tell them what they wanted 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

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

[31] Ibid.

questions as best 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 obvious that Anderson gave a false confession to appease the detectives.[32]

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 to help decide if his conviction for armed

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[32]See Trial Record, p. 147.

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 convictions be reversed.[33]

Before the trial court could consider admitting what proposes 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.[34] 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 right in order to establish the admissibility of a statement.[35]

Not only must the State show that the defendant was advised of his rights, but that the defendant was responsive and aware of what 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 were so many obstacles in the investigation, the trial court should have granted Anderson's motion to suppress immediately after seeing the videotape 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 items remain a mystery to this day. There were a number of

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

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

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

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.[36]

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.[37]

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 dread locks. 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.[38] 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.

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[36]See R. pp. 327, 372.

[37]See R. pp. 121, 375.

[38]See R. pp. 122, 385, 381.

This entire investigation was constitutionally defective. The trial court erred in finding that Anderson's statement was admissible 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 ago 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.[39]

The trial court did not conduct this test during the suppression 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 numbers, have been contravened.

Claim No. 2

> Anderson's trial was rendered fundamentally unfair in violation of the Fifth, Sixth and Fourteenth Amendments 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

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[39] *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).

Clause."[40] 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."[41] Our system of justice affords every criminal defendant "the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria."[42] Because of equal 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."[43] In the process of choosing a jury, racial discrimination not only injures "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.[44]

Discriminatory jury selection causes 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

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[40] *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.

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

[42] Id., 476 U.S., at 86-7; see also *Martin v. Texas*, 325 U.S. 398, 403, 65 S.Ct. 1276, 1279, 89 L.Ed. 1692 (1945).

[43] 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).

[44] 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).

justice.[45] In Anderson's case, the State peremptorily challenged and excluded one-hundred percent of eligible blacks from the jury panel.[46]

(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 challenges 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."[47] The State asked the trial court if it believed that the Defense had made a prima facie case of discrimination.[48] The court responded that it did "appear [as if] there were three minority members of the jury" struck by the State.[49]

(1). The State struck Cheryl Ziegler ("Ziegler") for being afraid that "she would not be paid while serving as a juror."[50] 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."[51] Even so, the State's race-neutral reason is unfounded. Ziegler did not say anything during voir dire

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[45]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).

[46]See R. pp. 12-13.

[47]R. p. 221.

[48]See R. p. 221.

[49]See R. p. 221.

[50]R. p. 222; cf. R p. 178.

[51]R. p. 222.

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.[52]

There is a marked contrast between the State's concerns and Ziegler's.[53] In response to the State's comments, Anderson's trial counsel pointed-out that Ziegler's concern was about "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 any financial hardship."[54]

Neither the trial court or the State made any attempt to rehabilitate Ziegler although she allegedly caused the State some concern.[55] According to the court, Ziegler seemed concerned about not being paid for her service.[56] 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.[57] It would have been easy to inform her that, if chosen, she would be compensated for her service. She was not

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[52]R. pp. 205, 210.

[53]Cf. R. pp. 205, 210, 222.

[54]R. p. 223.

[55]See R. p. 222.

[56]R. p. 223.

[57]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.

rehabilitated, however, because the court believed that "the race neutral reasons given by the State [were] reasonable."[58]

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."[59] The State intervened and told the court that Panks had been rehabilitated when the court questioned him after the Defense's voir dire.[60] The court sided with the State and denied the cause challenge.[61]

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 juror?[62]

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.

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[58]R. p. 223.

[59]See R. p. 279.

[60]See R. p. 279.

[61]See R. p. 279.

[62]R. p. 277.

In the matter concerning prospective juror Panks, Anderson's trial counsel asked the court to note the Defense's objection and proceeded to "strike [Panks] as Defense seven."[63] Even though Anderson's trial counsel objected for the record, she still failed to articulate her reason 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."[64] 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.[65] 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.[66] However, the State failed to mention that Torregano said she is biased toward guns, and that she

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[63]See R. p. 279.

[64]R. p. 205.

[65]R. p. 222.

