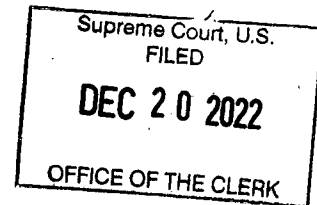


No. **22-6415 ORIGINAL**



IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD BETHELY v. TIM HOOPER, Warden

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[X] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s): U.S. Eastern District of Louisiana; and the U.S. Fifth Circuit Court of Appeal.

[] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court: Mr. Laue has never proceeded to the Federal Courts prior to this pleading.

Petitioner's affidavit or declaration in support of this motion is attached hereto.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Richard Bethely #609204, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor, and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$0	\$0	\$0	\$0
Self-employment (Hobby Shop)	\$0	\$0	\$0	\$0
Income from real property (such as rental income)	\$0	\$0	\$0	\$0
Interest and dividends	\$0	\$0	\$0	\$0
Gifts	\$0	\$0	\$0	\$0
Alimony	\$0	\$0	\$0	\$0
Child Support	\$0	\$0	\$0	\$0
Retirement (such as social security, pensions, annuities, insurance)	\$0	\$0	\$0	\$0
Disability (such as social security, insurance payments)	\$0	\$0	\$0	\$0
Unemployment payments	\$0	\$0	\$0	\$0
Public-assistance (such as welfare)	\$0	\$0	\$0	\$0
Other (specify): <u>N/A</u>	\$0	\$0	\$0	\$0
Total monthly income:	\$0	\$0	\$0	\$0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.): Incarcerated

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$0
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$0
			\$
			\$

4. How much cash do you and your spouse have? \$0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
N/A	N/A	\$0	\$0
		\$	\$
		\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value N/A

☐ Motor Vehicle #2
Year, make & model N/A
Value N/A

☐ Other assets
Description N/A
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$0	\$0
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A	N/A	

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (included lot rented for mobile home) Are real estate taxes include? [] Yes [] No Is property insurance included? [] Yes [] No	\$0	\$0
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$0	\$0
Home maintenance (repairs and upkeep)	\$0	\$0
Food	\$0	\$0
Clothing	\$0	\$0
Laundry and dry-cleaning	\$0	\$0
Medical and dental expenses	\$0	\$0

	You	Your spouse
Transportation (not including motor vehicle payments)	<u>\$0</u>	<u>\$0</u>
Recreation, entertainment, newspapers, magazines, etc.	<u>\$0</u>	<u>\$0</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	<u>\$0</u>	<u>\$0</u>
Life	<u>\$0</u>	<u>\$0</u>
Health	<u>\$0</u>	<u>\$0</u>
Motor Vehicle	<u>\$0</u>	<u>\$0</u>
Other: <u>N/A</u>	<u>\$0</u>	<u>\$0</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>N/A</u>	<u>\$0</u>	<u>\$0</u>
Installment payments		
Motor Vehicle	<u>\$0</u>	<u>\$0</u>
Credit card(s)	<u>\$0</u>	<u>\$0</u>
Department store(s)	<u>\$0</u>	<u>\$0</u>
Other: <u>N/A</u>	<u>\$0</u>	<u>\$0</u>
Alimony, maintenance, and support paid to others	<u>\$0</u>	<u>\$0</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	<u>\$0</u>	<u>\$0</u>
Other (specify): <u>N/A</u>	<u>\$0</u>	<u>\$0</u>
Total monthly expense:	<u>\$0</u>	<u>\$0</u>

9. Do you expect any major changes to your monthly income or expense or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid - or will you be paying - anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

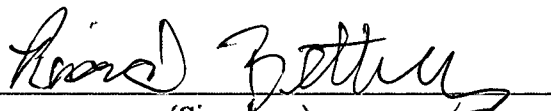
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Incarcerated. No income.

