

No 20-7676

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

AARON ORLANDO RICHARDS — PETITIONER

vs.

DARREL VANNOY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FILED
MAR 24 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

AARON ORLANDO RICHARDS
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LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

QUESTIONS PRESENTED

This is a principal to second degree robbery case based, almost exclusively, on questionable circumstantial evidence that ended in a life sentence for Aaron Orlando Richards and leads to the following questions:

1. The State's evidence, presented at trial, established that a male perpetrator attacked and robbed the victim. The entire ordeal was captured by a security camera. The video exclusively proves Richards was not the perpetrator. The video also, as the State conceded, disproved the theory of anyone acting as a lookout for the perpetrator:
 - A. Did the State, according to the standard announced in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) present sufficient evidence to convict in this case?
 - B. Did the State prove, beyond a reasonable doubt, that Richards acted as a lookout for an alleged accomplice?
 - C. Was the jury's decision to convict a rational decision?
2. Richards's trial counsel, who has since been disbarred, rendered ineffective assistance contrary to the Sixth Amendment to the United States Constitution. Counsel had several issues transpiring in his life that caused his performance to be constitutionally deficient:
 - A. Did Richards's trial counsel render ineffective assistance when he failed to file a Motion for Bill of Particulars and Notice?
 - B. Did Richards's trial counsel render ineffective assistance when he failed to file a motion to suppress an alleged inculpatory statement?
 - C. Did Richards's trial counsel render ineffective assistance when he failed to present a defense and meaningfully challenge the prosecution's case?

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Richards respectfully prays that a writ of certiorari be issued to review the order of the United States Court of Appeals for the Fifth Circuit denying a Certificate of Appealability (COA) on his Fifth, Sixth and Fourteenth Amendment claims, as interpreted by *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); and *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039 80 L.Ed.2d 657 (1984).

OPINIONS BELOW

The order of the Court of Appeals, No. 20-30411, denying a COA appears at **Appendix A** to the petition and has been designated for publication but is not yet reported. The District Court's order and the Magistrate Judge's report and recommendation appear in **Appendices B and C** to the petition and they are reported at USDC No. 6:19-CV-314, 2020 WL 3422164 (6/22/20); and 2020 WL 3424863 (4/16/20). The various state court opinions underlying the federal proceedings appear in **Appendices D-G**.

JURISDICTION

The Court of Appeals entered final judgment against Richards February 12, 2021 and he did not file a petition for rehearing. As such, this Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule 13.1 of the Rules of the Supreme Court of the United States. See *Hohn v. United States*, 524 U.S. 236, 253, 118 S.Ct. 1969, 1978, 141 L.Ed.2d 242 (1998) (holding denial of COA reviewable).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

[N]or shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law[.]

The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the assistance of counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

La. C. Cr. P. art. 821(B)

A post verdict judgment of acquittal shall be granted only if the court finds that the evidence, viewed in a light most favorable to the state, does not permit a finding of guilty.

STATEMENT OF THE CASE

On April 16, 2009, Addie Bourgeois's purse was snatched after she was punched in the face. She initially said her assailant "had dark hair ... and was dark complected, not black." R. p. 400, vol. 2 of 3. On October 15, 2009, Richards, a light-skinned black man, was charged with the second degree robbery perpetrated against Bourgeois. Richards was found guilty as a principal to second degree robbery. Richards was initially sentenced to twenty-five years without the benefit of probation, parole, or suspension of sentence. He was later adjudicated a habitual offender and sentenced to spend the rest of his life in prison without benefits. Richards's direct appeal, and the collateral attack, of his conviction and sentence were unsuccessful. Thus far, Richards has been unable to obtain a writ of habeas corpus. On February 12, 2021, the Fifth Circuit Court of Appeals denied Richards's request for a Certificate of Appealability. This instant petition for a writ of certiorari timely follows.

REASONS FOR GRANTING THE WRIT

Under Rule 10, the Louisiana courts and the United States Fifth Circuit Court of Appeals denied relief contrary to decided important questions of federal law that has been settled by this Court and further

decided important federal questions in ways that conflicts with relevant decisions of this Court as set forth below:

1. Richards's Conviction For Being A Principal To Second Degree Robbery Was Obtained Contrary To The Standard Announced In *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979).

In any criminal prosecution, the State must sustain the heavy burden of proving every element of the crime charged beyond a reasonable doubt.