[66]R. p. 222.

does not "like them in the house ... even if they are put up."[67] 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."[68] 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 because the prosecuting attorney did not want any blacks on the jury. Especially when a black prospective juror expressed concerns about a racist astigmatism that causes 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.[69] It appears that the State did not want

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[67]R. p. 209.

[68]R. p. 222.

[69]See R. p. 277.

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."[70] 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 difficulty 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.[71]

(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 prima 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."[72]

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[70]R. p. 223.

[71]R. p. 223.

[72]*State v. Jacobs*, 07-887, (La. App. 5 Cir. 5/24/11), 67 So.3d at 544-555 (citing *Batson v. Kentucky*, 476 U.S., at 96-98, 106 S.Ct. at 1723, 1724.

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 and 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."[73]

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 systematically 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."[74]

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

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

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

supremacy ran rampant."[75] The Supreme Court also held in *Strauder v. West Virginia*, that the Fourteenth Amendment prohibits states from excluding persons from jury service because of race.[76] 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."[77]

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.[78] 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 by popular vote.[79] As in *Hunter*, the historical background of the offending Louisiana law clearly demonstrates discriminatory intent.

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

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

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

[78] Id., at 98.

[79] Id., at 98-99.

The United States Constitution requires that Anderson be afforded protection against discrimination from the St. Tammany Parish District Attorney's office.[80] 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.'"[81] Anderson's claim is not only meritorious, it also qualifies as a structural error. In *Miller-El*, the U. S. Supreme Court said:

> 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.[82]

Because of the State's purposeful discrimination against African-American prospective jurors during jury selection, and the court's failure to completely follow *Batson'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."[83] Sadly, before Anderson's trial ever began, assistant district attorney Jason Cuccia revealed that

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[80]See *Batson v. Kentucky*, 476 U.S., at 88, 106 S.Ct., at 1718.

[81]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).

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

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

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.

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.[84] 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

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

the proceeding would have been different."[85] 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."[86]

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

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

[86] *Kyles v. Whitley*, 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).

> necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed. This means that the omission must be evaluated 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.[87]

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 this matter that were filed," and that it "would like to discuss ... the supplemental request and motion for discovery, disclosure, and inspection."[88]

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."[89] The following colloquy 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

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

[88] See R. p. 103.

[89] R. p. 101.

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 listed on the supplemental request, the only items that you have located would be the videotapes from the Wal-Mart parking lot?

STATE: Correct.[90]

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] provided open file discovery" does not amount to much; especially when what was provided and what was still missing was the nature of counsel's motion.[91] The State's claim that it provided Anderson's trial counsel with everything in the district attorney's files 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 and 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

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[90]R. pp. 102-103.

[91]See R. p. 103.

highly inflammatory, prejudicial, 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 saying 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.[92]

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, the 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 the 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

[92]R. pp. 104-105.

be glimpsed from the court's erroneous ruling concerning Anderson's trial counsel's motions 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.[93]

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 at 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 you are 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.[94]

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[93]R. p. 105.

[94]R. pp. 294, 295.

The State knew 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."[95] 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.[96]

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."[97] Binder went on to say that the perpetrator was "maybe five-five. Kind of on the shorter side for a male.[98] 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."[99] However, when the State asked Binder could

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[95]R. p. 296.

[96]Cf. R. pp. 113, 117-118, 325.

[97]R. p 300.

[98]R. p 303.

[99]R. p 302.

he "make an identification of the black male," he answered, "No."[100] ADA Cuccia's goal to win at any cost was seen with his next question. He asked Binder if it was because he was "to far away? Why is it you are unable to make an identification?[101] 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.[102]

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."[103] 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.[104]

(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."[105]

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[100]R. p 302.

[101]R. p 302.

[102]R. p 302.

[103]R. p 306.

[104]R. p 302.

[105]R. p. 325.

This testimony contradicted Detective Daniel Suzeneaux's testimony that Anderson was not the primary suspect at the beginning of the investigation.[106] 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."[107]

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."[108] 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 all around the bush, may as well have it out."[109] He asked Chadwick what "were the items of evidentiary value that were recovered from the vehicle?"[110] 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

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[106]See R. pp. 376-77.

[107]R. p. 326.

[108]R. p. 327.

[109]R. p. 328.