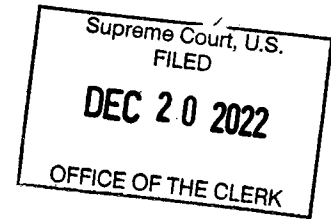
I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of December, 2022


(Signature)

22-6415 ORIGINAL

In The
Supreme Court of the United States
Term, _____



RICHARD BETHELY v. TIM HOOPER, Warden

On Petition for a Writ of Certiorari to

U. S. FIFTH CIRCUIT COURT OF APPEALS

Richard Bethely #609204
MPEY/Cypress-3
Louisiana State Penitentiary
Angola, Louisiana 70712-9818

December 15, 2022

PREPARED BY

David Constance #304580 Offender Counsel Substitute III
Main Prison Legal Aid Office
Criminal Litigation Team
La. State Penitentiary
Angola, LA 70712

QUESTION PRESENTED

- 1. Reasonable jurists would determine that Mr. Bethely's confession was coerced:**
- 2. Reasonable jurists would determine that the State Suborned Perjured Testimony:**
- 3. Jurists of reason would determine that Mr. Bethely's trial counsel was ineffective:**

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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.

District Attorney's Office
19th Judicial District Court
222 St. Louis St., 5th Floor Gov. Bldg.
Baton Rouge, LA 70802

Attorney General's Office
P.O. Box 94005
Baton Rouge, LA 70805

Tim Hooper, Warden
Louisiana State Penitentiary
General Delivery
Angola, LA 70712

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States Court of Appeals 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

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

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is the Louisiana Supreme Court in Docket Number _____.

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

The opinion of the _____ appears at Appendix _____ to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 30, 2022.

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

☐ 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 _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

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

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

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

IN THE
SUPREME COURT OF THE UNITED STATES
_____, TERM, _____

No.: _____

RICHARD BETHELY v. TIM HOOPER, Warden

Petition for Writ of Certiorari to the U.S. Court of Appeal

Pro Se Petitioner, Richard Bethely respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the U.S. Fifth Circuit Court of Appeal, entered in the above entitle proceeding on September 30, 2022.

NOTICE OF PRO-SE FILING

Bethely requests 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). Bethely is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

OPINIONS BELOW

The opinion(s) of the Louisiana First Circuit Court of Appeal was denied on January 30, 2019, and the Louisiana Supreme Court was denied on September 17, 2019. These pleadings were filed as collateral review, Supervisory Writ, and Supreme Court Supervisory Writs.

Bethely's federal petition to the U.S. Eastern District of Louisiana was denied on July 24, 2020. Bethely's Certificate of Appealability in the U.S. Fifth Circuit Court of Appeal was denied on September 30, 2022.

JURISDICTION

The U.S. Fifth Circuit Court of Appeal denied Bethely's Request for COA on September 30, 2022. On March 19, 2020, this Court issued an order automatically extending the time to file any petition for a Writ of Certiorari to 150 days from the date of the lower court judgment, order denying discretionary

review, or order denying a timely petition for rehearing. This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

REASONS FOR GRANTING THE WRIT

In accordance with this Court's *Rule X, § (b) and (c)*, Bethely presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

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.

LEGAL ARGUMENT

Reasonable jurists would determine that Bethely was denied a fair and impartial trial; and that his convictions are in violation to the United States Constitution.

WHEREFORE, for the arguments in Bethely's original State pleadings and the arguments above, Bethely requests that this Honorable Court Grant him the necessary relief.

STATEMENT OF THE FACTS

In or about the morning hours of December 18, 2009, somebody, identifying themselves as "Kenneth" forced their way through the apartment door of Avis Daniels, shooting him at close range and killing him instantly. Yolanda Franklin, who was also present, was shot several times survived.

Though the evidence suggests that Franklin was familiar with Mr. Bethely, she did not identify him immediately. Instead, she reiterated that someone named Kenneth was responsible for the shooting. She also described the attacker as partially covering his face. Franklin was no stranger to legal problems and was facing an unrelated prosecution of her own. By the time trial arrived, Franklin had dispensed with her previous ID and description; she now identified Mr. Bethely as her assailant, telling the jurors that he was unmasked at that time.

