IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

No. 21-5677

STATE OF LOUISIANA
Respondent

versus

RANDOLPH ARMSTEAD
Applicant

Armstead v. Deville, Warden

On Application For Writ of Certiorari, Petition under 28 USC § 2254 for Writ of Habeas Corpus Relief by a person in state custody, Directed to the United States Court of Appeals, Fifth Circuit Docket No. 20-30642 decision to deny Certificate of Appealability (COA)

United States District Court, Eastern Docket No. 17-5947 denial for Writ of Habeas Corpus Relief and Original Writ App. and/or Writ of Certiorari and/or Review Docket No. 2015-K-0392, from the Orleans Parish Criminal Court, LA Docket No. 502-727-J, Court of Appeals, Fourth Circuit Docket No. 2014-KA-0036

Sincerely yours,
Randolph Armstead
Claiborne Parish Detention
1415 Highway 520
Homer, LA 71040

QUESTIONS AND ISSUES PRESENTED

1. Did the state trial court, La. appellant, La. Supreme Court and US District court, Eastern violate the petitioner's Constitutional Rights 14th Amendment, 5th Amendment and 6th Amendment of the US Const. and/or commit manifest and harmful error, when it was held further proceedings including a trial applicable.

2. Did the State Court, La. appellant, La. Supreme Court and US District Court, Eastern violate the petitioner's Constitutional Rights 6th Amendment of the US Const. and/or commit manifest and harmful error, when it held the Confrontation Clause was not violated and a trial proceeded without testimony of the alleged victim.

3. Did the State trial court, La. appellant, La. Supreme Court and US District Court, Eastern violate the petitioner's Constitutional Right 14th Amendment and 6th Amendment of the US Const. and/or commit manifest and harmful error, when held the trial courts decision not to admit the statement by the victims mother into evidence was appropiate.

4. Did the state trial court, La. appellant, La. Supreme Court and US District Court, Eastern violate the petitioner's Constitutional Rights and or commit manifest and harmful error, 14th Amendment and 6th Amendment of the US Const., when held the trial Court did not abuse it's discretion denying the petitioner a new trial; holding the victim testimony wouldn't probably produce a different verdict.

5. Did the state trial Court, La. appellant, La. Supreme Court and US District Court, Eastern violate the petitioner's Constitutional Rights 14th Amendment, 5th Amendment and 6th Amendment of the US Const. and/or commit manifest and harmful error, when held the State proved every element of its case beyond a reasonable doubt.

6. Did the State trial Court, La. appellant, La. Supreme Court and US District Court, Eastern violate the petitioner's Constitutional Right 6th Amendment of the US Const. and/or commit manifest and harmful error, when held the petitioner failed to show Ineffective Assistance of Counsel.

7. Did the US District Court, Eastern commit manifest and harmful error, when "ruled" petitioner is not entitled to Fed. Habeas Relief on his claim that the state trial Court was without jurisdiction to reconsider it's ruling on the motion to quash the indictment; finding no plain error in the portion of the Report and Recommendation to which petitioner does not oject, that petitioner's clains be denied and dismissed with prejdice.

8. Did the US District Court, Eastern and US Court of Appeals, Fifth Circuit commit manifest and harmful error, when adopting the Magistrate Judge's recommendation that petitioner has not demonstrated a violation of his Constitutional Rights and Denying Certificate of Appealability((COA) and request and denial of an Evidentiary Hearing.

LIST OF PARTIES

Uniform Application for Post Conviction Relief request that bears Docket # 502-727, Criminal District Court Div "J"

Docket # 2017-K-0083, Fourth Circuit Court of Appeals

Docket # 2017-KH-367, LA Supreme Court

November 21, 2014, Rehearing granted Docket # 2014-K-1365, LA Supreme Court

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CITATIONS OF CASE

On Direct Appeal

An original counsel brief filed on Feb. 3, 2014, petitioner sought an appeal of his conviction and sentence in the state appellate court. April 9, 2014, state appellate court ordered supplemental briefing on issue of Divestiture of Jurisdiction by April 17, 2014, "Ruled" conviction and sentence vacated June 4, 2014, because court found "error patent" that the state trial court had been divested of it's jurisdiction, and thus the verdict and sentence were invalid; the court pretermitted consideration of petitioners' assignments of error of original brief. (See June 4, 2014, Docket # 2014-KA-0036)

The LA Supreme Court "granted" the State's Writ Application and "reversed" the judgement of the state appellate court, for reasons cited by dissenting state appellate court Judge. (See September 12, 2014, Docket # 2014-K-1365)

On Post Conviction Relief

Petitioner filed myriad prose pleadings in the state trial court and state appellate court between July 2016 and January 2017 requesting a decision and/or copy of the decision - Copy's of Judgement/letter is enclosed (See Docket # 2016-K-0956, Sept. 29, 2016) Docket # 2016-K-1179 "Order" November 22, 2016; Docket # 2016-K-1179 Dec. 12, 2016 and "letter" Docket # 2016-K-1179, Jan. 6, 2017

(NOT ENCLOSED) LA Supreme Court official Judgement was "lost" by Jail staff, when transfering me between jails.

STATEMENT OF JURISDICTION

Jurisdiction is vested in this Honorable Court by virtue of Article V. Section 10 of the Louisiana Constitution of 1974, and by Rule 10 and Rule 13 of the Rules of the Supreme Court of the United States.

Notice of Pro-se Filing, petitioner request that this Honorable court view these claims in accordance with the rulings of Haines V. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d. 652 (1972); State V. Moak, 387 So. 2d. 1108 (La. 1980) (Prose petitioner not held to same stringent standards as a trained lawyer); State V. Egana, 771 So. 2d. 638 (La. 2000) (less stringent standards than formal pleadings filed by lawyers). Petitioner is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this court.