State v. Brady, 414 So.2d 364,365 (La. 1982). In evaluating whether evidence is constitutionally sufficient to support a conviction, the reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781. A reviewing court making this inquiry is not permitted to consider only the evidence most favorable to the prosecution. *State v. Mussall*, 523 So.2d 1305,1310 (La. 1988); citing *Jackson v. Virginia*, supra. The court must consider the record as a whole since that is what a rational trier of fact would do. *Id*. When the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the State is required to negate any reasonable probability of misidentification. *State v. Neal*, 00-0674 (La. 6/29/01); 796 So.2d 649,658. In this case, the State

failed to prove, beyond a reasonable doubt, that Richards acted as lookout, or actually committed, a robbery in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

A. THE INCIDENT.

Surveillance footage obtained from a Buffalo Wild Wing's captured the incident Richards was convicted for. The video showed Bourgeois's vehicle pulling into the parking lot and another vehicle enter the lot behind her. The driver of the second car exited his vehicle, approached Bourgeois's car where he proceeded to attack and rob her. After the assault and robbery, the driver ran back to his car. The video established the person who robbed Bourgeois got out on the driver's side and re-entered the same way. The video does not show anyone acting as a lookout for the person who attacked and robbed Bourgeois. About forty-five minutes after the robbery, Bourgeois's credit card was used at a Wal-Mart store. The card was used again later that evening at a gas station. Video surveillance from the 2 locations established that Darvin Williams was the person who used Bourgeois's credit card.

The State does not claim Richards was the robber captured on video. The State also told the jury the video does not show anyone acting as a

lookout: "... ladies and gentlemen, if you choose to believe [Richards's] statement that he participated and was there in the robbery but he just acted as a look-out, **even though we all saw that there was no look-out on the video**, he's still guilty. It[s] called "principals." R. p. 212 (emphasis added). Two important factors were presented to the jury that makes their decision to convict irrational: (1) Richards was not the person on the video who attacked and robbed Bourgeois; and (2) the video does not show anyone acting as a lookout. Richards was charged with second degree robbery and convicted as a principal to the same only because he was seen on video surveillance with the person who used Bourgeois's credit cards.

B. THE ELEMENTS OF THE ALLEGED OFFENSE.

To convict a defendant of second degree robbery, the prosecution is required to prove:

- (1) the taking of (2) anything of value (3) belonging to another from the person of another or that is in the immediate control of another (4) when the offender intentionally inflicts serious bodily injury.

State v. Brown, 51,352 (La. App. 2 Cir. 5/2/17); 223 So.3d 88,95 (citing *State v. Wiggins*, 44,616 (La. App. 2 Cir. 9/23/09); 22 So.3d 1039,1042).

In cases where the defendant is accused of being principal to the offense, the prosecution is also required to establish that any:

... persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, **are** principals.

State v. Wiggins, 22 So.3d at 1041 (citing *La. R.S. 14:24* (emphasis added)).

Another element the prosecution is required to establish is specific intent, which has been explained as being:

[T]hat state of mind that exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act or failure to act. *La. R.S. 14:10(1)*. Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. However, the defendant's mere presence at the scene is not enough to 'concern' an individual in the crime. A principal may be connected only to those crimes for which he has the requisite mental state.

State v. Allen, 2005-1622 (La. App. 1 Cir. 3/2/06); 934 So.3d 146,153 (citing *State v. Hampton*, 98-0625, p. 13 (La. 4/23/99); 750 So.2d 867,880.

The "determination of whether the requisite intent is present in a criminal case is for the trier of fact, and a review of this determination is to be guided by the standards of *Jackson v. Virginia*["] *State v. Wiggins*, 22 So.3d at 1042. There are, at least 3, critical questions that must be answered in this case under the *Jackson* standard: (1) Is there sufficient proof to support the State's claim that Richards confessed to acting as a lookout? (2) Is a signed waiver of rights form sufficient proof that Richards allegedly confessed to acting as a lookout without a signed or taped confession? And

(3) Without proof of any alleged confession, can the question of voluntariness be effectively addressed?