Doubtless, Franklin's testimony was underwhelming. She was a convicted felon with pending charges who failed to identify Mr. Bethely until he was already targeted as a suspect. To substantiate her testimony, the State relied upon Mr. Bethely's alleged confession to the police.

Mr. Bethely was arrested in a dramatic fashion, including a no-knock warrant and a percussion grenade. He was delivered to the Baton Rouge Police Station where he was handcuffed and interrogated. BRPD detectives intimates that blood and DNA evidence already linked Mr. Bethely to the offense. This was a lie as no genetic or serological evidence was ever recovered. Additionally, detectives advised Mr. Bethely that if *he* didn't do it, his *wife* must have. At no time was Mr. Bethely's wife a suspect or arrested, nor did police have probable cause to suspect her of being involved. The threats against Delaina were pure stratagem, designed to weaken Mr. Bethely's resolve and tempt him to acknowledge guilt of an offense to spare a loved one the rigors of interrogation or the torment of criminal prosecution. Mr. Bethely's "*confession*" was legally and constitutionally suspect.

The admission of Mr. Bethely's extra-judicial statements, coupled with the ineffectiveness of trial counsel and the misconduct of the prosecution, colluded to violate Mr. Bethely's fundamental rights and undermine all confidence in the outcome of his trial. Accordingly, Mr. Bethely seeks relief in this matter.

Mr. Bethely's confession was coerced:

The testimony against Mr. Bethely was not overwhelming. Mr. Bethely was accused of shooting

Avis Daniel, killing him almost instantly. Mr. Bethely is further alleged to have shot Yolanda Franklin who survived her injuries. Beyond the shooter, Daniel, and Franklin, there were no other witnesses. Franklin, who was conscious when first responders arrived, identified her attacker as "Kenneth," a moniker with no known association with Richard Bethely. Later, Franklin, who was familiar with Mr. Bethely, identified him as the her attacker from a six-person photo line-up. Franklin, who was subject to legal woes of her own, requested leniency in exchange for her testimony at trial.

These facts simply do not support a conviction beyond a reasonable doubt. The shooter arrived at Daniel's apartment and Daniel was the initial victim of the assault, facts suggest Daniel may have been the intended target and Franklin only the collateral damage. Moreover, Franklin admittedly gave police a different name for the assailant in the immediate aftermath of the attack. Whether Mr. Bethely – who was previously known to Franklin – became unintentionally conflated with the attacker in Franklin's mind, or whether Franklin identified Mr. Bethely to better position herself for favorable treatment in her own criminal matter, remains to be seen. What can confidently be surmised, however, is that the case against Mr. Bethely was nebulous at best.

Enter Mr. Bethely's confession. In a statement given to BRPD detectives Brian Watson and Brett Magee, Mr. Bethely purportedly confessed to the shooting, asserting that he acted in self defense after a heated exchange with Danial at the time the latter had armed himself with "a f***king big a** pistol." Mr. Bethely's statement corroborated Franklin's dubious identification. It placed Mr. Bethely at the scene at the time of the shooting. It admitted to all pertinent facts less the actual intent to kill. In short, Mr. Bethely's alleged confession was the lynchpin of the State's case against him.

A confession is admissible only if it a product of the defendant's rational intellect and "free and will." See: *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). But, a suspect's free will can be compromised by coercive police conduct, intoxication, mental defect, or promises and inducements. *United States v. Blake*, (5th Cir. 2012).

“Promises or inducements can taint the voluntariness of a confession.” U.S. v. Restrepo, 994 F.2d 173 (5th Cir. 1993)(citing United States v. McClure, 786 F.2d 1286, 1289 (5th Cir. 1986). For this reason, a suspect must be apprised of his rights against compulsory self-incrimination and to consult with an attorney before authorities may conduct custodial interrogation. Miranda v. Arizona, 384 U.S. 436 (1966); Dickerson v. United States, 530 U.S. 428 (2000).

