

ORIGINAL

21-5263

No. _____

Supreme Court, U.S.
FILED

JUN 26 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

DERRICK EDWARDS - PETITIONER

VS.

DARREL VANNOY WARDEN
LOUISIANA STATE PENITENTIARY - RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

DERRICK EDWARDS # 621889

MAIN PRISON-EAST YARD

LOUISIANA STATE PENITENTIARY

ANGOLA, LOUISIANA, 70712

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LIST OF PARTIES

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

**DISTRICT ATTORNEY, 1ST JDC
CADDY PARISH
501 TEXAS STREET
SHREVEPORT, LA., 71101-0000**

QUESTION(S) PRESENTED

- 1. Did the Trial court erred in giving erroneous burden shifting jury instruction on manslaughter, (LSA 14:31) in violation of petitioner's right to due process
U.S. Const. 5th &14th;**

Mullaney v. Wilber, 421 U.S. 684; *Sandstrom v. Montana*, 442 U.S. 510, 99 S. Ct.

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- 2. Whether petitioner was denied his constitutional right to have effective assistance of counsel when (1) Counsel failed to object to unconstitutional burden shifting jury instruction given by court in violation of the 5th, 14th, 6th, Amendment to the U.S. Constitution;**

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

The Petitioner, Derrick Edwards, respectfully prays that a writ of certiorari issue to review the judgment of the Fifth Circuit Court of Appeals.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Fifth Circuit Court of Appeals appears at Appendix "A" to the petition and is reported at Derrick Edwards v. Darrel Vannoy, ; COA No. 20-30636

The opinion of the United States Western District Court of Louisiana appears at Appendix "B" to the petition and is unpublished,

Derrick Edwards v. Darrel Vannoy, USDC No. 5:18CV-1007

For cases from state courts:

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

State v. Derrick Edwards, ; No. 2015-K-0628 (2/5/2016); 186 So 3d 1163.

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

State v. Derrick Edwards,; No. 49,635-KA, (2/26/15); 162 So. 3d 512.

The opinion of the District Court on Post Conviction for the State of Louisiana appears at Appendix "E" and is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Fifth Circuit Court of Appeals decided my case was May 21, 2021.

No petition for rehearing was timely filed in my case.

For cases from state courts:

The date on which the highest state court decided my case was February 5, 2016. A copy of that decision appears at Appendix "C".

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is timely pursuant to 28 U.S.C. § 2101 (c).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Fifth Amendment to United States Constitution: "No person shall ... be deprived of life, liberty, or property, except by due process of law..."

Sixth Amendment to United States Constitution: "In all criminal prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Fourteenth Amendment, Section 1, to United States Constitution: "... nor shall any state deprive any person of life, or property without due process of law...."

Louisiana Statute 14:31.

STATEMENT OF THE CASE

A. STATE COURT PROCEEDINGS

Derrick Edwards was indicted by the Grand Jury for one count of second degree murder, in violation of Louisiana Revised Statute 14:30.1, for the murder of Tyrone Miles, which occurred on June 4, 2011. On August 15, 2011, Mr. Edwards, with counsel John Bokenfohr, was arraigned and entered a plea of not guilty. On January 28, 2014, Mr. Edwards' trial began before a jury for the charge of second degree murder. On January 30, 2014, Mr. Edwards was found guilty as charged. On March 3, 2014, Mr. Edwards was sentenced to life imprisonment for the charge of second degree murder. On February 26, 2015, the Second Circuit Court of Appeals rendered a judgment affirming Mr. Edwards conviction and sentence.(See *State v. Edwards*, No. 49,635-KA, 2/26/15) The Louisiana Supreme Court followed suit denying certiorari on February 5, 2016. (See *State v. Edwards*, No. 2015-K-0628 2/5/2016). Petitioner then filed an application for post conviction relief in the First Judicial District Petitioner submitted his Uniform Application for Post Conviction Relief in August, 2016.