CONSTITUTIONAL PROVISIONS

(1.) Jurisdiction of the State Trial Court

LA C.Cr. P Article 916:

The jurisdiction of the trial court is divested and that of the appellate court attaches upon the entering of the order of appeal. Thereafter, the trial court has no jurisdiction to take any action except as otherwise provided by law and to:

(1.) Extend the return day of the appeal, the time for filing assignments of error, or the time for filing per curiam comments in accordance with

Articles 844 and 919.

(2.) Correct an error or deficiency in the record.

(3.) Correct an illegal sentence or take other appropiate action pursuant to a properly made or filed motion to reconsider sentence.

(4.) Take all action concerning bail permitted by Title VIII.

(5.) Furnish per Curiam comments.

(6.) Render an interlocutory order or a definitive judgement concerning a ministerial matter not in controversy on appeal.

(7.) Impose the penalty provided by Article 844.

(8.) Sentence the defendant pursuant to a conviction under the Habitual offender Law as set forth in R.S. 15:529.1.

In this matter, the trial court granted the state's motion for appeal in connection with a September 25, 2012, ruling by the trial court granting the petitioner's Motion to Quash. (See Sept. 25, 2012, Motion to Quash trans.)

In accordance with (LA CCr.P Article 916), the appellate court had exclusive jurisdiction over this matter after the trial Court signed it's Sept. 25, 2012, order granting the state's motion for appeal.

Moreover, the trial court's allowance of other proceedings, including the trial did not fall within the exceptions of (LA C.Cr.P Article 916). The exceptions under Article 916 allow for the trial court to take up limited matters but none of those matters include the proceedings that were held in this matter and they certainly didn't include a jury trial.

The LA Supreme Court and US DC, Eastern are bound and failed to notice lack of jurisdiction and violated the petitioner's 6th Amendment "Fair Trial" 5th Amendment and 14th Due Process Clause of the US Constitution.

In **State v. Spell**, 388 So. 2d 754 (La. 1980). The Supreme Court of LA held the jurisdiction of a trial court is divested and that of an appellate

Court attaches upon the entering of an order of appeal, and the trial Court thereafter has no authority or jurisdiction unless the case is remanded from the appellate court.

Additionally, the state's time for appeal had lapsed in accordance with the LA C.Cr.P Article 915.1(A) and Local Rule 1 of the Court of Appeal, Fourth Circuit. The return date had passed and the state did not request a timely extension of the return date. However, the Fourth Circuit had exclusive jurisdiction of the matter dating back to September 25, 2012. The failure by the LA Supreme Court and US District Court, Eastern to notice lack of jurisdiction and constitutional violations is a travesty of justice.

Furthermore, the petitioner's Motion to Quash should stand, petitioner's Conviction and sentence be vacated, and should be granted an immediate order of release from custody that the cognizance of the US District Court, Eastern was never more relevant for review; that while the Court was divested, to conduct a trial, recieve a jury's verdict, and impose a sentence is "Contrary to" Art. 1, 2, 13, 16, and 22 of the LA State Const., 6th Amendment of the US Const. "Fair Trial" and the Due Process clause of the 5th and 14th Amendment of the US Const.

(2.) STATE COURT erred as a matter of Law, when it ruled the unavailability of the victim at trial was not a violation of the Confrontation Clause of the US Constitution

The Confrontation Clause of the Sixth Amendment of the US Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. This bedrock pro-

cedural guarantee applies to both federal and state prosecutions. Pointer v. Texas, 380 US. 400, 85 S.Ct. 1065, 13 L. 2d 923 (1965); Crawford v. Washington 541 US. 36, 124 S.Ct. 1354, 158 L.Ed 177 (2004). The 6th Amendment of the US Const. safeguards the defendant's right to confront his accusers and to subject their testimony to rigorous testing in an adversary proceeding before the trier of fact. California V. Green, 399 U.S. 149, 90S. Ct. 1030, 26 L. Ed 2d 489 (1970); State V. Kennedy 2005-1981 (La. 5-22-07) 957 SO. 2d 757, reversed in part on other grounds. Kennedy V. LA 128 S. Ct. 2641, 171 L. Ed. 2d 525 (2008). See also LA Const. Article 1, Section 16.

In countless cases, the federal Courts have ruled that when a defendant's right of confrontation was violated, such violation is not harmless error. See Lowery V. Collins, 988 F. 2d 1364 (5th Cir. 1993). Shaw V. Collins 5f. 3d 128 (5th Cir 1993), Offor V. Scott, 72 F. 3d 30 (5th Cir. 1995) D. G. V. LA, 130 S. Ct. 1729, 176 L Ed. 2d 176 (2010).

In this matter, the state intentionally withheld the alleged victim from trial because she simply was not a good witness for them in order to convict the petitioner.

The Fourt Circuit held that the State's failure to have the victim available at trial was not a violation of the confrontation clause because the State's case relied on DNA evidence and ages of the victim and the petitioner; And further held that the prosecution introduced no out-of-court statement from the victim accusing the defendant of any crime.

These assertions are "Vague" if its prohibitions are not clearly defined; or if it does not provide explicit standards for it's enforcement and Contrary to the 6th Amendment of the US Const.

The Supreme Court has acknowledge that failure of "persistent ef-

fort... to establish standard" can provide evidence of vagueness U.S. V. L. Cohen grocery Co. 255 US 81, 91, 41 S. Ct. 298, 65 Led. 516 (1921)

The mere fact the petitioner was tried in this matter was because of an accusation of a rape occurring to the victim on November 18, 2001; the testimony from Detective Neely and his investigation centers around the initial complaint made by the victim; testimony of the hospital staff who performed a rape kit. Yet the Fourth Circuit held that the state didn't use any statement from the victim to prove it case. This entire case is about a rape that the victim says happened to her on November 18, 2001; The LA Supreme Court further "having not" made a reasonable or unreasonable application of this decision and "have not" ~~provided~~ a rational decision for the Federal Court's to review; and the Magistrate Judge and US District Court, Eastern adopting the state court decision stating: the prosecution introduced no out-of-court statement from the victim to convict the petitioner.