[110]R. p. 328.

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.[111]

For a person who was not personally involved in the search, Chadwick gave great details about the elusive evidence.[112] Also, when he first began to say what was found he said, "Detective Brown and I found."[113] 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

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[111]R. p. 328.

[112]R. p. 327.

[113]R. p. 328.

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 off that car at that 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—[114]

Anderson's trial counsel interrupted with an objection to Det. Suzeneaux testifying about "anything he allegedly viewed on that videotape since the video was not preserved and cannot be viewed by [the Defense]."[115] Counsel accurately told the court that anything Det. Suzeneaux "observed on there would be in the nature of hearsay."[116] 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 is not hearsay. He saying directly what he observed. Correlational 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."[117] The court, overruled counsel's objection and agreed with the State and said that it was not hearsay.[118] The court failed to even consider that at least one of the detectives could

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[114]R. pp. 347-48.

[115]See R. p. 348.

[116]See R. p. 348.

[117]R. p. 349.

[118]R. p. 349.

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.[119]

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.[120] The detective's assumptions should not have be 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 dreadlocks."[121]

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

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[119]R. p. 350.

[120]R. p. 351.

[121]R. p. 355.

giving that statement?"[122] Of course, Det. Suzeneaux answered, "No, sir. He did so on his own free will."[123] 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 easy 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

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[122]See R. p. 356.

[123]See R. p. 356.

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."[124] 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 someone 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 end 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,

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[124]R. pp. 376-77.

unfortunately with it being a holiday season and as busy as we were, it didn't happen that way.[125]

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.[126] Amazingly, Anderson was identified by the victim in open court even after his appearance, according to Det. Suzeneaux, had drastically changed.[127]

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.[128] 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.

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[125]R. p. 370; Detective Suzeneaux was not called out to the house; cf. pp. 347-48.

[126]R. p. 370.

[127]See R. p. 355.

[128]R. p. 372.

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 ultimate pieces of evidence here in this case that are still in existence are the statement we just listened to?

WITNESS: Yes, ma'am ...[129]

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.[130]

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

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[129]R. pp. 372-73.

[130]R. pp. 379-80.

response from the suspects. So in reference to that, yes, we did tell him we had his fingerprints when we did not.[131]

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. Suzeneaux admitted to having by way of evidence was Anderson's coerced statements.[132] 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 has reversed a conviction on facts less compelling than these."[133]

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.[134] 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

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[131]R. p. 380.

[132]See R. pp. 380-81.

[133]*Spano v. New York*, 360 U.S. 315, 324, 79 S.Ct. 1202, 1207, 3 L.Ed.2d 1265 (U.S. N.Y. 1959).

[134]See R. p. 396.

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."[135]

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."[136] 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."[137] 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."[138]

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

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[135]*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.

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

[137]Id.

[138]Id.

correct what he knows to be false and elicit the truth.'"[139] 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.'"[140] Consequently, Anderson is entitled to a new trial "'if the false testimony could, in any reasonable likelihood have affected the judgment of the jury.'"[141]

Claim No. 4

> Anderson's was denied the effective assistance of appellate 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.[142]

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[139]Id.; quoting *People v. Savvides*, 1 N.Y.2d 554, 557, 154 N.Y. S.2d 885, 887, 136 N.E.2d 853, 854-855.

[140]Id.

[141]*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).

[142]See Original Direct Appeal Brief Appeal Brief, pp. 6-7.

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*."[143]

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 detailed and reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place."[144]

A counsel's performance on appeal is judged under the two-prong *Strickland* test.[145] To be considered as effective on appeal, an appellate counsel is not required to

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

[144]*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.

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

raise every non-frivolous issue.[146] However, it does mean, as it does at trial, that counsel perform in a reasonably effective manner.[147] "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."[148] "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."[149]

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.

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.

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[146]See *Evitts*, 105 S.Ct. at 835.

[147]*Id.*

[148]*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.

[149]Id., at 444.

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 felon 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.[150] 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 in possession of a firearm and was sentenced to serve ten years at hard labor.