Where the voluntariness of a confession admitted at trial and in compliance with Miranda, is raised in Habeas proceedings, the “issues of underlying or historic facts [and] the state court findings, if fairly supported in the record, are conclusive.” Gutierrez v. Stephens, 590 F.App'x 371, 375 (5th Cir. 2014) (citing West v. Johnson, 92 F.3d 1385, 1402 (5th Cir. 1996).

However, Habeas courts are charged with the totality of the circumstances, the challenged confession was obtained in a manner compatible with the requirements of the United States Constitution.

Here, Mr. Bethely's confession was the product of threats, coercion, and misinformation. Mr. Bethely was forcibly seized from his home and relocated to the Baton Rouge Police Department where he was restrained and interrogated by Watson and Magee. Though Mr. Bethely told officers “there's nothing for me to say,” and “I have no answers,” the interrogation continued unabated. Detectives advised Mr. Bethely that the “work[ed] for God.” they stated that the recovered “blood in the car [and] its [sic] not your blood.” They also “a gun, bloody clothing, bloody Nike tennis shoes ... “ They told Mr. Bethely his “DNA [was] all over” the evidence. “Lot's of stuff, man ... Boom, boom, there it is.”

Additionally, officers threatened to pin the offense on Mr. Bethely's wife if Mr. Bethely did not take responsibility. “That white car is in her name ... and we got that car ... Somebody's got some questions to answer. And you'd feel very bad if we went [sic] and put your wife in the parish prison for murder and she ain't [sic] had nothing to do with nothing.”

Law enforcement intimated that the State was in possession of evidence already linking Mr.

Bethely to the offense - "Boom, boom, there it is" - and that his confession was mere formality.

Similarly, BRPD detectives suggested that, without Mr. Bethely's confession, *somebody else* would have to stand accused of these offenses: Mr. Bethely's wife. The stratagem was as egregious as it was effective. By the time Mr. Bethely spoke with officers, Franklin had already identified her attacker as "Kenneth" and then later as Mr. Bethely. Franklin did not identify Mr. Bethely's wife, Delaina.

Accordingly, detectives were not merely trafficking in ambiguity or alternative theories, they were foisting a falsehood upon Mr. Bethely in an attempt to exploit his wife's safety to secure his confession.

A confession obtained through threats of harm to others are suspect. In Lynumn v. Illinois, 372 U.S. 528, 534 (1963), the United States Supreme Court found that it "abundantly clear" that the defendant's oral confession was not voluntary where it "was made only after the police had told her that state financial aid for her infant child would be cut off, and her children would be taken away from her, if she did not 'cooperate' with officers. Similarly, where a threat by a law enforcement officer to arrest an accused's close relative or family member is made without probable cause to do so, the threat is coercive and the resulting confession involuntary. U.S. v. Finch, 998 F.2d 349 (6th Cir. 1993) (information defendant provided to police concerning location of drugs was involuntary where it was provided after police threatened to arrest his mother and girlfriend unless he confessed, where no probable cause to carry out the threat existed); United States v. Tafoya, 459 F.2d 424, 427 (10th Cir. 1972); Thompson v. Haley, 255 F.3d 1292 (11th Cir. 2002). The love of family is a wellspring of altruism and a suspect's will can be easily overborn by threats to arrest, interrogate, incarcerate, and punish an innocent family member.

There was no probable cause to arrest Mr. Bethely's wife and detectives of the BRPD knew this. At minimum, Franklin identified on suspect, a man who identified himself as Kenneth; at most, she fingered Mr. Bethely as the culprit *and* placed him alone his wife's car just prior to the attack when he threatened to "smash" Franklin. The State stands on the edge of the blade. If the evidence against Mr.

Bethely was as immediate, decisive, and overwhelming as the State claims, then it follows the evidence against Mr. Bethely's wife was corresponding infinitesimal. If, however, law enforcement could not even identify the *gender* of the gun person, then it stands to reason the evidence against Mr. Bethely was equivocal from the start. In either event, detectives had no probable cause to arrest Mr. Bethely's wife and any threats to do so were coercive, interdicting the voluntariness of Mr. Bethely's statements.