We learned at the May 3, 2013, hearing for Motion for New Trial that the victim did not show up for trial because she did not want to, but also because the state called her and told her not to appear, because a jury would be pick the entire day, yet everyone was previously informed by the trial Court that the trial would be completed in one day. The victim later admitted under cross examination by the state that she was not showing up for trial anyway, yet she did not change her story that someone from the DA office called her and told her not to appear for trial. (See the entirety of the May 3, 2013, sentencing transcripts, Section T)

The state alone bears the burden of making the witness available to testify when the witness is unavailable or simply refuses to appear. State Law

or the compulsory process clause is no substitute for the right of confrontation. See Davis V. Washington, 547 US, at 820, 126 S. Ct. 2266. As in Davis Supra, the victim was subpoened by the petitioner for the numerous trial fixings in this matter, including the March 26, 2013, trial date. Overtime, the petitioner was not able to maintain a good address for the accuser, and therefore his subpoena request was never served upon the victim at the last know address, However, (See pages 112-113, 137, 308-309, Section L); the state had an updated address for the victim and it's subpoena was infact served upon her.

Regardless of the petitioner's failed efforts to subpoena the witness, the petitioner does not have a duty under the confrontation clause to ensure adverse-witness no shows to appear in court. "Converting" the prosecution's duty under the confrontation clause into the petitioner's privilege under state law or the compulsory process clause shifts the consequences of adverse witness no shows from the state to the accused. More fundamently, the confrontation clause imposes a burden on the prosecution to present it's witnesses, not on the defendant to bring those adverse witnesses into court. It's value to the defendant is not replaced by a system inwhich the prosecution presents it's evidence and waits for the defendant to subpoena the affiant he chooses." See Melendez-Diaz V. Washington, 547 US. 813, 830 (2006).

The petitioner vigorously objected to the trial of this matter going forward without the availability of the victim. (See pages 6-7 of the March 26, 2013, trial transcript, Section T)

However, the Fourth Circuit Court erroneously held that the Confrontation Clause was not violated because of the state's reliance on DNA evidence and the ages of the victim and the defendant at the time

of the offense. The Fourth Circuit's decision amounts to an exception to the Confrontation Clause that hasn't been resolved by the LA Supreme Court or any of the Federal Courts and gives green light to prosecutors around the state that as long as you have DNA evidence, the state is under no obligation to make the victim available for trial.

This New Exception to the Confrontation Clause is "Vague" and involves a significant issue of Constitutional Law; and has caused a material injustice and significantly affect the public interest by it's creation. Relying on zero case precedent in reaching this conclusion.

(3.) STATE COURT erred as a matter of Law, when the trial Court excluded the statement of the victim's mother

The trial court prohibited a statement from the victim's mother into evidence, in spite of the petitioner's arguement that the statement was an exception to the hear say rule of statement against interest. According to the police report in this matter, the victim's mother stated, "her daughter lied about the November 18, 2001, rape to cover-up how she got an STD." The statement of the mother resulted in the Detective closing the case as unfounded (See Section I, pages 161-163, 200-203 Section N, page 166 of the record).

The petitioner argued the statements fall under the Hearsay exception of 804(B)(3) in the LA Code of Evidence - Statements Against Interest. The statue reads as follows:

"A statement which was at the time of it's making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he

believed it to be true. A statement tending to expose the declarant to criminal liability and offer to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement."

The statement made by the mother is totally against her pecuniary interest and could have subjected her to criminal liability for making false statements to the police. A reasonable person, who has a child who was alleged gang raped, would not have told police their daughter made the story up, unless they believed it to be true. The statement is clearly trustworthy, because it came from the victim's mother, not a stranger. As such the statement should have been admitted as an exception to the hearsay rule.

The state argued that the statement was made from the victim to her mother, then to Detective Neely, which is four rounds of hearsay and is therefore not an exception to the hearsay rule. (See pages 14-16 of the March 26, 2013, trial transcript, Section T).

The trial court agreed with the state and excluded the mother's statement The trial Court and the State were wrong; LA Code of Evidence Article 805 states that hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided by legislation. The statements from the victim, to her mother, to Detective Neely all conform to the hearsay exception under LA Code of Evidence 804(B)(3).

The Fourth Circuit Court ruled that the trial courts decision to not admit the statement into evidence was appropiate, because the petitioner "failed to make a good faith effort" to get the victim and her mother to trial and didn't prove the statement was trustworthy.

The record unequivocally reveals the petitioner submitted subpoena requests for the victim and her mother (Laverna Barnes), for all of the many

trial dates set in this matter. Issuing multiple subpoena request for the victim and her mother serves as (good faith) efforts to get both witnesses to court.

Moreover, the Fourth Circuit's holding that the petitioner failed to prove the statement was trustworthy, "defies logic." Defense counsel argued vigorously to the trial court that the statement was trustworthy by the mere fact that it came from the victim's mother, regarding the fact that her daughter lied about being raped, and the statement to the police. There is no more of a trustworthy statement than a statement made by a mother to the police that her daughter lied about being sexually assaulted.

The Fourth Circuit Court's is clearly in error in it's ruling and "ploy" by the trial court to convict the petitioner; the statement should have been heard by the jury. The Fourth Circuit's ruling regarding this issue was contrary to the laws of the state of LA regarding the hearsay exception of statement against interest; The Magistrate Judge and US District Court, Eastern adopting decision "concluded this issue is of state law." However, petitioner's Due Process of the 14th Amendment of the US Const. and 6th Amendment of the US Const. "Fair Trial" is clearly violated, when the jury did not hear this testimony or statement at the trial in this matter.

(4.) STATE COURT erred as a matter of law, when it failed to grant a new trial after the victim appeared and testified the Orleans Parish DA Office called her and told her not to appear for trial, because a jury would be picked the entire day

La. C. Cr. P. Article 851 sets for the requirement for the grant of a new trial.

"The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.

B. The court, on motion of the defendant, shall grant a new trial whenever any of the following occur:

(1.) The verdict is contrary to the law and evidence.

(2.) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error.