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

> R.S. 14:95.1 CONVICTED FELON POSSESSING 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.* 14:95.1, respectively. To support the charge of felon in possession of a firearm against Anderson, the State used the above cited October 17, 2005, convictions

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[150]*State v. Dauzart*, 02-1187 (La. App. 5 Cir 3/25/03), 844 So.2d 159, 168.

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 convictions."[151] 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.[152] 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.[153] However, Anderson's right of equal protection has been violated because the very provisions that are designed to protect him were violated by an

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[151]*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.

[152]*La. Const. art.* I, § 15; *U.S. Const. amend.* V; *U.S. Const. amend.* VIII; *U.S. Const. amend.* XIV.

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

impermissible double enhancement when he was subjected to "multiple punishment for the same conduct."[154]

PRO SE LITIGANT CONSIDERATION

As a pro se litigant, Carter's writ of habeas corpus should be liberally construed in the interest of justice.[155]

CONCLUSION

Wherefore, Carter respectfully requests the Court to vacate his convictions and sentences, or in the alternative remand his case back to the Twenty-second Judicial District Court, Parish of Tammany for a full evidentiary hearing.

Respectfully submitted,

Carter V. Anderson
418030, Magnolia—2
Louisiana State Penitentiary
Angola, Louisiana 70712

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[154]Id.; citing *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969); *State v. Vaughn*, 431 So.2d 763, 767 (La. 1983); *State v. Warner*, 94-2649, p. 4 (La. App. 4 Cir. 3/16/95), 653 So.2d 57, 59.

[155]See *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam); *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980) (citing Haines v. Kerner, 404 U.S. 519, 520- 21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam); *Serio v. Members of Louisiana Board of Pardons*, 821 F.2d 1112 (5th Cir. 1987); *Griffith v. Roy*, 269 So.2d 217, 222 (La. 1973).

AFFIDAVIT/CERTIFICATE OF SERVICE

I, Carter Vincent Anderson, do hereby declare that the foregoing is true and correct to best of my knowledge, information, and belief. I further certify that a copy of the same has been served upon:

Opposing Counsel:

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

By placing a copy of same in a properly addressed envelope into the hands of the Classification Officer assigned to my unit along with a Withdrawal form made out to the General Fund, LSP, Angola, LA 70712 for the cost of postage and a properly filled out Inmate's Request for Indigent/Legal Mail form, receiving receipt for same in accordance with the institution's rules and procedures for the sending of legal mail.

Done this _____ day of August, 2018.

Respectfully submitted,

Carter V. Anderson
418030, Magnolia—2
Louisiana State Penitentiary
Angola, Louisiana 70712

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 1

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0836

STATE OF LOUISIANA

VERSUS

CARTER V. ANDERSON

Judgment Rendered: FEB 18 2014

* * * * * *

On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 503016 "C"

Honorable Richard A. Swartz, Judge Presiding

* * * * * *

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Carter V. Anderson

* * * * * *

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Carter V. Anderson, was charged by bill of information with armed robbery (count one) and possession of a firearm or carrying a concealed weapon by a person convicted of certain felonies (count two), violations of LSA-R.S. 14:64 and LSA-R.S. 14:95.1.[1] The trial court denied defendant's motion to suppress his confession. Defendant entered a plea of not guilty and, after a trial by jury, was found guilty as charged on both counts. The State filed a habitual offender bill of information seeking to enhance the sentences on both counts. The trial court subsequently adjudicated defendant a third-felony habitual offender, vacated the original sentences, and imposed sentences of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on both counts, to be served concurrently.[2] Defendant now appeals, assigning error to the trial court's ruling on the motion to suppress the confession. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

STATEMENT OF FACTS

On December 30, 2010, between midnight and 1:00 a.m., Larry Bennett (the victim) was in a Wal-Mart parking lot in Slidell, Louisiana, when an African-American male approached his 1993 Cadillac Seville. The victim, a retired truck driver from Toledo, Ohio, who came to Slidell to purchase a part for his antique airplane, was set to spend the night in his vehicle when the perpetrator suddenly smashed his rear window. When the victim turned towards the back, the perpetrator pointed a gun at the victim's face and told him to get out of the car. When the victim attempted to take the keys out of the ignition, the perpetrator told him to leave the keys in the ignition and get out of the car, and he began

[1] The prior felony conviction used on count two is a 2005 conviction of possession of cocaine, as noted in the bill of information and stipulated by both parties during the trial.