Questions concerning the identity of the robber are essentially of no consequence to this case because the victim did not identify Richards as the person who punched her and took her purse. Bourgeois's description of the attacker, her failure to pick Richards out of a lineup, and her testimony that she never identified Richards as her attacker, serves as sufficient proof that Richards did not accost her in any way. Bourgeois was undeniably punched in her face and robbed; however, there are 2 important questions that should have been answered for the jury: (1) Who robbed Bourgeois? and (2) Did the perpetrator have someone acting as lookout when he robbed her? As is evident from Bourgeois's identification of her assailant, Richards was not the perpetrator. In fact, the State did not present any appreciable evidence, that could withstand the *Jackson* test, to prove Richards acted as principal, in any capacity, to the attack and robbery. The issue in this case is did Richards, either "directly or indirectly" cause the incident to happen; and, did the State satisfy its burden under *Jackson v. Virginia*, supra.

C. THE ALLEGED CONFESSION.

According to Louisiana's Third Circuit Court of Appeal, Richards "confessed his participation in the robbery" and after he was "*Mirandized* twice regarding the voluntariness of the statements ... [t]he advice of rights forms were submitted into the record." Appendix C, p.27. Even so, there is no proof Richards gave any confession. Even assuming Richards returned to give a statement, the question would have to turn to why the detective, who allegedly received the confession, failed to preserve or corroborate it.

The federal district court noted that Richards's trial counsel failed to file a motion to suppress statements prior to trial and also failed to object to the detective's testimony about the statement he allegedly made. Appendix C, p. 7. Even so, the court made no mention of the State's failure to offer anything, except hearsay testimony, to support its claim that Richards made an inculpatory statement. On the other hand, the state and lower federal courts claim counsel did not render ineffective assistance when he failed to file a motion to suppress Richards's alleged statement—a statement no one can prove exists. The detective's hearsay allegation, that Richards confessed involvement in a crime, cannot stand. Where there is no proof Richards made a statement, his trial counsel had a duty to, at least, make an attempt at

keeping the detective's uncorroborated claim (that Richards confessed) from the jury. Especially where one prospective juror said he would give more weight to police testimony, Richards's trial was adversely affected.

In an unrelated case (where Richards was the defendant) the State called Detective Borel to testify about the instant case. The state appellate court noted:

Detective Borel testified he obtained a video from Buffalo Wild Wing's surveillance camera for the evening of the robbery. The video showed Ms. Bourgeois' vehicle pulling into the parking lot. Another vehicle pulled in right behind her vehicle. A man exited the second car, approached Ms. Bourgeois, struck her, and raced back to the waiting vehicle. The detective stated the next day he learned that one of Ms. Bourgeois' credit cards was used at a Wal-Mart store approximately forty-five minutes after the robbery. Detective Borel obtained Wal-Mart's surveillance video and identified Defendant, wearing a green polo shirt, and another man making a purchase with Ms. Bourgeois' credit card. That same evening, the credit card was used again at a gas station in Kaplan. A surveillance video was also obtained of one of the men using the credit card. The gas station's store clerk identified the man using the credit card as Darvin Williams. Mr. Williams was picked up and questioned by police. Mr. Williams admitted that he was with Defendant the night Ms. Bourgeois was robbed. Mr. Williams told the detective he was driving the vehicle that pulled up behind Ms. Bourgeois' vehicle and it was Defendant who assaulted and robbed Ms. Bourgeois. Detective Borel identified Defendant in court as the man who was with Darvin Williams at Wal-Mart wearing a green polo shirt. The detective said Defendant told him it was Mr. Williams who hit and robbed Ms. Bourgeois and that they had switched shirts afterwards.

State v. Richards, 2017-135 (La. App. 3 Cir. 6/6/18); 247 So.3d 878,884.

Under the *Jackson* standard, the state appellate court's cursory gloss emphasizes the State's deficient evidence. First of all, the Walmart video does not reasonably infer Richards used the credit card because the video showed "another man making a purchase with Ms. Bourgeois' credit card." Another surveillance video showed the same man (later identified as Darvin Williams) using Bourgeois's credit card.

D. THE VICTIM'S DESCRIPTION OF THE PERPETRATOR.

The federal district court considered Bourgeois's description of her attacker and noted she "identified the perpetrator as a male with a dark complexion, broad shoulders, dark hair, wearing a green polo shirt." Appendix C, p. 8. The court, however, failed to make mention of Richards's light-skinned complexion. The State mischaracterized Bourgeois's testimony to support the misidentification of an innocent man. In fact, the state appellate court acknowledged, in an unrelated case where Bourgeois testified, that she never identified Richards as her assailant. See *State v. Richards*, 247 So.3d at 883-84. Again, the lower courts ignored this and claimed Richards "confessed his participation in the robbery." Appendix G, p. 27.