(3.) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgement of guilty.

(4.) The defendant has discovered, since the verdict or judgement of guilty, a prejudicial error or defect in the proceedings that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before the verdict or judgement.

(5.) The court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right.

(6.) The defendant is a victim of human trafficking or trafficking of children for sexual purposes and the acts for which the defendant was convicted were committed by the defendant as a direct result of being a victim of the trafficking activity."

At the petitioner's Motion for New Trial Hearing and Sentencing the victim appeared and testified in open court many things; including that the petitioner never raped her and she never had any sort or sexual relations with the petitioner and she identified a "affidavit" she signed more than a year prior, attesting to this fact.

She further testified that someone from the District Attorney office called her and told her not to appear for trial on March 26, 2013, because a

jury would be picked the entire day. The record clearly shows the entire trial of this matter took place in one day on March 26, 2013. The state attempted to muddy the record by making false assertions at the hearing that the victim sent text messages to the victim coordinator that she was afraid of the petitioner, and further requested in writing to the DA office that she wanted protection. (See the entirety of the May 3, 2013, Sentencing transcript Section T).

The Fourth Circuit held that the trial court did not abuse it's discretion in denying the defendant a new trial, because the defendant did not subpoena the victim to testify at trial and he could have spoken with the victim prior to trial. The Fourth Circuit Court further held that the defendant failed to establish that the victim's testimony at trial would have produced a different verdict in the event of retrial.

The Fourth Circuit Court is in complete and total error regarding this issue. Again, the record shows the petitioner requested the issuance of a subpoena for the victim for every single trial date in this matter. Additionally we can not lose sight of the fact that it is "undisputed" that the state contacted this young lady and told her not to appear on the one(1) day trial in this matter. Yet the Fourth Circuit erroneously held that the defendant is at fault for not getting the victim to trial.

Moreover, the State requested multiple continuances of the trial of this matter, which is why the petitioner was previously released from jail without bond. The victim appeared at earlier trial dates in this matter, however, when the trial court grants the state or the defendant an abundant amount of continuances, witnesses move, their phone numbers change, etc. As a result, the petitioner was not able to get the victim to trial through the compulsory process.

However, the state was able to contact the victim through the significant resources the state has at its' disposal, but instead of having her available for the trial, the state intentionally gave the victim false information that a [six person] jury would be picked the entire day and therefore she would not have to appear for the trial, which lasted for only one day.

The Fourth Circuit erroneously held that the defendant failed to prove that the victim's testimony would probably produce a different verdict in the event of retrial. The record is clear through the victim's own testimony and "affidavit" she executed more than a year prior to the trial in this matter that the petitioner never raped her and she never had sexual intercourse with him. "If the jury heard this testimony from the victim, and read her affidavit, along with other factors about the two other guys named for the alleged rape, etc., it is very likely a different verdict would occur in the event of retrial, which is why the state called the victim and told her do not appear for the trial date." The trial court clearly abused its discretion in not granting a new trial in this matter. The Fourth Circuit Court's sanction of the trial court's decision to not grant a new trial in light of the state's efforts to keep the victim away from the trial, was clear error and a gross departure from proper judicial proceedings. The LA Supreme Court gave no reasonable or unreasonable application to this decision for the Federal Court's to review. The US District Court, Eastern adopting the Magistrate Judge's recommendation, "that this doesn't involve Const. law and the petitioner failed to prove the victim's appearance and testimony isn't a question for federal court review on Habeas Corpus; clearly the 14th Amendment of the US Const. and 6th Amendment of the US Const has been violated.

(5.) STATE COURT and FOURTH CIRCUIT

erred as a matter of law, when it ruled that the prosecution proved every element of it's case beyond reasonable doubt

Petitioner contends the evidence presented is insufficient to support the jury's verdict. **State V.** Hearold, 603 So. 2d 731 (La. 1992) states that because a finding of insufficient evidence may result in an outright acquittal, sufficiency challenges should be addressed before other claims.

"In reviewing the sufficiency of the evidence to support a conviction, the appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." State v. Captville, 448 So. 2d 676, 678 (La. 1984) (see Case Law)

The trial Court provided the jury with definition of Felony Carnal Knowledge of a Juvenile, as defined by LA revised statue 14:80 on November 18, 2001. That definition reads as follows in pertinent part: "Carnal Knowledge of a Juvenile, Felony is committed when a person who is 17 years of age or older has sexual intercourse with consent with a person who is less than 17 years of age, when the offender is not the spouse or the victim, and is at least two years older than the victim." (See page 173 section

At the trial in this matter the evidence produced before the jury indicated the victim reported to the police on November 18, 2001, that she had been raped by two perpetrators named Brandon and Ronald whom she went to Augustine Middle School with.

The evidence further showed that Detective Neely, the original investigation officer of the alleged rape, closed the case and determined the victims

accusations to be unfounded two days after the November 18, 2001, rape report. Detective Neely based his decision to close the case as unfounded from information he recieved from the victim's mother. (See pages 22-30 of the March 26, 2013, trial transcript, Section T)

However, the trial court excluded the statement from the victim's mother as hearsay evidence over the petitioners objection. (see page 10-16 Section T)

Moreover, the state presented lengthy DNA evidence from various DNA experts that claim the petitioner's DNA was found inside the victims vagina. However, the state's DNA experts conceded that the DNA evidence in this case was at best, "unreliable."