Habeas courts are charged with an "independent federal determination of the ultimate question whether, under the totality of the circumstances, the challenged confession was obtained in a manner compatible with the requirements of the United States Constitution. Soffar v. Cockrell, 300 F.3d 588 (5th Cir. 2002).

Here, the evidence fingering Mr. Bethely – outside of his alleged confession – amounted to a known acquaintance with pending legal problems of her own who misidentified Mr. Bethely in the immediate aftermath of the attack. That Mr. Bethely's wife should fall under suspicion was not lost on Mr. Bethely or his interrogators who weaponized Mr. Bethely's marital bonds to induce a confession. Accordingly, Mr. Bethely's "confession" was involuntary and unknowingly made. Mr. Bethely's is entitled to relief.

State Suborned Perjured Testimony:

Yolanda Franklin gave multiple versions of the events that unfolded in the early morning hours of December 18, 2009, aside from her initial identification of her attacker as "Kenneth." At trial, Franklin testified:

FRANKLIN: He said – he called my name. He was like, Landa. And when I looked up at him, and he was like, I'm going to teach you about playing with me. He said, I'm going to show you about playing with me. He said Bitch, I'm going to smash you. So when he said that, I took off running.

* * * * *

FRANKLIN: ... I took off running. I just ran.

STATE: And where did you run?

FRANKLIN: I ran to the – the first building I could get to because I know how to run through the

apartments and get to 5240.

STATE: So you -- so did you get -- did you leave the parking lot of the apartments after you got in the gate?

FRANKLIN: Yes ma'am. I ran to to the first building I came to and ran up the steps.

STATE: All right. Now while you were running up the steps, did you see Chop or the car while you were trying to make your way to the apartment?

FRANKLIN: I ran through first -- the second set of gates, but I could hear him like, speeding, going through the second set. By the time I ran around and got to building 7, to the apartment, I put my key in the door. I could hear the car like, you know, like speeding, but he didn't come up because I guess by the time he would have got out and made it up, you know, I was inside.

(Vol. IV, pp. 616-21).

However, in the immediate aftermath of the attack, Yolanda described the following exchange:

She began by saying that [sic] walking home to TURNER PLAZA APTS at approximately 2000 hours when "CHOP" the "SUSPECT" drove up in a small white car and yelled at her, "Bitch I got you." He then immediately drove away. (Rec. Vol. I, p. 163).

Notably absent from this rendition is the claim that Mr. Bethely charged after the fleeing Franklin, speeding through a second set of gates in hot pursuit. Likewise, Franklin had this to say at trial regarding the identity of the gunman.

FRANKLIN: About -- about, I'm going to say 4:00, 4:00 o'clock, I hear this banging on the door, like boom, boom, boom, (demonstrating). And it -- it just banging hard, hard, hard. So I heard Avis jump up because the apartment's, you know, the floor, the tile is thin. So, he jumped up, and he goes like, who is it. And the person said, Kenneth. Avis walked to the door and Avis opened the door. And when Avis opened the door, all I hear was boom, like a shot, boom. And Avis fell. And when Avis fell, he just hit the floor like, it's a sound that I can't really, like describe because it's -- it's like -- it was just real, really, really loud. And when I see Avis falling because -- I was like in shock. And I -- when I looked at Avis and I looked up and Chop's standing at the door with his gun. And he just shot him, boom. As he turned to me, right, like I'm laying right here on the sofa, and he just turned to me and he shot. The first shot he shot, he shot me in my face because I was laying on my side on a pillow. When he shot me in my face right here and I threw my -- I threw this hand up over my face trying to stop him because he was hollering, like I was saying ow, ow, ow, and he was steady shooting. And I threw my hand up, and I got shot in my arm. And I threw my leg up and he -- he kept shooting me. He just kept shooting me.

However, in her taped statement to BRPD Sergeant John Norwood, Franklin had this to say about the encounter:

YOLANDA stated she went into the apartment and laid down on the sofa and went to sleep.

