

21-7370
IN THE
SUPREME COURT OF THE UNITED STATES

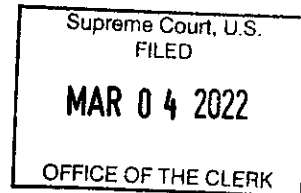
Dante Leon Milon #562330

Petitioner

VS.

Tim Hooper, Warden

Respondent(s)



ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

Dante Leon Milon #562330

(Your Name)

17544 Tunica Trace, Louisiana State Penitentiary
(Address)

Angola, La. 70712
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION PRESENTED FOR REVIEW

- 1) If there is a critical discrepancy within the record Is the transcript complete? And a new trial permitted? Pg 26
2. A witness allowed to give a false testimony that was critical to the defense. Was the prosecutor in error and was a fair trial denied? Pg 19
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LIST OF PARTIES:

[X] All parties appear in the Caption of the case on the cover page

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

RELATED CASES

Eastern District:

Milon v Vannoy 2020 WL 6468229 May 14, 2020

Milon v Vannoy 2020 WL 6449156

Supreme Court Louisiana

State v Milon 279 So 3d 909

First Circuit Court of Appeals

State v Milon 2018 WL 3455922

District Court

State v Milon 585 So 2d 739

United States Court of Appeals Fifth Circuit

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from federal courts: Yes

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

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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

☐ reported at N/A Milan v. Vannoy 2020 WL 6449156; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts: Yes

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

☒ reported at State v. Milan 279 So.3d 909, State v. Milan 2018 WL 3455922; or, State v. Milan 585 So.2d 739
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

A The opinion of the United States Court of Appeals Fifth Circuit appears at Appendix A to the petition and is

☐ reported at _____ or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ yes] For cases from federal courts:

The date on which the United States Court of Appeals decided my case
was December 6, 2021

☒ No petition for rehearing was timely filed in my case.

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

☐ N/A] An extension of time to file the petition for writ of certiorari was granted to and including NO (date) on NO (date) in Application No. _____ A _____.

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

☒ For cases from state court:

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

6TH AND 14TH AMENDMENT(S) TO THE UNITED STATES CONSTITUTION

STATEMENT OF CASE

On August 15, 2010 Milon was at his girlfriend house all day. When he was ask to drive his girlfriend Rasheka Winslow to their Hotel room. Before arrived at the hotel. They asked Milon to go to the corner store to get some items. Upon reaching Brayson's Mobile store. Mr. Ross went into the store. As he left Milon seen a guy name E later identified as Eric Thompson who was with five females. As E and Milon were talking, the alleged victim pulled along side the store, jumped out of the car and started coming directly at Milon aggressively while reaching under his shirt. While telling Milon "he got him", Milon was telling the alleged victim "he did not want any problems". Upon seeing the alleged victim reaching under his shirt Milon pulled out the gun he had and shot the alleged victim once to get the alleged victim to leave him alone. In the midst of shooting, the alleged victim was turning, causing the alleged victim to get hit on the side, close to the back. Milon at no point knew that the alleged victim was hit. Milon was arrested on August 16, 2010.

On November 17, 2010, petitioner was indicted for the second degree murder of Brandon Washington on August 15, 2010. On October 5, 2010, Milon's obtained attorney, John Hall Thomas placed numerous motions in court that were never ruled on. On June 15, 2011, Mr. Thomas withdrew himself as counsel. On July 11, 2011, Judge Walker granted the open court motion by A.D.A., Sam Marks to dismiss the motions in court by paid attorney. State appointed counsel did not object and the open court motion is completely omitted out of the courtroom minutes.

On November 28 and 29, 2011, a one day trial begun. Judge Walker, A.D.A's Sam Marks and Dennis Elfert spoke about juror Benjamin Walker and the relations of the walkers before the voir dire was underway. Upon jury member Benjamin Walker stating for the record that he was blood related (nephew) to Judge Walker, A.D.A Sam Marks informed juror Walker that judge Walker had already spoke about their relationship earlier.