The state's first DNA expert was Ms. Anne Montgomery testified "the DNA was not stored the ideal way in storeing DNA evidence." Ms. Montgomery further testified that the 2001 rape kit was not analzed for years under these conditions until April of 2007, inwhich the "initial results of the DNA test excluded the petitioner, nor identified the petitioner as the person of interest." "That not until a retest of the DNA, five(5) months after the initial test and the seal been broken that the petitioner than could not be excluded;" In September of 2007 by the company Reliagene who was contracted by the N.O.P.D, because of funds they recieved by the federal government. (See pages 70, 122-127 of the trial transcripts section T)

Another state DNA expert, Chris Larsen, testified he did not personally process the opened or used rape kit of the victim but instead supervised technicians who analyzed DNA; but he worked for the private company Reliagene from 2000-2005. However, the trial court never produced the original technician who analyzed the victim's rape kit both times. The most compelling aspect of Mr. Larsen's testimony is that he indicated

Reliagene recieved several violations from DNA auditors for "improper reporting" of it's DNA evidence. When Mr. Larsen was further questioned about this "improper reporting" during cross examation, he stuttered and struggled to answer, than changed his answer by saying the violations were for not taking "corrective action," not "improper reporting." (See pages 150-152 of the March 26, 2013, transcript Section T)

The aforementioned summary of the state's case shows overwhelmingly that it failed to prove its case beyond a reasonable doubt. The jury was presented with statements and evidence to convict the petitioner of, and the crime and elements of the statue is erroneous for the jury to resolve unambiguously. The victim named two individuals as her rapist on November 18, 2001. Those individuals named Brandon and Ronald did not have the petitioners name, which is Randolph Armstead. The victim claimed she went to Augustine Middle school with the alleged rapist, yet it is impossible for her to have gone to middle school with the petitioner since they are five(5) years apart in age.

Moreover, Detective Neely closed this case and determined the case to be unfounded after the victim's mother provided him information that the victim lied about the November 18, 2001 rape. The trial court's Divestiture of Jurisdiction, in which a trial shouldn't have never happen in this matter. The unreliable DNA results and the fact that the company Reliagene who analyzed the DNA that "improper reported" or did not take "corrective action" when they made a mistake in the DNA analysis. The District Attorney's office intentionally lying to the victim, informing her to not appear for trial in this matter on March 26, 2013; much reasonable doubt existed in this case and the jury was therefore "required" to return a verdict of not guilty, yet failed to do so. In spite of the aforemen-

tioned, the Fourth Circuit held the state proved every element of it's case beyond a reasonable doubt. The Fourth Circuit's decision regarding this issue was an erroneous application of law regarding the requirement of the trier of fact to return a not guilty verdict when reasonable doubt exists. La. Supreme Court gave no reasonable or unreasonable app. of this decision.

However, the Magistrate Judge and US District Court, Eastern adopting ruling "that the jury was well-within the ambit of it's authority to resolve and consider the amount of evidence brought before it to prove that petitioner had sexual intercourse with the victim T.B and found that petitioner was not entitled to relief" is clear manifest and harmful error and a violation of his 5th Amendment, 14th Amendment of the Const. of the United States and 6th Amendment of the U.S Const. "fair trial" herein the record.

(6) STATE COURT erred as a matter of law, when held the petitioner failed to show Ineffective Assistance of Counsel

"A defendant claiming 'ineffective assistance must show that counsel's actions were not supported by a reasonable strategy and that error was prejudicial." Strickland v. Washington, 466 US, 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 USCA Constitutional Amendment 6th.

Petitioner shows undersigned counsels actions were not supported by a reasonable strategy and that error was prejudicial, when counsel refused to appeal the trial court's judgement after the apparent Divestiture of Jurisdiction, in which the trial court reversed it's own ruling. (See recorded letter and November 9, 2012, pretrial conference transcripts)

LA C.Cr.P Article 911 state the following:
"Appeal is the exercise of the right of the state or the defendant to have a judgement or ruling reviewed by the proper appellate Court. An appeal bond is not required."

However, this matter was considered twice on direct appeal, after undersigned counsel's failed due diligence and that a trial took place, which was prejudicial to having the petitioner convicted. An appeal was warranted and was later "ordered" by Supplement Brief by the Fourth Circuit Court "ruling" finding error patent and later "ruling" vacating the petitioner's conviction and set aside 10year sentence. (See April 9, 2014, Fourth Circuit Court of Appeals "order.")

The US District Court, Eastern adopting the Magistrate judge's recommendation that "Petitioner suffered no prejudice from his counsels failure to seek pretrial review of the trial court order" and/or judgement to reverse it's own ruling according to La. C.Cr.P Article 911 is manifest and harmful error and is contrary to the 6th Amendment of the US Const.

(7.) US DISTICT COURT, EASTERN committed manifest and harmful error, when ruled petitioner is not entitled to Federal Habeas Relief on his claim that the trial court was without jurisdiction to reconsider it's ruling on the motion to quash the indictment; finding no plain error in the portion of the Report and Recommendation to which petitioner does not oject, that petitioners claims be denied and dismissed with prejudice

The trial court is divested of jurisdiction shows overwhelmingly constitutional and procedural violations. The evidence supports this finding. (See September 25, 2012, oral motion to quash, September 28, 2012, written motion to quash and November 9, 2012, pretrial conference and hearings).

"On instructions of the trial judge, counsel for petitioner faxed a copy of his written motion to quash to both the clerk of court and the prosecution on September 28, 2012."

The prosection did not file an opposition memorandum. The trial judge set the motion for a hearing date. At the close of the November 9, 2012, hearing the prosecution asked for consideration, which the trial judge granted. The trial judge than reversed his own ruling and the DA office had never withdrawn his motion for appeal.

The Supreme Court has long been established that lack of Jurisdiction is a defect fatal to a criminal prosecution; acknowledges that a jurisdictional defect can constitute an error patent. (See State v. Jackson, 04-2863 P8 (La. 11-29-05), 916 So. 2d. 1015, 1019) Yet, the US District Court, Eastern ruled petitioner is not entitled to Federal Habeas Relief.

Moreover, the state Court's and Federal Court's have bound tifully duty to notice it's lack and consequential nullity and hereby violates the Due Process Clause of the 14th Amendment of the US Const.

Furthermore, herein petitioner purports that he has always "objected" to the previous courts and/or every portion directed as it pertained to each Magistrate recommendation; (1.) To dismiss without prejudice for failure to exhaust state court (2.) The court determined that this matter can be disposed of without an Evidentiary Hearing (3.) To dismiss with prejudice on each of six claims. In fact the petitioner's objections

is enclosed in this entire 28 USC 2254 proceedings and/or initial Habeas Petition and memorandum in support.