Judge Brady D. O'Callaghan delivered the judgment of the lower court denying Petitioner's Application in it's entirety on September 26, 2016. App. At "D". The Second Circuit denied writs on December 2, 2016. App. "E". The Louisiana Supreme Court followed suit on April 20, 2018. App." F".

B. FEDERAL COURT PROCEEDINGS

Edwards timely filed a federal petition for habeas corpus under 28 U.S.C. §2241, et seq., raising three issues: (1) denial by his trial counsel of his constitutional right to testify, and, (2) ineffective assistance of counsel for his trial counsel's failure to object (3) unconstitutional burden shifting jury instruction.

A federal Magistrate Judge recommended that Edward's petition be denied and dismissed with prejudice.

Federal District Court Judge adopted the magistrate's recommendations.

The Fifth Circuit Court of Appeals denied COA on May 21, 2021.

Petitioner now comes to this Honorable Court for relief.

STATEMENT OF FACTS

On June 4, 2011, Derrick Edwards was involved in a disagreement with his daughter (TR pg. 270). Derrick Edwards did not agree with his daughter, who was a minor, aged 17 at the time, having a relationship with a 27 year old adult male named Tyrone Miles. (TR pgs. 145, 301). Subsequently, Derrick Edwards and Tyrone Miles were involved in a fight on West 74th Street in Shreveport Louisiana (TR pgs. 268). After the fight was over, Tyrone collapsed and ultimately died at the hospital.

First, the State called Katrina Brown to the stand. She testified that Tyrone Miles went into the street to fight Derrick Edwards (TR pg. 277). Then, she saw Derrick Edwards and Tyrone Miles fight in the street (TR pg. 299). Although she saw the fight, she did not realize that Miles had been stabbed until he said that he had been stabbed. (TR pg. 277).

The State then called Shanderricka Edwards. Shanderricka is the daughter of Derrick Edwards. She thought that Derrick Edwards had told Tyrone that he would bust his but (TR pg. 328). At some point, she was holding Tyrone's arm, but Tyrone broke away from her and went into the street where her father was. After Tyrone ran into the street, the fight ensued. Although she saw the fight, she did not hear what was being said by Derrick or Tyrone and she did not see Tyrone get stabbed. On cross examination, she testified that that once "Tyrone" stopped fighting, Derrick did not follow him.

The State also called Patricia Carthron. She testified that Derrick Edwards did not approve of his daughter seeing Tyrone Miles because she was 17 years old. She too told Tyrone Miles not to go into the street to fight Derrick. But he snatched away from Shanderricka and went into the street anyway, (clearly the aggressor). However, the street lights were out and they could not see exactly what was going on.

The State called Corporal Jennie Taylor who testified that she was the first law enforcement to arrive on the scene. Derrick Edwards made contact with her and told her that he had been in a fight with Tyrone and that he had stabbed him. He gave Corporal Taylor the knife that had been used. On cross examination, Corporal Taylor testified that Derrick immediately informed her of what happened and was cooperative and polite.

The defense called a number of witnesses to rebut the state's witnesses but not Derrick Edwards. The jury returned a verdict of guilty to second degree murder and Mr. Edwards was sentenced to life imprisonment w/o benefits.

REASONS FOR GRANTING THE PETITION

There are two questions of law to be settled here: (1) whether the State of Louisiana's jury instruction on manslaughter comports with the requirements of the Due Process Clause of the Fourteenth Amendment that the prosecution must prove beyond a reasonable doubt every fact necessary to constitute the crime charged; (2) whether trial counsel was ineffective for not objecting to the unconstitutional jury charge.

The Louisiana and Federal courts erred in their decision denying petitioner's claims relief.

The petitioner alleges (1) Trial court erred in giving erroneous burden shifting jury instruction on manslaughter a due process violation; U.S. Const. 5th &14th; (*Mullaney v. Wilber*, 421 U.S. 684; (*Sandstrom v. Montana*, 442 U.S. 510, 99 S. Ct. 2450) (2) that counsel failed to object to unconstitutional burden shifting jury instructions, clearly deficient and prejudice performance, and an evidentiary hearing was required to ascertain the truth of this gross ineffectiveness by counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).