At the one day trial prosecutor presented Milon's unconstitutional statement, Detective

Lucas, Coroner Walker, (unrelated to the judge and juror) and two witnesses, Jana Adams and Rasheka Winslow that Milon shot and killed Brandon Washington with the intent to kill. Detective Lucas questioned Milon before giving his Miranda Rights. After Milon claiming self-defense once detective Lucas told him what everybody was saying. Milon was then given his Miranda Rights but was never told that the statement given before can not be used against him. Jana Adams testified she seen someone shoot at someone who was running away but could not identify the shooter. She did not see anyone come into the store besides Eric Thomas and the five females with him, and she did not see anyone take a gun off the alleged victim. A.D.A Sam Marks did not correct Ms. Adams testimony that was material to Milon's defense. Stating that nobody else came into the store and she never took her eyes of the people around the alleged victim.

Rasheka Winslow testified that she seen Milon shoot the alleged victim. That someone told her that Milon said he was going to kill the alleged victim, but didn't hear the statement from Milon. Ms. Winslow believes somebody took the gun off the alleged victim and also saw the victim reaching under his shirt. Coroner Walker testified that the alleged victim was shot in the back, causing a loss of blood and hemorrhaging as the cause of death and not the drugs that was found in the alleged victim's system. Defense counsel did no investigating for Milon's defense before trial. As the trial started and the facts were coming out, counsel tried to investigate but even then she would drop the issues seeing that it would weaken the prosecutor's case. Jury members used cell phones in the middle of the trial. The jury was allowed to bring Milon's transcribed statements to the deliberation room and the jury seen Milon in handcuffs. His motion for mistrial was denied. A 10-2 verdict was rendered from the

reading of the judge rules to convict Milon of second Degree Murder on November 29, 2011. A motion for a new trial was denied.

Petitioner filed his appeal October 18, 2012, requesting to supplement on October 29, 2012 but never did. On April 23, 2013, Milon was denied in the first circuit court. June 12, 2013, Milon filed a writ to the Louisiana Supreme Court. December 6, 2013 Milon was denied. On July 2, 2014, Milon filed his Post Conviction. April 15, 2016, Milon filed his first supplement. February 7, 2017, Milon filed his second supplement. August 6, 2017, Milon filed a writ of mandamus to the first circuit court to have the district court render a verdict on Milon's Post Conviction. October 26, 2017, judge Walker denied Milon's Post Conviction and supplements under 930.4 and 930.8. November 8, 2017, Milon filed his writ to the first circuit court. November 16, 2017, the first circuit denied the application as moot since the trial court had already denied the application as supplemented. Judge Walker gave his reason for the denial November 17, 2017. November 28, 2017, Milon filed a writ application related to the denial of his application finding that Milon failed to include the necessary documentation but allowed Milon until April 20, 2018. July 17, 2018, the Louisiana First Circuit denied Milon's new writ application without reason. August 5, 2018, Milon filed his writ application to the Louisiana Supreme Court. September 24, 2019, the Louisiana Supreme Court denied Milon's related writ application finding Milon showed no lower court error. October 8, 2019, Milon filed his Habeas Corpus to the Unites States eastern District of Louisiana. November 7, 2019, the Eastern District of Louisiana ordered the state to respond to Milon's writ. December 9, 2019, the state was granted an extension. The state response was filed December 10, 2019. December 23, 2019, Milon filed for an extension and was granted. January 6, 2020, Milon filed

a traverse to the state's response. May 14, 2020, the United States Magistrate Judge gave his report and recommendation. May 28, 2020, Milon filed his response to the magistrate judge report and recommendation with a in camera inspection.. June 1, 2020, Milon filed a motion to amend the record. November 3, 2020, the Eastern District of Louisiana federal Court adopted the magistrate Judge opinion in the matter. November 18, 2020, Milon placed a notice to appeal.. November 23, 2020, the United States Fifth Circuit Court of Appeal notified that the notice of appeal was documented. December 1, 2020, Milon filed a motion for leave to appeal in forma paupers and accompanying application in support. In December 2, 2020, notice of deficient filing was filed. December 15, 2020, Milon sent a letter to the United States Fifth Circuit Court of Appeal informing them that he was filing a motion for leave to appeal in forma paupers. December 15, 2020, Milon filed affidavit to proceed in forma paupers to the Eastern District of Louisiana. December 17, 2020, the United States Fifth Circuit Court inform Milon that he had to apply for a C.O.A. December 26-27, 2020, Milon filed for an extension of time. January 7, 2021, the fifth circuit granted the extension until February 28, 2021. February 18, 2021, Milon filed for another extension. February 22, 2021, the United States Fifth Circuit granted the extension until March 29, 2021. March 28, 2021, Milon filed his appeal writ and requested for a certificate of appealability from the denial of habeas corpus relief. December 28, 2021, the United States Fifth Circuit denied the motion for C.O.A and the IFP was denied as moot.