[2] On count one, the trial court originally sentenced defendant to sixty years imprisonment at hard labor with the first twenty years to be served without the benefit of parole, probation, or suspension of sentence. The original sentence on count two was ten years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The trial court enhanced both counts, adjudicating defendant a third-felony habitual offender based on a 2004 conviction of simple burglary of an inhabited dwelling and a 2005 conviction of possession of a firearm or carrying a concealed weapon by a convicted felon.

striking the victim in the back of his head. Before fleeing the scene in the victim's vehicle, the perpetrator forced the victim to place a blanket that was in his vehicle over his head, as blood from his head injury began to cover his neck. John Binder, a bystander who was in the Wal-Mart parking lot at the time, witnessed the robbery and contacted the police. Binder described the perpetrator as a short, African-American male with dreadlocks. The victim was taken to Ochsner Hospital where he received stitches in the back of his head.

After being released from the hospital, the victim provided the Slidell Police Department (SPD) with the telephone number for the cell phone that he left in the vehicle and with the clothing that he was wearing at the time of the incident. The police accessed the cell phone records and determined that the cell phone was used to call Laura Bolden. Bolden was defendant's girlfriend, with whom he was living at the time in a duplex apartment building at the corner of 11th Street and Cousin Street in Slidell. The victim's vehicle was recovered from an apartment complex within walking distance of the residence. SPD Detectives Daniel Suzeneaux[3] and Brian Brown observed surveillance footage[4] from the apartment complex showing that, shortly after the robbery, the vehicle was dropped off by an individual who fit the description provided by Binder. The victim's cell phone was found at the residence on Cousin Street, and defendant and the others who were present at the residence were asked to come to the police station for questioning. Defendant, before being questioned, initially denied any knowledge or involvement. Defendant was advised of his **Miranda** rights at the scene and again at the police station where a waiver of rights form was executed. Defendant made incriminating statements during an audio-recorded interview at the police station. SPD executed a search warrant for Bolden's vehicle that was at the residence on Cousin Street and found a bag containing a handgun and a traffic ticket in defendant's name. The victim's DNA

[3] The detective's name is alternatively spelled as "Seuzeneau" in the record.

[4] The apartment manager had limited knowledge on the operation of the surveillance system. After the police viewed the surveillance footage, they unsuccessfully attempted to download the footage.

was found during the testing of swabs processed from the recovered handgun. Defendant fit the basic description depicted on the surveillance footage and given by Binder; however, at the time of his arrest he had a short haircut with remaining twists, as opposed to full dreadlocks. During the audio-recorded interview, defendant admitted that his girlfriend recently styled his hair in dreadlocks, but due to the "good" texture of his hair he could not maintain the locks. During the trial, the victim identified defendant as the perpetrator, noting that he was able to focus on the perpetrator's eyes and nose as the gun was being held between the perpetrator's face and the victim's face.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that the trial court erred in denying his motion to suppress his confession. He asserts that detectives threatened him and his girlfriend in order to get him to incriminate himself. Defendant contends that there was no eyewitness identification or DNA evidence linking him to the armed robbery offense. Defendant argues that the convictions should be reversed due to the police's use of coercion, threats, and promises to induce the confession. Defendant contends that the trial court should have granted the motion to suppress after hearing the detectives threatening him on the recording. Defendant notes that he was not the only person who had access to the vehicle and further contends that the police investigation was faulty because they lost evidence and they failed to identify the owner of the items seized from the vehicle that was searched. Defendant contends that he emotionally collapsed under the notion that his girlfriend could be falsely accused of this crime. Defendant notes that the detectives lied about his fingerprints being found in the victim's vehicle and about having a witness who already identified defendant as the perpetrator. Defendant also claims that the detectives promised to help his girlfriend, knowing that they intended to prosecute her.