However, the US District Court, Eastern adopting the Magistrate Judge's recommendation, "finding no plain error in the portion of the Report and Recommendation to which petitioner does not oject," that petitioner's claims be denied and dismissed with predice is clearly wrong and manifest and harmful error.

(8.) US DISTRICT COURT, EASTERN and US COURT OF APPEALS, FIFTH CIRCUIT committed manifest and harmful error, when adopting the Magistrate Judge's recommendation that petitioner has not demonstrated a violation of his Constitutional Rights and Denied Certificate of Appealability (COA) and request and denial of an Evidentiary Hearing

Standard to Obtain COA

To obtain a COA, Petitioner must make a substantial showing of the denial of a constitutional right when the United States District Court denial is on the merits, "the petitioner must demonstate that reasonable jurists would find the US District Court assessment of the Constitutional claims debatable" or that "the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 US 473, 484 (2000). Finally, "any doubts as to whether a COA should issue must be resolved in [the petitioner's] favor." Ramirez v. Dretke, 398 F. 3d 691, 694 (5th Cir. 2005).

Herein petitioner purport a Certificate of Appealability should be

granted/issued because petitioner made substantial showing of denial of constitutional right and substantial showing that procedural ruling, which resulted in dismissal of his Habeas Petition was "debatable or wrong," when the US District Court, Eastern adopted the Magistrate Judge's recommendation "ruling" that petitioner has not demonstrated a violation of his constitutional right arose from the actions of the State Courts.

The trial court is divested of jurisdiction, shows over whelmingly Constitutional right and Due process procedural violations. (See September 25, 2012, oral motion to quash, September 28, 2012, written motion to quash "On instructions of the trial judge, counsel for petitioner faxed a copy of his written motion to quash to both the Clerk of Court and the prosecution on September 28, 2012")

The prosecution did not file an opposition memorandum. The trial judge set the motion for hearing date. At the close of the November 9, 2012, hearing the prosecution asked the trial judge for reconsideration which the trial judge granted their request. (See April 9, 2014 "order" by the Fourth Circuit of Appeals Court). The trial judge reversed his own ruling. (See June 4, 2014 "ruling") vacateing and set aside the petitioner 10 year sentence. The District Attorney office had never withdrawn his motion for appeal

Moreover, this creation by the State Court's to not have the victim available for trial is **contrary to clearly established 6th Amendment of the US Const.** This New Exception to the Confrontation Clause involves a significant issue of Constitution Law and has caused a material injustice and significally affect the public interest by it's creation. Relying on zero case precedent in reaching this conclusion.

Furthermore, that a Certificate of Appealability(COA) is denied by the US District Court, Eastern and petitioner was never given the opportunity to file a notice of appeal or request for COA of the US District Court, Eastern.

Issue(s) on which an Evidentiary Hearing being sought

"In Habeas Corpus proceeding instituted by a state prisoner, a federal district court must grant an evidentiary hearing if (1.) the merits of the factual dispute were not resolved in the state hearing (2.) the state factual determination is not fairly supported by the record as a whole (3.) the fact finding procedure employed by the state court was not adequate to afford a full and fair hearing (4.) there is a substantial allegation of newly discovered evidence (5.) the material facts were not adequately developed at the state court hearing or (6.) for any reason it appears that the state tier of fact did not afford the applicant a full and fair fact hearing."

Petitioner purports he is entitled to an Evidentiary hearing, when he established a "colorable" claim of relief and never been given a federal hearing on his claims Earp v. Oronski, 431 F. 3d 1156, 1167 (9th Cir. 2005)

(1.) The state factual determination is not fairly supported by the record as a whole, when it reversed its own ruling and allowance of other proceedings including a trial and without the testimony of the victim.

(2.) The fact finding procedure employed by the state courts was not adequate to afford a full and fair hearing, when the trial court

created a new exception to the confrontation clause of the 6th Amendment and

(3.) for any reason it appears that the state trier of fact did not afford the applicant a full and fair fact hearing, when the trial court abused it's discretion in failing to grant a new trial in this matter.

"The federal Court may grant habeaus relief based on an erroneous state court evidentiary ruling only (if) the ruling violates a specific federal Constitutional right or render the petitioner trial fundamentally unfair"

The petitioner purports the unavailability of the victim at trial amounts to an exception to the confrontation of the 6th Amendment of the US Const. that hasn't been resolved by the LA Supreme Court or any of the federal courts; and gives green light to prosecutors around the state, that as long as you have "reliable or unreliable" DNA evidence, the state is under no obligation to make a victim available for trial

Moreover, the divestiture of Jurisdiction of the trial court factual determination as a whole, and fact finding procedure employed state trier of fact did not afford applicant a full and fair hearing. (See September 25, 2012, Motion to Quash transcripts, September 28, 2012, written motion to quash, November 9, 2012, Pretrial Conference transcript and the Fourth Cir. April 9, 2014 "order and June 4, 2014 "ruling" finding error patent.)

That but for these US Due Process 5th, 6th and 14th Amendment Constitutional errors, no reasonable fact finder would have found the petitioner guilty of the underlying offense.

USC § 2254 (e)(2)

(A) the claim relies on -

(i) A new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense.

Rendering the Petitioner's trial fundamentally unfair; that there is no more better specific facts of a "colorable" claim, which would entitle relief and/or a federal evidentiary hearing; and the La. state courts, Magistrate Judge, and USDC, Eastern was bound to notice the trial court's lack of jurisdiction and consequential nullity; in which the trial court conducted actions are null and void.

However, the US District Court, Eastern denied and/or dismissed without ordering an evidentiary hearing; presuming the petitioner's conviction and sentence is not invalid is manifest and harmful error.

STATEMENT OF CASE

The petitioner was originally indicted by a grand jury on or about December 2010 for the crimes of Aggravated Rape and Second Degree Kidnapping that allegedly occurred more than ten years ago on or about Nov. 18, 2001.