Milon is therefore timely filed and seek a writ of certiorari to the court judgment.

REASONS FOR GRANTING THE PETITION

The Courts erroneously denied Milon with the AEDPA 2254 (d) 1&2 against Supreme Court

Rule 10(a) and (c):

Rule 10(a), a United States Court of Appeals has ... so far departed from the accepted and usual course of judicial proceedings.

Rule 10(c), a State Court or a United States Court of Appeals has decided an important question of Federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court with the five below reasons...

1) If there is a discrepancy within the record and its material a new trial should have been granted, for the Courts to uphold the denial that leaves the record incomplete has diminished not only Milon's right, but the foundation of the Constitution's Civil and Criminal Rights. Leaving another black eye to the judicial system. If this Court allows the State District Court to believe they are allowed to receive a conviction with material evidence not before the Courts from the record, there is no Supreme Court Rules, Justice or AEDPA.

2) The prosecutor allowed to have material witnesses to give false testimony without correction that was material to the defense. The fact finders were hindered from getting full facts for the wide latitude the state and appeals court have granted the prosecutor to obtain their conviction with errors as this, that have gone uncorrected. All for the sake of the states to uphold their wrongful conviction.

3) Allowing the Judge who was not impartial and allowing the influence of his family to sit as a jury member is a new violation that has yet to be addressed and has left the Courts with no avenue to render their judgment.

4) Confrontation of a witness was a fundamental right, but now is a choice of anyone with a certificate trained in the field or not can verify if someone died of a drug overdose or not.

5). The wide latitude that the Court has granted is impossible to meet the *Strickland*, or *Cronic* test. It is as if the Supreme Court is saying, "if you do not plea out to keep the States from spending money on a trial, whatever defense attorney allows is okay." Being poor should not affect the way an attorney for the state or paid should represent a client. The wide latitude the Supreme Court has allowed is saying and doing just that.

ARGUMENT AND AUTHORITIES

CLAIM ONE

Was Mr. Milon denied his Right to Effective Assistance of Counsel when trial counsel failed to conduct an investigation into the facts of this case?

STANDARD OF REVIEW

The factual findings of this district court are reviewed for according to the clear error standard. The legal conclusions are reviewed *de novo*.

"The Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions..." Strickland v. Washington, 104 S.Ct. 2052. the duty of counsel is not merely to do "somethings" rather than nothing on behalf of one's client but to act as the client's effective advocate during each critical state of the defense. These professional decisions can only come about through, as the court held in Bryant v. Scott, 28 F.3d 1411, 1415 (5th Cir. 1994), by engaging in a reasonable amount of pretrial investigation and at a minimum... make an independent investigation of the facts and circumstances in the case." (quoting Nealy v. Cabana, 764 F.2d 1173, 1177 (5th Cir. 1985).

The relevancy of the holdings in these two supporting cases particularly comes to play in light of the fact that Milon's original counsel of record, Mr. John H. Thomas of Martin Reagan, Jr. and Associates withdrew from representing Mr. Milon less than six months after enrolling as counsel. Before withdrawing as Milon's counsel, "he (Mr. Thomas) filed a series of motions. One of which was a Motion and Order to Suppress the confession. Milon was then appointed a public defender. After the appointment of the Office of the Public Defender (ms. Kathryn

Lirette), the record shows no indication of the resolution of any of the pre-trial motions filed by Mr. Thomas. Nor does the record show that Milon's newly appointed counsel object to the inadmissibility of the so-called confession given by Milon. LSA-Const. Art, 1, §§ 13, 16.