Claim I asserts trial judge denied petitioner a fair trial by giving burden shifting instructions. Petitioner now contends that the trial judge, in his charge to the jury, erroneously stated in his instructions to the jury that:

"The defendant bears the burden to prove, by a preponderance of the evidence, that he acted in "sudden passion or heat of blood" in order for a verdict of Manslaughter to be appropriate." (See, Charge to the Jury, TR T pg 613, Ex. B).

This jury instruction clearly instructed the jury that the burden of proof was of the defendant to prove something. This prejudiced the defendant by denying him his presumption of innocence, and denied him a fair trial, causing a miscarriage of justice. The defendant in this case did not testify. The Trial Judge gave this erroneous instruction to the jury, leading the jury to believe that the defendant had to prove something in order for them to consider returning a verdict of manslaughter, along with the fact that the defendant did not testify, mislead the jury into believing that they could not consider this particular responsive verdict because the defendant did not prove it.

Petitioner next alleged that his trial attorney failed to object to burden shifting instructions given to the jury on the responsive charge of manslaughter. The judge in denying this claim erroneously states that this claim was "already addressed on appeal by the Second Circuit in Footnote 3 of their opinion..." The Judge is in error. This claim of Burden Shifting instruction was not brought before the Second Circuit on direct appeal and has never been ruled on as a state or constitutional violation.

In his instructions to the jury, Honorable Judge O'Callaghan gave the following instruction to the jury:

"The defendant bears the burden to prove, by a preponderance of the evidence, that he acted in "sudden passion or heat of blood" in order for a verdict of Manslaughter to be appropriate." (See, Charge to the Jury, TR T pg 613, Ex. "B").

By these giving these instructions to the jury the Court effectively shifted the burden of proof to the defendant, thereby removing his presumption of innocence unless he proved it. Counsel made a very serious error here in failing to object to this

erroneous instruction of the trial court.

By failing to object to the trial court's instruction, counsel was ineffective and the effect of this ineffectiveness denied petitioner his right to a fair trial. There is a reasonable probability that the result of the proceeding would have been different if the jury had been correctly instructed. It should be noted that the court did not address this allegation under deficiency of trial counsel.

The post conviction court erred in making a decision on these allegations of ineffective assistance of counsel without holding an evidentiary hearing to ascertain the truth, which if these allegation prove true would grant petitioner relief.

Petitioner disagrees with the state's rulings as they are contrary to clearly established federal law. See, *Mullaney v. Wilber*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508; *Sandstrom v. Montana*, 442 U.S. 510, 99 S. Ct. 2450; *Strickland v. Washington*, 466 U.S. 668 (1984);

The rulings of the Louisiana Courts in this case are in conflict with *Mullaney*, *Sandstrom*, and *Strickland*, supra, and the Sixth Amendment, and is a departure from clearly established Federal law, as determined by the Supreme Court of the United States and an unreasonable determination of facts in light of the evidence presented in the State court proceedings.

These issues presented below are clearly ripe for review by this Honorable Court to decide the important question of the instruction's constitutionality.

CLAIM NO. 1

**Trial court erred in giving erroneous burden
shifting jury instruction on manslaughter
a due process violation; U.S. Const. 5th &14th;
(*Mullaney v. Wilber*, 421 U.S. 684)
(*Sandstrom v. Montana*, 442 U.S. 510, 99 S. Ct. 2450)**

The State of Louisiana requires a defendant charged with murder, which upon conviction carries a mandatory sentence of life imprisonment, to prove that he acted in the heat of passion on sudden provocation in order to reduce the homicide to manslaughter, in which case the punishment is a fine or imprisonment not exceeding 40 years. This rule is violative of the Due Process Clause of the Fourteenth Amendment that the prosecutor must prove every fact necessary to constitute the crime charged, *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368, and unconstitutionally shifts the burden of proof to the defendant. To satisfy that requirement, the prosecution in a homicide case in Louisiana must prove beyond a reasonable doubt the absence of heat of passion on sudden provocation when the issue is properly presented. *Mullaney v. Wilber*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508.