The Fourth Amendment to the United States Constitution and article I, § 5 of the Louisiana Constitution protect persons against unreasonable searches and

seizures. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. LSA-C.Cr.P. art. 703A. The State bears the burden of proving the admissibility of a purported confession or any evidence seized during a search without a warrant. LSA-C.Cr.P. art. 703D. Louisiana Revised Statute 15:451 provides that before a purported confession can be introduced in evidence, it must be affirmatively shown to be free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his or her **Miranda** rights. **State v. Plain**, 99-1112 (La.App. 1 Cir. 2/18/00), 752 So.2d 337, 342. The State must specifically rebut a defendant's specific allegations of police misconduct in eliciting a confession. **State v. Thomas**, 461 So.2d 1253, 1256 (La.App. 1 Cir. 1984), writ denied, 464 So.2d 1375 (La. 1985).

Whether a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. **State v. Benoit**, 440 So.2d 129, 131 (La. 1983). The trial court must consider the totality of the circumstances in deciding whether a confession is admissible. **State v. Hernandez**, 432 So.2d 350, 352 (La.App. 1 Cir. 1983). Testimony of the interviewing police officer alone may be sufficient to prove a defendant's statements were freely and voluntarily given. **State v. Maten**, 04-1718 (La.App. 1 Cir. 3/24/05), 899 So.2d 711, 721, writ denied, 05-1570 (La. 1/27/06), 922 So.2d 544.

A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 01-0908 (La.App. 1 Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So.2d 791. Correspondingly, when a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported

by the evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. When reviewing a trial court's ruling on a motion to suppress, the entire record may be considered, including trial testimony. **State v. Martin**, 595 So.2d 592, 596 (La. 1992).

The following evidence was presented at the hearing on the motion to suppress. Detective Suzeneaux testified that everyone present at the duplex apartment on the day of the robbery, including defendant, was asked to come to the station for questioning regarding the robbery, and everyone agreed. After Bolden was interviewed, Detective Suzeneaux and SPD Detective Luke Irwin interviewed defendant. Detective Suzeneaux denied that defendant was coerced or forced into making a statement at the hearing and again during the trial.

The audio-recorded interview revealed that defendant's rights were read to him, and he stated that he understood his rights and further stated that he wished to make a statement. Defendant denied that he had been physically or verbally abused and confirmed that he was making the statement of his own free will. Defendant initially denied having specific information regarding, or being involved in, the robbery. He implicated his male roommate before eventually making incriminating statements that pointed to his personal involvement, but he did not initially make a full-blown confession. The police relayed some of the information that they had regarding the offense and admittedly used falsehoods. For example, the police indicated that they already knew what happened and that they had fingerprint evidence and witness statements implicating defendant. Vulgar language was also used along with repeated requests for truth, honesty, and details. The police also told defendant that he was not helping himself by lying and that he was being given the chance to tell the truth. Defendant eventually admitted to handling the gun, having personal contact with the stolen vehicle, and knowing that it had been stolen. Defendant ultimately stated that he hit the victim out of fear. The police informed defendant that if he continued

to cooperate they would let his cooperation be known. The police reminded defendant that his child and girlfriend loved him and suggested that defendant may have committed the offense for them, as they continued to question defendant. Before defendant finally confessed, he again admitted that he was not being forced to make the statements. Defendant's emotional breakdown came after he confessed and became even more concerned about the consequences of his actions.

As to the voluntariness of defendant's statements, we note that the police testimony indicated that there were no promises or abuse to induce defendant's agreement to make a statement, and defendant indicated as such during the interview. As noted, defendant was fully advised of his rights and executed a waiver of rights form. We note that statements by the police to a defendant that he would be better off if he cooperated are not promises or inducements designed to extract a confession. **State v. Lavalais**, 95-0320 (La. 11/25/96), 685 So.2d 1048, 1053, cert. denied, 522 U.S. 825, 118 S.Ct. 85, 139 L.Ed.2d 42 (1997). A confession is not rendered inadmissible by the fact that law enforcement officers exhort or adjure a defendant to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or one which implies a promise of reward. Further, a defendant's confession is not inadmissible merely because in making it he may have been motivated by a desire to protect his girlfriend. See **State v. Lee**, 577 So.2d 134, 143-44 (La.App. 1 Cir.), writ denied, 580 So.2d 667 (La. 1991); **State v. Weinberg**, 364 So.2d 964, 969-71 (La. 1978); **State v. Brown**, 504 So.2d 1025, 1031 (La.App. 1 Cir.), writ denied, 507 So.2d 225 (La. 1987). As did the Louisiana Supreme Court in **Lavalais**, we find in this case that, rather than being promises or inducements designed to extract a confession, the comments in question herein were more likely musings not much beyond what this defendant might well have concluded for himself. **Lavalais**, 685 So.2d at 1053-54. The totality of the interview clearly conveys that the statements were not being made according to any promises, coercion, or threats.