Suddenly she heard a loud banging on the the [sic] door. Before she had a chance to tell Avis not to open the door, AVIS opened it. YOLANDA stated she immediately heard a loud "Pow" and Avis was shot and fell on his face. YOLANDA stated that "Chop" walked inside with a tee-shirt covering part of his face, but she recognized him. He walked over to where she is laying on the sofa and fired a shot into her face and then shot her in the arm, the chest and her leg. After shooting her multiple times "Chop" fled the scene.

These distinctions are not immaterial. In her statement to police – arguably more accurate given its temporal proximity to the offense – Franklin described Mr. Bethely's alleged threat to "smash" hear as idle, an assault made and immediately abandoned by Mr. Bethely who promptly drove away. At trial, this exchange was heightened into a Hollywood-esque scene complete with Franklin's narrow escape.

While Franklin identified Mr. Bethely to Sgt. Norwood, she admitted that the gunman wore a face covering, a crucial detail that would have been essential for the jury to weigh the accuracy of Franklin's identification. This salient detail was omitted at trial, giving the jury the impression that Mr. Bethely's face was uncovered and plainly visible. The State made no effort to correct these factual missteps.

"[The] deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice [internal quotations omitted]. Mooney v. Holohan, 294 U.S. 103 (1935); see also: Pyle v. Kansas, 317 U.S. 177 (1942). "[T]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Giglio v. United States, 405 U.S. 150, 153 (1972); citing Napue v. Illinois, 360 U.S. 264 (1959).

As the U.S. Fifth Circuit has noted: "In or criminal justice system the prosecutor has at his disposal the substantial resources of the government, as well as considerable other advantages. In exchange, that system reposes great trust in the prosecutor to replace the ends of justice above the goal of merely obtaining a conviction. See generally: Kirkpatrick v. Whitley, 992 F.2d 491, 495 (5th Cir. 1993); citing Imbler v. Pachtman, 424 U.S. 409 (1976). Presenting Mr. Bethely's coerced or otherwise involuntary statement as one freely given violates the basic standards of prosecutorial integrity. To perform its "high function" in the best way, "justice must satisfy the appearance of justice." Offutt v. United

States, 348 U.S. 11, 14 (1954).

Habeas relief is warranted where prosecutorial misconduct results in a violation of the Petitioner's Due Process rights secured under the Fifth Amendment to the United States Constitution. To obtain relief, the misconduct must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 181 (1986).

"The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor." Smith v. Phillips, 455 U.S. 209, 219 (1982). Moreover, the State cannot stand behind the defense that the misdeeds were the fault of the law enforcement rather than the District Attorney's Office. See generally: Creel v. Johnson, 162 F.3d 385, 391 (5th Cir. 1998)(upholding that prosecutors have constructive notice of police reports found in their files). Where this is the case, a Petitioner has standing to litigate whether his conviction was procured by means or procedures which contravene due process. Campbell v. Louisiana, 523 U.S. 392, 401 (1998).

Here, whether by intent or mere inadvertence, the State permitted Franklin to make gross departures from her previous statements to police without correction. Such deviations could not help but raise the specter of perjury. However, the State made no efforts to protect the truth-finding function of trial but appeared content to permit Franklin to stretch the truth to the point of breaking.

There can be no honest mistake or harmless error here. Consequently, the State's silence during the presentation of false, invalid, and conflicting evidence was deliberate, intentional, and knowing. It was prosecutorial misconduct of the highest magnitude entitling Mr. Bethely to Habeas relief.

Mr. Bethely's trial counsel was ineffective:

A claim of ineffectiveness is assessed by the two-part Strickland test set forth by Strickland v. Washington, 466 U.S. 668 (1984). The defendant must first show that counsel's performance was deficient. This requires a showing that counsel "made errors so serious that counsel was not

functioning as the 'counsel' guaranteed by the Sixth Amendment to the United States Constitution.

Next, the complainant must show that the deficient performance prejudice his or her defense. This can be accomplished upon a "showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Where an alleged error is within the ambit of trial strategy, it cannot be relied upon to establish ineffectiveness of counsel. See generally: Michel v. Louisiana, 250 U.S. 91, 101 (1955).

Moreover, because of the inherent difficulties in assessing trial counsel's conduct retroactively, a reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance."