What the record does show is that, Milon was questioned by the interviewing police and in the midst of questioning the police decided to stop questioning Milon, record the proceedings and then have him sign a waiver of rights form. See: Tr. pp. 171-173.

The procedure used by the interviewing officers corresponds to the one used by the interviewing officers in Missouri v. Seibert, 542 U.S. 600, which was eventually held to be unconstitutional. Officers cannot began a questioning process without advising a person of the rights they possess as citizens of this country. Nor after getting a confession not then advise the person that what was said before could not be used against him. Miranda v. Arizona, 384 U.S. 436. Any statements made prior to advising a person of their rights, including a "confession" cannot be used in a court of law under the jurisdiction of the United States of America.

Because this ground raises the denial of a fundamental constitutional right, the right to effective assistance of counsel, that subsequently allowed another violation of a fundamental right to stand unchecked... the right to be advised of the rights retained by all citizens upon encountering police officers. The lower courts has therefore decided an important federal question in a way that conflicts with relevant decisions of this Court.

The investigation failure led to prejudicial circumstances that Milon could not overcome and resulted in Milon not having counsel in any form. A situation that U.S. v. Cronic, 466 U.S. 648 provided remedy for.

Therefore, Milon's conviction and sentence should be reversed and a new trial ordered.

CLAIM TWO

Was Mr. Milon prejudiced by counsel's failure to object to members of the jury being allowed to possess transcribed notes of the proceedings and have access to electronic devices (cell phones) in the jury room.

Counsel was ineffective for not requesting notes, cell phones and transcribed statements not be collected prior to deliberations. Irvin v. Dowd, 366 U.S. 717. Jury members are to rely on their memory only in the deliberation room. The record reflects that in Milon's case, transcribed notes were passed out and only picked back up once. See: Tr.pp 169-187. Counsel should have moved to obtain and inspect notes and cell phones taken by the jury into the deliberation room in order to ascertain if any prejudicial information was searched for by Milon's jury which would make them develop or harbor bias towards Milon. LSA-Const. Art. 1, §16... "every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public and impartial trial..." Counsel was also aware that allowing the jury to read a transcribed statement without the benefit of the video recording of his statement would allow this evidential material to be taken out of context. This failure of counsel severely put into doubt the fairness and reliability of the proceedings against Milon. *Cronic, supra*. A jurist of reason could debate whether or not prejudice occurred due to counsel's failure. Therefore the lower courts decided an important federal question in a way that conflicts with relevant decisions of this Court.

For the denial of a reliable fair trial, the conviction and sentence should be reversed.

CLAIM THREE

Did counsel's failure to object to the continued jury service by a juror who had seen him in handcuffs prejudice Mr. Milon?

Counsel erred by not moving to replace juror (Gautreaux) regardless of whether or not the juror actually saw Milon in handcuffs an assertion Milon claims did indeed occur. Milon receiving a fair adversarial process supersedes all other aspects of criminal proceedings because all are guaranteed not to lose their life or liberty by one of the oldest continuous judicial documents in existence in the United States and Louisiana Constitutions. LSA-Const. Art 1, §§ 2, 16. The safeguard of having alternate jurors would have adequately solved any issues this appearance of impartiality caused.

Counsel in this case should have thoroughly questioned the improbability of juror not seeing Milon in a position that assumes guilt – in handcuffs – as well as the officer who escorted Milon. See: Tr. pp. 119-215). Milon informed his counsel that other jurors saw him as well but since only one, Mr. Gautreaux, admitted to seeing him, counsel should have invoked the alternate juror safeguard. Tr. pp. 199-213. Everything that happened thereafter can be assumed to be prejudicial. For it is only human for Mr. Gautreaux to discuss what took place when he returned to the deliberation room.

Furthermore, the state had an obligation to prove beyond a reasonable doubt that defendant being seen shackled before the jury, which violated his 5th and 14th Amendment Rights was harmless error. Deck v. Missouri, 544 U.S. 622. The record does not show this level of protection was employed in Milon's case.