Regarding certain falsehoods used by the police during questioning, the issue is whether or not such tactics were sufficient to make an otherwise voluntary confession or statement inadmissible. See **State v. Lockhart**, 629 So.2d 1195, 1204 (La.App. 1 Cir. 1993), writ denied, 94-0050 (La. 4/7/94), 635 So.2d 1132. In **Lockhart**, a detective misled the defendant into believing that the police knew more about the case than they really did by telling him that the victims had identified him. Another detective stated that he would inform the district attorney's office that the defendant contended the shootings were accidental. This court found that the detectives' statements to the defendant were not sufficient inducements "to make an otherwise voluntary confession inadmissible." **Lockhart**, 629 So.2d at 1204. Similarly, in **State v. Sanford**, 569 So.2d 147, 150-52 (La.App. 1 Cir. 1990), writ denied, 623 So.2d 1299 (La. 1993), this court determined that a defendant's confession was not rendered involuntary, although the detective apparently misled the defendant into believing that one of his cohorts had confessed by informing him that the other suspects were "singing like birds." **Sanford**, 569 So.2d at 151.

We have carefully reviewed the evidence presented at the suppression hearing and at trial and conclude that the lower court's ruling is supported by the record. While the officers admittedly utilized confrontational language, defendant, who had a criminal record, seemed to be more concerned about his realization that he was a multiple offender and admitted to being terrified in that regard. We find that the totality of the circumstances surrounding the making of the confession by defendant and his responses as a whole show that the confession was made freely and voluntarily. Considering the above, we further find that the trial court did not err or abuse its discretion in denying the motion to suppress. The assignment of error is without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 2

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2014-KO-0591

VS.

CARTER V. ANDERSON

- - - - - -

IN RE: Anderson, Carter V.; - Defendant; Applying For Writ of Certiorari and/or Review, Parish of St. Tammany, 22nd Judicial District Court Div. C, No. 503016; to the Court of Appeal, First Circuit, No. 2013 KA 0836;

- - - - - -

October 24, 2014

Denied.

JTK

BJJ

JLW

GGG

MRC

JDH

Supreme Court of Louisiana
October 24,2014

Deputy Clerk of Court
For the Court

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 3

STATE OF LOUISIANA

VERSUS

CARTER V. ANDERSON

NUMBER 503016 DIV. "C"

22ND JUDICIAL DISTRICT COURT

PARISH OF ST. TAMMANY

STATE OF LOUISIANA

FILED: July 20 2016

DEPUTY CLERK

ORDER

This matter is before the Court pursuant to an Application for Post-Conviction Relief filed by Carter V. Anderson. Pursuant to the Court's Order, the St. Tammany Parish District Attorney filed a State's Response to Carter V. Anderson's Application for Post-Conviction Relief. The Court has reviewed the entire record and finds that the issues raised in the Application for Post-Conviction Relief may be decided on the record and no evidentiary hearing is necessary.

The Court finds that Applicant has failed to prove grounds upon which relief shall be granted. Accordingly, the Court finds the Application of the defendant is without merit and must be denied.

IT IS HEREBY ORDERED that the Application for Post-Conviction Relief filed by Carter V. Anderson is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court for the Parish of St. Tammany give notice of this denial to Applicant, the District Attorney for the Parish of St. Tammany and the Applicant's custodian.

SIGNED AT COVINGTON, LOUISIANA, this 20th day of July 2016.

JUDGE RICHARD A. SWARTZ

I CERTIFY THIS TO BE A TRUE COPY
CLERK, 22nd JUDICIAL DIST. COURT
ST. TAMMANY PARISH, LA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 4

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA NO. 2016 KW 1048

VERSUS

CARTER VINCENT ANDERSON

OCT 17 2016

In Re: Carter Vincent Anderson, applying for supervisory writs, 22nd Judicial District Court, Parish of St. Tammany, No. 503,016.