In *Mullaney v. Wilber*, *supra*, the Supreme Court stated "...historical review establishes two important points. First, the fact at issue here – the presence or absence of the heat of passion on sudden provocation – has been, almost from the inception of the common law homicide, the single most important factor in determining the degree of culpability attaching to an unlawful homicide. And, second, the clear trend has been toward requiring the prosecution to bear the ultimate burden of proving

this fact. See generally Fletcher, *supra*, n. 16; H. Packer, *The limits of the Criminal Sanction* 137-139 (1968)."

Petitioner now contends that the trial judge, in his charge to the jury, erroneously stated in his instructions to the jury that:

"The defendant bears the burden to prove, by a preponderance of the evidence, that he acted in "sudden passion or heat of blood" in order for a verdict of Manslaughter to be appropriate." (See, Charge to the Jury, TR T pg 613, Ex. B).

This jury instruction clearly instructed the jury that the burden of proof was of the defendant to prove something. This prejudiced the defendant by denying him his presumption of innocence, and denied him a fair trial, causing a miscarriage of justice. The defendant in this case did not testify. The Trial Judge gave this unconstitutional burden shifting instruction to the jury, leading the jury to believe that the defendant had to prove something in order for them to consider returning a verdict of manslaughter, along with the fact that the defendant did not testify, mislead the jury into believing that they could not consider this particular responsive verdict because the defendant did not prove it.

Louisiana law requires a defendant to establish by a preponderance of the evidence that he acted in the heat of passion on sudden provocation in order to reduce murder to manslaughter. Under this burden of proof a defendant can be given a life sentence when the evidence indicates that it is as likely as not that he deserves a significantly lesser sentence. This is an intolerable result in a society where, to

paraphrase Mr. Justice Harlan, it is far worst to sentence one guilty only of manslaughter as a murderer than to sentence a murderer for a lesser crime of manslaughter. *In re Winship*, 397 U.S., at 372, 90 S. Ct., at 1076 (concurring opinion).

Adequate jury instructions are those which fairly and reasonably point out the issues and which provide the correct principles of law for the jury to apply to those issues. The trial judge is under no obligation to give any specific jury instructions that may be submitted by either party; the judge must, however, correctly charge the jury. *Doyle v. Picadilly Cafeterias*, 576 So. 2d 1143 (La App. 3d Cir. 1991).

If the court gives misleading, confusing instructions, then such instructions do not adequately set forth the law and may constitute reversible error. *Smart v. Kansas City Southern R. R.* (La. App. 2d Cir. 2002) 830 So 2d 581.

Correlative to a judge's duty to charge the jury as to the law applicable in a case is a responsibility to require that the jury receives only the correct law. *Melancon v. Sunshine Construction, Inc.*, 712 So 2d 1040 ,> *Doyle*, 576 So 2d at 1152.

The instruction was not only unconstitutional, but was highly prejudicial when it is considered that the defendant claimed the stabbing was an accident and a response to a real perceived danger to himself. Accordingly, if the jury believed the defendant's version that the stabbing was accidental and that he was acting out of fear, they would have been duty-bound at the very least to return a verdict of manslaughter.

The Louisiana Supreme Court in *State v. Williamson*, 389 So.2d 1328,1331

(La. 1980), found that an erroneous jury instruction was reviewable, stating:

... it is within the province of this reviewing court to entertain complaint of Constitutional violations on appellate review notwithstanding that consideration of such complaint more often than not is deferred until filing of a writ of habeas corpus. This Court's usual premission of such issues stems from the need of an evidentiary hearing which can only be had incident to the writ of habeas corpus. The record before us, however, bears full and sufficient proof of the error which no posterior hearing could augment.

Thus, our jurisprudence provides sufficient authority for review of the alleged erroneous jury charge despite the lack of a contemporaneous objection.

The instruction which defined "sudden heat and passion" as the "burden" of the defendant in a manslaughter instruction was unconstitutional, erroneous, and prejudicial, depriving petitioner of his right to due process of law, and therefore, the conviction must be reversed.