E. TRIAL COUNSEL'S DEFICIENT PERFORMANCE.

The state appellate court's conclusion establishes Richards's claim of ineffective assistance. The court said Richards failed to file a motion to suppress his statement (although the State did not prove Richards made a statement). The court also said he failed to object to Detective Borel's testimony; and, "even if [he was] precluded from attempting to suppress his confession, there is sufficient evidence in the record to indicate [] the confession was freely and voluntarily made....[and therefore] the evidence was sufficient to sustain the jury's verdict."

In evaluating the sufficiency of the evidence to support a conviction, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 43 U.S. 307, 99 S.Ct. 2781 (1979); *State v. Jacobs*, 504 So.2d 817 (La. 1987). Where the conviction is based on circumstantial evidence, *La. R.S. 15:438* provides that such evidence must exclude every reasonable hypothesis of innocence. *State v. Langford*, 483 So.2d 979 (La. 1986). *La. R.S. 15:438* does not establish a stricter standard of review than the more general rational juror's reasonable doubt formula. It is merely an evidentiary guide

for the jury when considering circumstantial evidence. *State v. Porretto*, 468 So.2d 1142 (La. 1985). The State's case failed to establish, beyond a reasonable doubt, that Richards was guilty of second degree robbery in any capacity.

2. Richards's trial counsel rendered ineffective assistance under the standard announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

A criminal defendant's right to the effective assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments and "is indispensable to the fair administration of our adversarial system of criminal justice."

Maine v. Moulton, 474 U.S. 159, 168, 106 S.Ct. 477, 88 L.Ed.2d 481 (1985).

The standard of review for a claim of ineffective-assistance-of-counsel requires a reviewing court to reverse a conviction if the defendant establishes his counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and, if not for counsel's deficient performance, there is a reasonable probability the outcome of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. at 688,694. The reasonable probability standard does not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome. *Strickland v. Washington*, 466 U.S. at 693, 104 S.Ct., at 2068. While a reviewing court

must examine the “totality of circumstances and the entire record” to assess counsel’s performance, “[s]ometimes a single error is so substantial that it alone causes the attorney’s performance to fall below the Sixth Amendment standard.” *Nero v. Blackburn*, 597 F.2d 991, 994 (5th Cir. 1979).

A. FAILED TO FILE A MOTION FOR BILL OF PARTICULARS AND NOTICE.

Under *La. C. Cr. P. art. 484*, the prosecution is required to “furnish a bill of particulars setting forth more specifically the nature and cause of the charge against [a] defendant.” A Bill of Particulars must specify the manner in which a particular statute is alleged to have been violated. For instance, Richards was charged with second degree robbery but convicted as a principal. The video surveillance proves Richards was not the perpetrator and further shows there was no one acting as a lookout. This had to have confused the jury and is probably what led them to ask if they could “get the definition of each charge and affirmation that principal to the crime is still ‘guilty’ of the same crime?” The problem here is, the State failed to specify what Richards did to “aid and abet … [or] counsel or procure another to [do].” *La. R.S. 14:24*. In other words, The jury did not understand if Richards was accused of robbing Bourgeois or if he was accused of acting in concert with the actual perpetrator. Therein lies the dilemma of the State’s

principal accusation—the prosecution failed to tell the jury exactly what Richards **supposedly** did.

The State's constructive amendment to the bill of information happened after Richards's trial began. The State's mere mention of the law of principals was not sufficient to qualify as: (1) a legal amendment of the accusation; and (2) adequate notice of the crime Richards was accused of. The State failed to provide Richards with written notice of being charged as a principal to second degree robbery and his trial counsel, who has since been disbarred, rendered ineffective-assistance when he failed to object.