Accordingly, to carry his burden, a defendant must establish "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." While judiciary scrutiny must be "highly differential," deference does not preclude relief." See: Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

While trial counsel's conduct will be viewed in a doubly deferential manner, Strickland's measure of deference "must not be watered down into a disgusted form of acquiescence." See generally: Moore v. Johnson, 194 F.3d 586, 604 (5th Cir. 1999); see also: Profitt v. Waldron, 821 F.3d 1245, 1248 (5th Cir. 1987). Strategies must be based upon "thorough investigation of the law and facts relevant to plausible options." Beltran v. Cockrell, 294 F.3d 730, 734 (5th Cir. 2022). The Fifth Circuit has "recognize[d] the distinction between strategic judgment calls and plain omissions, and we are 'not required to condone unreasonable decisions parading under the umbrella of strategy, or to fabricate tactical decisions on behalf of counsel when it appears on the face of the record that counsel made no strategic decision at all.'" Koon v. Cain, 277 Fed.Appx. 381, 386 (5th Cir. 2008); Wood v. Allen, 130 S.Ct. 841, 853 (2010).

Here, counsel had at his disposal the means to contradict and impeach the testimony of Yolanda

Franklin. Counsel could have drawn the jury's attention to Franklin's identification of the masked gunman as Kenneth, her previous testimony that Mr. Bethely did not pursue her outside the apartment complex but drove away after telling Franklin, "B***ch, I got you," or her statement that the shooter's face was partially covered during the attack. Counsel did none of this. Instead, counsel sat mute while the State presented knowingly false and perjured testimony.

Even assuming, *arguendo*, that counsel possessed some tactical reason for these omissions, strategic decisions can still fail to reach the minimums of constitutional effectiveness, thus demanding relief on habeas relief. While an alleged error falling within the "ambit of trial strategy" cannot be relied upon to establish ineffectiveness of counsel, not every choice of counsel is automatically clothed in the presumption of a strategy. For example, in the persuasive case of Beltran v. Cockrell, the U.S. Fifth Circuit, considering Supreme Court authority, was not persuaded that trial counsel's strategy of distancing his client, Beltran, for his co-defendant, Plata, was reasonable where significant exculpatory evidence pointed toward Plata's guilt.

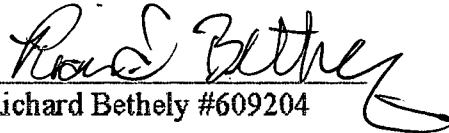
Likewise, counsel's failure to impeach Franklin – or even subject her to lukewarm cross-examination – implicates Mr. Bethely's fundamental rights. The Sixth Amendment guarantees extend to cross-examination at trial. The U.S. Supreme Court has noted that "[a]bsent competent counsel, ready and able to subject the prosecution's case to the 'crucible of meaningful adversarial testing,' there can be no guarantee that the adversarial system will function properly to produce just and reliable results." United States v. Cronin, 466 U.S. 648 (1984).

Mr. Bethely's trial counsel was constitutionally ineffective for failing to subject Franklin's testimony to any reasonable attack or counter-narrative. In a case with a dubious confession and a complete dearth of physical evidence, counsel's failures are untenable. Counsel's error was so egregious as to prejudice Mr. Bethely who was unable to challenge the accuracy of Franklin's statement to provide the jury with the truth. Consequently, Mr. Bethely is entitled to relief.

CONCLUSION

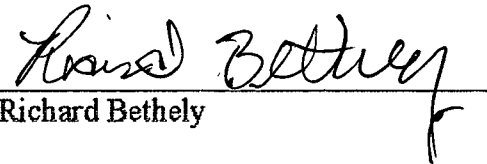
As Bethely was denied the right to a fair and impartial trial, this Court should grant the petition for Writ of Certiorari.

Respectfully submitted this 15th day of December, 2022.


Richard Bethely #609204

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served by First Class United States Mail this 15th day of December, 2022, upon counsel of record for Respondent, pursuant to Rule 29 at the following address: District Attorney's Office, 222 St. Louis St., 5th Floor Gov. Bldg., Baton Rouge, LA 70802.