However, on or about September 25, 2012, prior to the start of a previous trial fixing and without notice to undersigned counsel, the state amended the Aggravated Rape to Felony Carnal Knowledge of a Juvenile and dismissed the charge of Second Degree Kidnapping.

Immediately thereafter, the petitioner orally moved the trial court to Quash the matter, pursuant to La. C.Cr.P Art. 572(B)(1)(2), for failing to timely bring this matter to trial. The trial court granted the petitioner's oral motion and requested subsequent written Motion to Quash that was filed into court record September 28, 2012. The state orally moved for an appeal and later submitted a motion to appeal. (See September 25, 2012, transcript Section T and Section M, pages 143-146)

On or about November 9, 2012, the trial court decided to overturn its decision to grant the September 25, 2012, Motion to Quash.

On March 26, 2013, the trial of this matter took place without the availability of the alleged victim, in spite of the petitioner's fervent objections. At the trial of the matter, the following evidence was produced: (See page 5 of March 26, 2013, trial transcript, Section T)

On or about November 18, 2001, the victim, T.B. stated she had attended a block party at a car wash located on the corner of Bienville and N. Claiborne. The victim stated she was walking away from the party, two young men she remember from school stopped her and began speaking with her. The victim informed the young men that she was going to Rally's to get something to eat. The young men told the victim they would walk with her. As the victim approached the 2600 block of Iberville street, she was allegedly pushed into

an alley, whereby the young men took turns vaginally raping her. After the rape, the victim alleged the perpetrators told her they would kill her baby if she told anyone. The victim was approximately four (4) months pregnant at the time of the alleged rape.

The victim further stated the two young men's names were Brandon and Ronald, and she attended Augustine Middle School with the perpetrators. The victim stated the alleged rape occurred between 7-800pm on Sunday Nov. 18, 2001. The victim was asked by the initial Det. in this matter, Detective Neely, why she waited to call the at 11:50pm. The victim replied she didn't call the police, but her sister did, after she told her what happened. The victim was then taken to Charity Hospital where a rape kit was performed on her.

Thereafter, Det. Neely proceeded to bring the victim back to the location of the alleged rape and asked her to tell her what alley the rape occurred at. The victim allowed Det. Neely to drive through the entire block and never pointed at a location. Upon entering the 2500 block of Iberville st., Detective Neely asked the victim what block he should have been in. The victim stated, "oh! it was back there." Det. Neely asked the vitim exactly where. The victim then brought Det. Neely to a vacant lot across from a church parking lot. Det. Neely advised the victim she originally told him she had been assaulted in an alley. The victim did not provide any rebuttal to the statement by Det. Neely that she originally told him she had been assaulted in an alley.

Detective Neely tried contacting the victim for a second interview on Nov. 19, 2001, but was unsuccessful. On November 20, 2001, Det. Neely contacted Pastor Eldridge Hunter of the True Gospel Church located at 134-138 N. Broad st. Pastor Hunter advised Det. Neely that his church had evening services from 5-700pm on Sundays. Pastor Hunter advised members of his church generally park in the rear of the church which would be directly across from the vacant lot the victim stated she was raped in.

Pastor Hunter advised none of his members told him anything about seeing the alleged rape.

Detective Neely contacted the victim's mother on November 20, 2001, two days after the alleged rape. The victim's mother advised she had recieved a letter from Delgado advising the victim had contracted a sexually transmitted disease. The victim's mother advised Det. Neely that the victim had told her she made up the rape story to cover-up her having a sexually transmitted disease. Based on the victim recanting her statement, Det. Neely considered the allegations in the case unfounded and closed the case. (See Section I, pages 1161-1163, 200-203, and Section N page 1166 of the record).

On or about September 2007 the state DNA Index System (SDIS), matched the petitioner to the alleged rape of T.B that occurred on November 18, 2001, and the New Orleans Police Department (NOPD) Scientific Criminal Investigations Division sent a lead letter to Lt. Norwood with the NOPD that the petitioner was identified by the state DNA Index System (SDIS as a match to the alleged rape.

On or about November 10, 2008, the NopD sent Detective Journay Ross to speak with the victim concerning the November 18, 2001, alleged rape. The victim was asked if she had consensual sex with the petitioner. The victim told Det. Journay Ross that she did not have consensual sex with the petitioner and she did not want to pursue charges against him. Detective Journay Ross closed the case per the victim's request. (See Section I, pages 1161-1163, 200-203, and Section N, page 1166 of the record).

On or about October 28, 2010, the petitioner was stopped by an NOPD officer for an alleged seat belt violation. After running the petitioner's

name, the officer discovered the petitioner had a warrant issued for his arrest in connection with the November 18, 2001, rape of T.B.

A jury of six persons found the petitioner Guilty of Felony Carnal Knowledge of a Juvenile at the conclusion of the March 26, 2013, trial.

The petitioner filed a Motion for a New Trial. The hearing concerning the motion for New Trial was held on May 3, 2013. The alleged victim, T.B appeared and testified in open court that someone from the District Attorney's Office called her and told her not to appear for trial on March 26, 2013, because a jury would be picked the entire day. The victim further testified in pertinent part that the petitioner never raped her and she never had any sort or sexual relations with the petitioner, and had previously signed an affidavit attesting to that fact. She further testified that the District Attorney office knew of her desire not to have the petitioner prosecuted in this matter. However, the trial court denied the petitioner's Motion for New Trial and Sentenced him to Ten(10) years imprisonment (See May 3, 2013, Motion for New Trial Hearing and Sentencing transcripts).

A one-million dollar bond was set for the petitioner after his arrest. The petitioner filed a Motion for Speedy Trial. He was released from jail without bond based on the state's failure to timely bring the matter to a speedy trial. The decision to release the petitioner without bond was upheld by the Court of Appeals, Fourth Circuit and affirmed by the Louisiana Supreme Court.