B. FAILED TO OFFER A DEFENSE.

The Sixth Circuit Court of Appeals said that a “modification at trial that acts to broaden the charge contained in an indictment constitutes reversible error.” *Lucas v. O’Dea*, 179 F.3d 412, 416 (C. A. 6 (Ky.) 1999); citing *Stirone v. United States*, 362 U.S. 212, 217-19, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960). That court also explained that there is no distinction between federal or state prosecutions because “a state prisoner petitioning for habeas corpus relief [also] has a due process right to be informed of the nature of the accusations against him.” *Lucas v. O’Dea*, at 417; citing *Combs v. Tennessee*, 530 F.2d 695, 698 (6th Cir. 1976). The *Lucas* court also

considered the district court's observation concerning the "result of the fatal variance between the indictment and the jury instruction[:]"

[I]t is clear that [Lucas] was prejudiced, given that his defense to the murder charge was that he was not the one who shot Zurla. Given the form in which the case was delivered to the jury, this would end up being no defense at all.

Lucas v. O'Dea, quoting *Lucas v. O'Dea*, No. 3:96-CV-482-A (June 18, 1997).

There was a fatal variance between the State's bill of information, the presentation of its case, and the instructions given to the jury. Worse still, Richards's trial counsel did not present a defense, instead he told the jury:

[T]he key thing that you have to determine is who done it. That's the theme in this case. [That's] the only thing that I'm asking you to do is when you're focusing on the evidence in this case, focus on that primary question on who done it?

Richards's trial counsel could not have understood the law of principal. He failed to ask the jury to consider the evidence and decide what, if anything, the evidence proves Richards did. Richards was deprived of his constitutionally protected right to present a defense and to be given notice of the accusation against him in this case because of his trial counsel's ineffectiveness.

The Louisiana Constitution provides that a "person arrested or detained ... shall be advised fully of the reason for his arrest or detention [and] ... in a criminal prosecution, an accused shall be informed of the

nature and the cause of the accusation against him.” *La. Const. Art. I, § 13.* Likewise, the United States Constitution requires that an accused “be informed of the nature and cause of the accusation … against him … and to have the effective assistance of counsel for his defense.” *U.S. Const. Amend. VI.* The federal protection is afforded a state defendant by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. This honorable Court has said that “[n]o principal of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal.” *Cole v. Arkansas*, 68 S.Ct. 514 (1948) (citing *In re Oliver*, 33 U.S. 257, 68 S.Ct. 499 (1948); *DeJonge v. State of Oregon*, 299 U.S. 353, 362, 57 S.Ct. 255, 259, 81 L.Ed. 278 (1937); see also *Jackson v. Virginia*, 99 S.Ct. 2781 (1979).

C. FAILED TO FILE MOTION TO SUPPRESS.

The federal district court’s reference to the state appellate court’s ruling on the admissibility of Richards’s alleged statement is misplaced. There is no tangible proof Richards ever made a statement. How, then, can the question of voluntariness truly be addressed? Richards’s trial counsel

rendered ineffective assistance when he failed to object to Detective Borel's hearsay statement in the jury's presence that Richards confessed to acting as a lookout during the robbery. Better still, counsel should have known the State intended on offering the detective's statement under oath. Counsel had a duty to file a motion to suppress the alleged confession and make clear to the court that, without proof of any alleged confession, the question of voluntariness should not have been the first inquiry.

The Eleventh Circuit Court of Appeals has said that “[a]t the heart of effective representation is the independent duty to investigate and prepare.” *Goodwin v. Balkcom*, 684 F.2d 794, 805 (11th Cir. 1982) (internal citations omitted). The Eighth Circuit Court of Appeals said:

Investigation is an essential component of the adversary process. “Because [the adversarial] testing process generally will not function properly unless counsel has done some investigation into the prosecution’s case and into various defense strategies ... ‘counsel has a duty to make reasonable investigations....’”

Wade v. Armontrout, 798 F.2d 304, 307 (8th Cir. 1986) (internal quotations omitted).

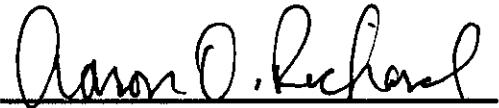
Richards was deprived of his Sixth Amendment right to the effective assistance of counsel because his trial counsel was not prepared. In fact, Richards’s counsel requested a continuance so he could better prepare; however, he failed to file other necessary pre-trial motions to gain more than

just a passing knowledge of the case against Richards. Richards's trial counsel neglected the central issue and also failed to meaningfully challenge the State's case; therefore, prejudice must be presumed. See *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039 (1984).

CONCLUSION

For the foregoing reasons Richards's petition for a writ of certiorari should be granted.

Respectfully submitted,


Aaron O. Richards
Aaron Orlando Richards

Date: March 23, 2021