Milon deserves fairness. He was an indigent man accused of a crime he until this day not believe he committed. Who but the poorest amongst us should receive all the safeguards the law allows? Because the poorest amongst us are the most vulnerable and subjected to conditions they do not have the resources to combat. This is who the laws were written. Griffin

v. Illinois, 12 U.S. 351.

Therefore, the Courts have so far departed from the accepted and usual course of judicial proceedings or has decided an important federal question in a way that conflicts with relevant decisions of this Court, which should cause remand for a new trial.

CLAIM FOUR

Was Milon's due process rights violated and did prejudice ensue because of prosecutor's actions allowing knowingly false testimony to go uncorrected and counsel's failure to object to prosecutorial misconduct, i.e., inflammatory, coercive comments and remarks made during *voir dire*?

Although the opening and closing arguments are not considered evidentiary material, prosecutors are given a long rope by which to interject material which in any other portion of the trial would be considered inadmissible. Fortunately for Milon, inflammatory comments made in the *voir dire* are not taken as lightly. The purpose of "*voir dire* examination serves the dual purpose of enabling the Court to select an impartial jury and assisting counsel in exercising peremptory challenges." Mu'min v. Virginia, 500 U.S. 434. It is not a stage for counsel to try and implant ideas, use coercive and insinuating language or tactics.

Prosecutor's implication that regardless of whether or not "he proved beyond a reasonable doubt [Milon's guilt] they had to convict because if not an injustice [a crime] would occur. This statement strikes at the heart of any semblance of a fair and impartial trial. And can squarely be placed in the category of prosecutorial misconduct.

The prosecutor's duty in a criminal proceeding is to seek justice. Berger v. U.S., 295 U.S. 78. The prosecutor should prosecute with earnestness and vigor, but may not use "improper methods calculated to produce a wrongful conviction," *Id.* The standard for whether or not

conduct engaged in by the prosecutor reaches misconduct and therefore a reversal of conviction is granted with whether or not the improper conduct taken in context of the trial as a whole violated the defendant's due process rights. United States v. Rodriquez-Lopez, 756 F.3d 422 (5th Cir. 2014).

The proceedings in this case were tainted from the beginning. The only viable solution after prosecutor made this statement was to dismiss the entire juror pool and begin anew. A prosecutor may not express personal opinions about the defendant's guilt or credibility. See: e.g., U.S. v. Auch, 187 F.3d 125 (holding prosecutor's statement "the only way I can even imagine ever acquitting this man... improper because it conveyed personal opinion). The prosecutor in this case not only injected personal opinions, he crossed the line over into an area which rendered the judicial proceedings of Milon totally unreliable.

Prosecutors "you would create the injustice" statement [Tr.pp 96-96] were intended to inflame the passions of the jurors, thereby leading to a conviction for an improper reason.

It is also well established that a conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the 14th Amendment, Mooney v. Holohan, 294 U.S. 103. The same result obtains when the state although not soliciting false evidence, allows it to go uncorrected when it appears. Napue v. Illinois, when the reliability of a given witness may well be determinative of guilt or innocence nondisclosure of evidence affecting credibility falls within this general rule. The prosecution in this case knew that one of the key witnesses used to convict Milon, as Ms. Adams lied on the stand when she claimed nobody else came into the store and didn't take her eyes off the victim in this case. An impossibility for the records shows she states, "they still had people in there trying to buy stuff

in the store you know and we was telling them I don't think its the right time now. So we was trying to clear the store out." Tr.pp. 223-226.

The prosecutor knew she lied on the witness stand yet he allowed it to go uncorrected. This was a violation of his duty as a representative of the people. If the people can not count on the integrity of those are tasked with upholding justice, the system will collapse.

In a system such as the one face by Milon, there is no question whether or not his due process rights were violated. The only question is what is the appropriate remedy? The appropriate legal remedy is that this case must be subjected to a substantive due process analysis if it is "objectively, deeply rooted in this nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if it were sacrificed." Washington v. Glucksberg, 521 U.S. 702. A fair and impartial process includes not only having impartial jurors empaneled but also having a representative of the people, in this case a district attorney, who is geared not toward vindictiveness or even punishment. But one who is geared toward providing a guarantee. A guarantee that every right due, every right owed the people must be upheld. He or she cannot become a person who seeks to subvert the rights afforded to all people. If even the semblance of subversion of justice occurs in a criminal proceeding that proceeding has become fatally flawed.