WRIT GRANT REASONS

The petitioner avers the Supreme Court of the United States should grant this Writ for the following reasons:

Jurisdiction of the state trial court: The United States District Court, Eastern denied petitioner's Writ of Habeas Corpus Relief stateing; Petitioner's claim that the state courts erroneously applied state law is not "cognizable" on federal habeas review and petitioner has not demonstrated that a federal constitutional violation arose from the actions of the state courts; and found petitioner is not entitled to habeas relief on the claim because the state courts denial of relief on this issue was not contrary to or an unreasonable application of federal law.

The cognizance of the US District Court, Eastern was never more relevant for review; that while the court Divestiture of Jurisdiction, to conduct a trial, recieve a jury's verdict, and impose a sentence; The petitioner's ground that he is in custody in violation of Due Process clauses of the 14th and 5th and 6th "Fair Trial" of the US Constitution, La. state Laws and LA state Const. and Habeas relief should be granted.

Erroneous Interpretation or Application of Constitutional and State Laws: The Fourth Circuit Court of Appeals erroneously interpreted and applied the United States Const., LA Const. and the law of the state of LA, when it affirmed the trial courts decision to deny the petitioner his constitutional right to confront his accuser; ruling the petitioner Const. right was not violated because the state's case solely relied upon DNA evidence and the ages of the victim and the defendant at the time of the offense. In spite of evidence in the record; that for unreliable DNA

results petitioner was involved; the petitioner never raped the victim and she never had any sort or sexual relations with the petitioner and had previously signed an affidavit attesting to that fact; "Testifying" at the petitioner's Motion for New Trial Hearing; the District Attorney's office intentionally keeping the victim away from trial; The LA Supreme Court "having not" made a reasonable or unreasonable application of that decision and "have not" provided a rational decision for the Federal Court to review.

The Magistrate Judge adopting the state court's decision that states: the prosecution introduced no out-of-court statement from the victim accusing Mr. Armstead of any crime; ruling petitioner's confrontation rights were not violated or implicated by the victims absence. [If ever there was a case where the petitioner's right to confront his accuser was paramount, this is the case.] Where the victim names the two(2) individuals who raped her (and neither name is the petitioner); the victim indicating to police she went to middle school with the individuals who raped her; However, the victim and petitioner are five(5) years apart in age and could not and did not attend middle school together; and makes a statement to her mother that she lied about the rape.

This decision has caused a material injustice and significally affect the public interest by it's creation of an exception to the confrontation clause of the United States Const. and LA Const. and decided a significant issue of Law, which has not been decided or resolved by the LA Supreme Court or any of the Federal Court's relying on zero case precedent in reaching this conclusion.

Gross Departure From Proper Judicial Proceedings: The Fourth Circuit Court of Appeals has so far departed from proper judicial proceedings in sa-

rectioning the decision by the trial court to deny the petitioner's Motion for New Trial, inspite of the alleged victim appearing and testifying at the hearing for Motion for New Trial that the Orleans Parish District Attorney's office balatantly lied to her that "she should not appear" for trial because a six(6) person jury would be picked the entire day; inspite the trial lasting for only one day set by the trial court.

Additionally, the alleged victim testified that the petitioner never raped her and never had any sort or sexual relations with the petitioner, and submitted a copy of an "affidavit" she executed more than a year prior to her testimony attestin to the facts.

The Fourth Circuit held the victim testimony wouldn't produce a different verdict is tremendously flawed; The Supreme Court "having not" made a reasonable or unreasonable application of that decision and "have not" provided a rational decision for the federal court to review; The Magistrate Judge determined and the District Court, Eastern adopting: that petitioner failed to prove a constitutional violation in the failure of the victim to appear or testify at his trial; The Due Process clause of the 14th Amendment of the US Const. and 6th Amendment of the US Const. violations supports this claim.

COA: The United States District Court, Eastern denied a Certificate of Appealability stateing: Petitioner has not demonstrated a violation of his constitutional rights, when any doubts to whether a(COA) should issue must be resolved in [the Petitioner's favor]. Petitioner made a substantial showing of denial of his Constitutional right and demonstrated that reasonable jurists would find the District Court's assessment of the constitutional claims "debateable" "or wrong" or that the issues presented were adequate to deserve encouragement to proceed further; Specifically, with this New exception of the

confrontation clause of the 6th Amendment of the US Const., inwhich, is contrary to, or involve [] an unreasonable application of clearly established Federal Law, as determined by the Supreme Court of the US.

Evidentiary Hearing: The United States District Court, Eastern denied and/or dismissed without ordering an evidentiary hearing. Petitioner claims establish clear and convincing evidence that but for Constitutional error, no fact finder would have found the petitioner guilty of the underlying offense stating: Petitioner has not shown that an evidentiary hearing is warranted. The trial Court is Divested of Jurisdiction and the LA State Court's and federal US District Court, Eastern was bound to notice it's lack of jurisdiction, and consequential nullity, inwhich the trial Court conducted actions are null and void; and the US District Court, Eastern presuming the petitioner's conviction and sentence is not invalid, and the petitioner's other claims of the entire record is deserving of this hearing.

CONCLUSION/PRAYER

The jury's verdict is clearly and erroneously and Contrary to the law of the state of LA and United States Const. and evidence presented in this case. The state failed to prove it's case beyond a reasonable doubt. Additionally, the trial Court committed various manifestly harmful errors throughout the various proceedings in this matter; including dismissing this case then resurrecting it; allowing the trial to proceed without the availability of the alleged victim.

If the courts were to accept the prosecutions arguements, and creations of law, the errors would be attributable to it as well, because

it claims to have proven every element, procedual and factfinding, as the petitioner contends his entire conviction is invalid.

In light of the aforementioned assignments of error and applicable law discussed at length in this Writ, the petitioner prays his conviction is vacated and sentence is set aside or in the alternative, the petitioner prays the trial Court's September 25, 2012, order granting his Motion to Quash is enforced and his conviction is vacated and sentence set aside and he is granted an immediate order of release from custody.

Respectfully submitted,
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