BEFORE: WHIPPLE, C.J., GUIDRY AND McCLENDON, JJ.

WRIT DENIED.

JMG
PMc
VGW

COURT OF APPEAL, FIRST CIRCUIT

DEPUTY CLERK OF COURT
FOR THE COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 5

The Supreme Court of the State of Louisiana

STATE EX REL. CARTER VINCENT ANDERSON
VS.

NO. 2016-KH-2137

STATE OF LOUISIANA

- - - - - -

IN RE: Carter Vincent Anderson; - Plaintiff; Applying For Supervisory and/or Remedial Writs, Parish of St. Tammany, 22nd Judicial District Court Div. C, No. 503016; to the Court of Appeal, First Circuit, No. 2016 KW 1048;

- - - - - -

August 3, 2018

Denied. See per curiam.

BJJ

JLW

GGG

MRC

JDH

SJC

JTG

Supreme Court of Louisiana
August 3, 2018

Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 16-KH-2137

STATE EX REL. CARTER VINCENT ANDERSON

v.

STATE OF LOUISIANA

AUG 03 2018

ON SUPERVISORY WRITS TO THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY

PER CURIAM:

Denied. Relator fails to show that he received ineffective assistance of counsel under the standard of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As to his remaining claims, relator fails to satisfy his post-conviction burden of proof. La.C.Cr.P. art. 930.2.

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

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 6

CARTER V. ANDERSON

VERSUS

DARRYL VANNOY, Warden
Louisiana State Penitentiary

DOCKET NO: 503016 DIVISION "C"

22ND JUDICIAL DISTRICT COURT

ST. TAMMANY PARISH LOUISIANA

JUNE 5, 2017
FILED:

Hana D. Cooper
DEPUTY CLERK

ORDER

CONSIDERING THE FOREGOING:

IT IS HEREBY ORDERED that a contradictory hearing with the office of the district attorney be held on the _____ day of _____, 2017, wherein the State should be prepared to show just cause as to why Anderson should not be granted the specific relief sought in this matter.

Denied

IT IS FURTHER ORDERED that a writ of Habeas Corpus Ad Testificandum be issued concerning the foregoing and be directed to Darryl Vannoy, Warden of the Louisiana State Penitentiary, to produce the body of Carter V Anderson, for the purpose of this hearing to be held on the date and time specified by this honorable Court.

Covington, Louisiana this 7 day of June, 2017.

JUDGE – TWENTY-SECOND JUDICIAL DISTRICT COURT

Not timely
Multiple Filings
Sentence reviewed
on Appeal

A TRUE COPY
DY. CLERK 22nd JUD. DIST. COURT
ST. TAMMANY PARISH, LA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 7

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

VERSUS

CARTER VINCENT ANDERSON

NO. 2017 KW 0865

AUG 21 2017

In Re: Carter Vincent Anderson, applying for supervisory writs, 22nd Judicial District Court, Parish of St. Tammany, No. 503,016.

BEFORE: WHIPPLE, C.J., McDONALD AND CHUTZ, JJ.

WRIT DENIED.

JMM
WRC
VGW

COURT OF APPEAL, FIRST CIRCUIT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

CARTER VINCENT ANDERSON

VERSUS

DARREL VANNOY, Warden
Louisiana State Penitentiary

Appendix 8

The Supreme Court of the State of Louisiana

STATE EX REL. CARTER VINCENT ANDERSON

NO. 2017-KH-1530

vs.

STATE OF LOUISIANA

IN RE: Carter Vincent Anderson; - Plaintiff; Applying For Supervisory and/or Remedial Writs, Parish of St. Tammany, 22nd Judicial District Court Div. C, No. 503016; to the Court of Appeal, First Circuit, No. 2017 KW 0865;

August 3, 2018

Denied.

JDH
BJJ
JLW
GGG
MRC
SJC
JTG

Supreme Court of Louisiana
August 3, 2018

Deputy Clerk of Court
For the Court