Jurist of reason could and should have argued whether or not the issues presented here were adequate to encouragement to proceed further. Therefore, the courts have so far departed from the accepted and usual course of judicial proceedings or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Whereas, an Order of reversal should be granted.

CLAIM FIVE

Was Milon's confrontational rights violated by trial counsel's failure to confront the doctor who actually performed the autopsy on the victim?

The confrontation clause of the Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." A non objection to offending evidence may cause the accused to waive this right. Melendez-Diaz v. Massachusetts, 557 U.S. 305.

Counsel erred by allowing the coroner to testify concerning the drugs found in the victim's system when he was not the person who performed the test. The coroner could not provide an accurate determination of the drugs present in the victim's system nor of their potency. Whether or not they were accelerants to the blood flow or any number of things the actual performer of the test could have revealed.

The testifying coroner could not even definitively decide whether or not the victim was grazed by a bullet on his ankle injury which did not support the evidence gathered by the police that only one shot was fired nor Milon initial statement to the police that he fired one shot to scare him away. Which support the diagonal entry wound and where the projectile was lodged. tr. pp. 187-193, 194-196, 197-198.

Counsel's failure to object allowed the jury to be mislead due to lack of firsthand information causing a trial whose outcome is questionable and unreliable. Therefore, the courts findings has decided an important federal question in a way that conflicts with relevant decisions of this Court. Whereas this Writ should be granted and this case remanded for a new trial.

CLAIM SIX

Was Milon prejudiced by counsel's failure to strike the juror or recuse the judge who were relatives?

There is a discrepancy between Federal Law and Louisiana Law 28 U.S.C., 455 (b)(i)(e) requires recusal if the judge, the judge's spouse, or ant other family member is a party 28 U.S.C., 458 (a)(i). No person shall be pointed to or employed in any office duty or any duty in the court who is related... within the degree of first cousin to any justice or judge of such court. A juror is considered as an interested party in criminal proceedings. Louisiana Law, to the detriment of Milon ^{does not} allows juror's to be blood related to any party in the proceedings ^{beside} ~~including~~ the ^{Judge} ~~were~~.

Milon contends that a law such as the one in practice in Louisiana violates his constitutional right to a fair and impartial jury. Counsel in this case found cause to strike three jurors whom were related to her someway, but did not exercise the same caution when it came to striking a juror who was related to the most important participant in the judicial process, the judge. (TTr.pp 118-120, 86, 120-124, 127)

Judge walker stated that it was a part of counsel's strategy to allow the juror in question to remain in the jury pool because the juror stated he knew the law and would make his judgment according to the evidence that was presented and not his personal opinion. The three jurors that were dismissed were related to counsel in some way. Also stated they could remain impartial as well. Yet they were still stricken.

Louisiana law states that the jury relation to the judge is of no importance because the judge does not have a stake in the outcome of the case. However, even the possibility that the

juror could have influenced the other jurors because of his relationship to the judge should have been grounds for a challenge for cause.

If counsel chose not to strike the juror in question at the least a motion for recusal of the judge should have ensued. None of these things occurred. Milon was already facing the state and all their resources. He was overwhelmed from the onset of these proceedings. Recusing the judge or striking the juror in question would have... should have been the obvious if not legal thing to do. Jurist of reason could have debated whether or not the discrepancy between Louisiana law and federal law creates a situation whereby an accused rights to a fair an impartial jury or an appearance of partiality in criminal proceedings are being violated. Therefore the courts decision has decided an important question of federal law that has not bee, but should be settled by this Court.

CLAIM SEVEN

The trial court's failure to provide Milon with a complete transcript of all proceedings violated his right to file a proper appeal.

An appeal in a criminal proceeding is an established right recognized by the United States Supreme Court. Evitts v. Lucey, 469 U.S. 392. A record that is incomplete therefore, hinders a petitioner or appellant from filing a proper appeal and fully exercising this right. Ellis v. United States, 356 U.S. 674; Hardy v. United States, 395 U.S. 277; Marshall v. Hendricks, 36 F.3d 307.