Richard Bethely

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 30, 2022

Lyle W. Cayce
Clerk

No. 22-30259

RICHARD BETHELY,

Petitioner—Appellant,

versus

TIM HOOPER, *Warden, Louisiana State Penitentiary,*

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Middle District of Louisiana
USDC Nos. 3:19-CV-463, 3:19-CV-798

ORDER:

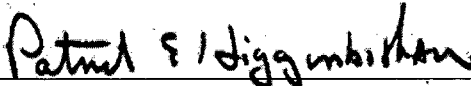
Richard Bethely, Louisiana prisoner # 609204, moves for a certificate of appealability (COA) to challenge the denial of his consolidated 28 U.S.C. § 2254 applications, attacking his jury trial convictions of second-degree murder and attempted second degree murder and the associated sentences of life imprisonment and 50 years of imprisonment.

In his COA filings, which have been prepared by trial counsel, Bethely renews his constitutional claims that the State knowingly used false testimony and that his confession was improperly coerced. He argues that the admission of his coerced confession was not harmless. Bethely does not renew, and has therefore abandoned, his claim that his counsel was

No. 22-30259

ineffective for failing to impeach the State's key witness. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

To obtain a COA, Bethely must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where, as here, the district court denies relief on the merits, an applicant must demonstrate that reasonable jurists "would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because Bethely has not made the requisite showing, the motion for COA motion is DENIED.


PATRICK E. HIGGINBOTHAM
United States Circuit Judge

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

RICHARD BTHELY (#609204)

CIVIL ACTION

VERSUS

NO. 19-463-JWD-RLB

DARRYL VANNOY, ET AL.

Consolidated with:

RICHARD BTHELY (#609204)

CIVIL ACTION

VERSUS

NO. 19-798-JWD-RLB

DARRYL VANNOY, ET AL.

OPINION

After independently reviewing the entire record in this case and for the reasons set forth in the Magistrate Judge's Report dated November 4, 2021 (Doc. 34), to which an objection (Doc. 40) was filed and considered;

IT IS ORDERED that the petitioner's application for habeas corpus relief is denied, and that this proceeding shall be dismissed with prejudice.

IT IS FURTHER ORDERED that in the event the petitioner pursues an appeal in this case, a certificate of appealability shall be denied.

Judgment shall be entered accordingly.

Signed in Baton Rouge, Louisiana, on March 31, 2022.



**JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

RICHARD BETHELY (#609204)

CIVIL ACTION

VERSUS

NO. 19-463-JWD-RLB

DARRYL VANNOY, ET AL.

Consolidated with:

RICHARD BETHELY (#609204)

CIVIL ACTION

VERSUS

NO. 19-798-JWD-RLB

DARRYL VANNOY, ET AL.


JUDGMENT

For written reasons assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered, denying the petitioner's application for habeas corpus relief and dismissing this proceeding, with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED in the event the petitioner pursues an appeal in this case, a certificate of appealability shall be denied.

Signed in Baton Rouge, Louisiana, on March 31, 2022.



**JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD BETHELY — Appellant

vs.

TIM HOOPER — Appellee(S)

PROOF OF SERVICE

I, Richard Bethely #609204, do swear or declare that on this date, December 15, 2022 as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceedings or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and address of those served are as follows:

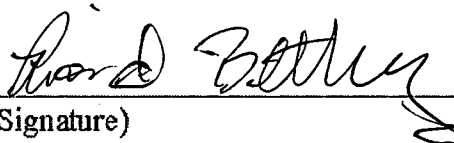
District Attorney's Office
Parish of East Baton Rouge
222 St. Louis St., 5th Floor Gov. Bldg.
Baton Rouge, LA 70802

Jeff Landry
P.O. Box 94005
Baton Rouge, LA 70804

Tim Hooper, Warden
General Delivery
Louisiana State Penitentiary
Angola, LA 70712

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

Executed on December 15, 2022.


(Signature)