CLAIM NO. 2

Whether petitioner was denied his constitutional right to have effective assistance of counsel when (1) Counsel failed to object to unconstitutional burden shifting jury instruction given by court in violation of the 5th, 14th, 6th, Amendment to the U.S. Constitution; and Article of the Louisiana Const.

The right to counsel, which is guaranteed in the Sixth Amendment to the United States Constitution and under Article 1, § 16 of the Louisiana Constitution, "is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." *Gideon v. Wainwright*, 372 U.S. 335, 344, 83

S.Ct. 792, 796, 9 L. Ed.2d 799 (1963). Without counsel, the right to a fair trial itself would be meaningless, for it is only through counsel that the accused may secure his other rights.

The essence of an ineffective assistance claim is that counsel's unprofessional errors upset the adversarial balance between the defense and prosecution, rendering the trial unfair and the verdict suspect. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed.2d 674 (1984). In order to prevail to prevail on such a claim, one must show both that counsel's representation fell below an objective standard of reasonableness, and that there exists a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

In his instructions to the jury, Honorable Judge O'Callaghan gave the following instruction to the jury:

"The defendant bears the burden to prove, by a preponderance of the evidence, that he acted in "sudden passion or heat of blood" in order for a verdict of Manslaughter to be appropriate." (See, Charge to the Jury, TR T pg 613, Ex. "B").

By these giving these instructions to the jury the Court effectively shifted the burden of proof to the defendant, thereby removing his presumption of innocence unless he proved it. Counsel made a very serious error here in failing to object to this erroneous instruction of the trial court.

By failing to object to the trial court's instruction, counsel was ineffective and the effect of this ineffectiveness denied petitioner his right to a fair trial. There is a reasonable probability that the result of the proceeding would have been different if the

jury had been correctly instructed.

The general law is that an error may not be accessed on appeal unless a timely contemporaneous objection is made. Nevertheless, the jurisprudence has carved out an exception to this rule where such alleged trial errors raised overriding due process considerations. > **State v. Gaddis**, (La. App. 2d Cir. 3/14/03), 839 So 2d 1258; **State v Lowery**, (La. App. 2d Cir. 2/28/01) 781 So 2d 713.

The failure to object timely to a jury instruction is subject to plain error review. See, **U.S v. Fuchs**, 467 F. 3d 889, 901, (the court will reverse only if (1) there was an error, (2) that was clear and obvious, and (3) that affected the defendant's substantial rights causing a miscarriage of justice.).

Trial counsel was ineffective for not objecting to this faulty jury instruction, which thereby prejudiced and denied petitioner a fair trial.

DEFICIENT PERFORMANCE AND PREJUDICE

Petitioner avers that he has fulfilled the first prong of **Strickland**, *supra*, by demonstrating that his trial attorney's performance was deficient. He has identified specific instances of his trial attorney's omissions and that he has a right to effective assistance of counsel. In being effective, petitioner's attorney owed him a duty to protect his rights, but failed to object to a clearly unconstitutional jury instruction. This error should be deemed to be of sufficient gravity to have undermined the fundamental fairness of the trial itself. See **Nealy v. Cabana**, 764 F.2d 1173 (5th Cir. 1985).

Next, petitioner intends to show that this deficient performance of his trial attorney prejudiced him by depriving him of a fair trial, i.e., a trial whose result is

reliable. Defense Counsel's conduct truly undermined the proper functioning of the adversarial process in that the trial cannot be relied on as having produced a just result. This was a grave error on the part of petitioner's trial counsel. Petitioner should not be made to suffer continual incarceration due to his trial counsel's grave errors. Instead, his trial counsel should be made to answer, in an evidentiary hearing, as to why he failed to provide effective and reasonable assistance of counsel to his client.

For the foregoing facts and law in relation thereof, petitioner's trial counsel should be deemed to have provided him ineffective assistance of counsel at the trial stage. Petitioner's sentences and convictions should therefore be reversed and remanded for a new trial in the district court for having wrongfully convicted him of second degree murder.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Derrick Edwards #621889

Date: July 26, 2021