The missing verbal motion by the prosecutor requesting Judge Walker to dismiss Milon's previous attorney are relevant because they show why the request was granted. This issue is that the motions filed by Milon's previous attorney were never addressed and were therefore

pending until a hearing could be had on them. (July 11, 2011 hearing)

The Court's contention that even if true it is of no consequences because new counsel filed her own motions. Completely missing the point! The point is, the missing portion of the transcript proves that Judge Walker was not functioning as an impartial actor in these court proceedings. The court stated there was a conversation, but regardless, Judge Walker and counsel knew about the family relationship. ^{An allegedly} ~~and~~ the Judge was not even aware of the relation. [?] Nevertheless, once informed of this relationship the prudent thing to do would have been to dismiss this juror. The missing part of the transcript also dispel the assumption that it was a strategy of counsel that allowed the related juror to remain in the jury pool. In fact, practically all of the claims put forth by Milon for review are contained in the missing parts of the transcript. Even the issue of the jury members seeing Milon in handcuffs. (Tr.pp. 170-186; 204-206, 213-215).

Petitioner is entitled to have a complete and reliable rendering of the proceedings in his case. Not a piecemeal offering. Counsel's failure to object to this irregularity is prima facie evidence that jurist of reason could have found debatable if the omission denied Milon access to a fair and reliable appellate proceeding. Therefore, the courts decision has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Whereas, a new trial should be granted..

CLAIM EIGHT

The accumulation of errors committed by Milon's counsel and the cumulative prosecutorial misconduct prejudiced him. Was Milon prejudiced by these aggregate events?

The evidence before the post-conviction court as well as the District Court identified numerous issues that standing alone constitute ineffective assistance of counsel. The evidence before the post-conviction court as well as the district court identified numerous issues that standing alone constitute prosecutorial misconduct. The Court should not that "a single critical error may render counsel's performance constitutionally defective." *Nero v. Blackburn*, 597 F.2d 991. but when there is an instance where there appears to be an accumulation of errors by a trial counsel, and cumulative prosecutorial misconduct, the proceedings definitively deserve *de novo* review.

In *White v. Roper*, 416 F.3d 728, cert denied, 546 U.S. 1157 (2006), the Court found prejudice from counsel's ineffectiveness in failing to investigate and call two witnesses. In *Cargle v. Mullin*, 317 F.3d 1196, the Court found prejudice both because of prosecutorial misconduct. These cases imply that where there is an instance where ineffectiveness assistance of counsel is alleged along with an allegation of prosecutorial misconduct relief must be granted.

Counsel's representation amounted to incompetence under prevailing professional norms from the time counsel was officially enrolled in the case until trial began. Counsel's lack of preparation can be shown when she was taken by surprise when Ms. Winslow testified she was not in fact told by Milon that he intended to kill the victim in this case. Tr. pp. 237, 241-242). Nor that Ms. Winslow felt Milon reacted out of fear. Counsel allowed Ms. Adams' statement

that "nobody came into the store" to pass without confronting her with the evidence of her untruthfulness which counsel possessed. (Tr. pp. 217-226... Post conviction Exhibit B, lines 28-29). Counsel allowed the inadmissible statement alleged to have been made by Milon to become part of the evidence without objection even though Milon was not under *Miranda* when he gave it.

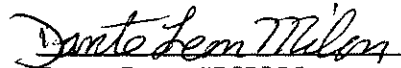
The errors committed by counsel as a whole were a violation. Counsel did not investigate the evidence in this case. Counsel did not interview witnesses. Counsel did not preserve evidence. Counsel made no objections. Counsel's investigation began at trial. There was no indication counsel was prepared to offer a defense based on Milon's only defense... self defense.

This abandonment of Milon's only defense, this failure to challenge two instances of juror irregularities, this failure to move for a recusal of the trial judge, all these instances and more amounted to a dereliction of duty. A dereliction of duty that could have been rectified. Therefore, the courts decisions has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Whereas, the writ of certiorari should be vacated and remanded for a new trial or release Milon.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Dante Leon Milon".

Dante Leon #562330
Louisiana State Penitentiary
17544 Tunica Trace
Angola, Louisiana 70712