22-6668 ORIGINAL

No. ______________

FILED
JAN 17 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Aaron Lyons — PETITIONER
(Your Name)

vs.

Brian Ladner (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the 5th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Aaron Lyons-197782
(Your Name)

F-building Bed 64 P.O. Box 88550
(Address)

Pearl, Mississippi 39288
(City, State, Zip Code)

(Phone Number)

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Questions Presented

1. Petitioner has presented that a key state's witness was using a cell phone while testifying against petitioner at trial. Petitioner was convicted solely on hearsay testimony and circumstantial evidence.

Did the Fifth Circuit err in denying a COA concerning a key witness using a cell phone while testifying at trial? Did District Court err in adopting the magistrate's report that no evidentiary hearing was required nor any relief warranted because there is no indication in the record that the trial judge observed witness using the cell phone even though two (2) sworn affidavits were submitted by trial audience members from that day stating that they clearly saw the witness using a cell phone the entire time while testifying?

2. Prosecutors presented a purple cloth to corroborate their main witness' testimony that Petitioner used the purple cloth to wipe away evidence of the crime. DNA results proved that Petitioner's DNA was not on the purple cloth but the state's main witness' DNA was present on the purple cloth. Fibers from the purple cloth were found on the metal money box that was robbed of the victim.

Did the Fifth Circuit err in denying a COA concerning prosecutors misrepresenting evidence? Did District Court err in adopting that since Petitioner's legal counsel did not object to the purple cloth being admitted into evidence that this precludes Petitioner from having the issue reviewed that Prosecutors created a false impression of the evidence?

3. Petitioner has presented that there is insufficient evidence to support the guilty verdict. Petitioner has presented specific elements of the crime that trial evidence did not and could not prove.

Did the Fifth Circuit err in denying a COA concerning there being insufficient evidence to support each element of the crime? Did District Court err in deferring to state court findings that Petitioner did not bring the insuffiency of evidence issue up in state proceedings? Did District Court err in not recognizing that Petitioner did attack the insufficiency of the evidence of the elements of the crime in his pro se supplemental brief in direct appeal notwithstanding that he accidentally mislabeled the heading of the issue as "weight of the evidence" instead of "issufficiency of the evidence."?

Questions Presented

4. Prosecutors displayed a photo of the deceased victim during closing arguments.

Did the Fifth Circuit err in denying a COA concerning prosecutors displaying a picture of deceased victim during closing arguments? Did District Court err in adopting that the display of this photograph during closing arguments while prosecutors referred to Petitioner as a "cold-blooded killer" did not greatly affect Petitioner's substantial rights?

5.(a) Petitioner has presented that his trial counsel was ineffective for failing to call any number of witnesses who had already given statements to law enforcement that a 3rd party had committed the crime.

Did the 5th Circuit err in denying a COA concerning counsel being ineffective for not calling any one of many potential witnesses who had already implicated a 3rd party for the crime? Did District Court err in deferring to the state court findings that Petitioner was not prejudiced by his trial counsel's failure to call any witnesses who would have directly implicated a 3rd party as the person who committed the crime including one witness that admitted to driving the 3rd party to the crime scene to commit the crime?

5.(b) Petitioner has presented that prosecutors submitted a purple cloth into evidence that their main witness testified that Petitioner used to wipe away evidence of the crime. Fibers from this purple cloth were found attached to the metal money box that was robbed of the victim. Later, a DNA expert testified that Petitioner's DNA was not present on the cloth but the prosecutors' main witness' DNA was present on the purple cloth. The DNA resuts prove that the main witness was lying about Petitioner and that the main witness was actually the individual who possessed and wiped off the stolen money box as revealed by the fact that the cloth's fibers were found attached to the money box.

Did the Fifth Circuit err in denying a COA concerning counsel being ineffective for failing to adequately use this valuable impeachment and exculpable evidence?
Did District Court err in deferring to the state court findings that Petitioner was not prejudiced by his trial counsel's failure to adequately use this impeachment and exculpable evidence?

5.(c) Petitioner has presented that there is a copy of a FBI lab report that shows that fibers from a pair of jeans, located several miles away from the crime scene, that prosecutors speculated that Petitioner accidentally knocked out of a truck while in a hurry to get away after the crime were found all throughout the original suspect's car. This is valuable exculpable evidence as it proves that the jeans were loose in a 3rd party's car prior to ending up on the side of the road. Therefore, this 3rd party could have accidentally knocked the jeans out of his car in a haste to get away. Petitioner's counsel did not speak of these findings nor admitted it into evidence.

Did the Fifth Circuit err in denying a COA concerning counsel being ineffective for failing to adequately use this valuable exculpable evidence?

Did the District Court err in deferring to the state court finding that Petitioner was not prejudiced by his trial counsel's failure to adequately use this exculpable evidence?

5.(d) Petitioner has presented that his trial counsel did not object to prosecutors displaying a photo of the deceased victim during closing arguments.

Did the Fifth Circuit err in denying a COA concerning counsel being ineffective for failing to lodge an objection to the display of the victim's photo during closing arguments?

Did the District Court err in deferring to the state court finding that Petitioner was not prejudiced by his trial counsel's failure to lodge an objection to the victim's photo being displayed during closing arguments?

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:

TABLE OF AUTHORITIES CITED

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INDEX TO APPENDICES

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

[X] 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,
[X] 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,
[X] 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

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______________________ court 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 1, 2022.

[X] 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. ___A______.

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. ___A______.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST., AMEND. VI

U.S. CONST., AMEND. XIV

28 U.S.C. § 2254 (a), (b), (c), (d), (e), (f), (g), (h), (i)

STATEMENT OF THE CASE

Petitioner was convicted of the robbery and killing of John Deere. Mr. Deere was the owner of a local gas station. According to Lavatrus Harris, the prosecutors' main witness, Petitioner forced Harris to drive him to the gas station to rob Mr. Deere. At Petitioner's trial the jury found him guilty of armed robbery and manslaughter and he was sentenced to 50 years in prison. His conviction was confirmed on direct appeal. Lyons v. State, 237 So. 3d 763 (2017). State post-conviction proceedings were filed; relief was denied in the motion court and on appeal. Petitioner then filed a habeas corpus action under 28 U.S.C. § 2254. Relief was denied by the district court. Both the district court and the Fifth Circuit denied a certificate of appealability.

At Petitioner's trial, Lavatrus Harris testified as the prosecutors' main witness. Harris claimed that she was awakened in the pre-dawn hours of the morning and forced to drive Petitioner in a stolen car to a service station. Harris testified that once Petitioner had gotten out of the car she had fallen asleep. She was awakened by the sound of what she perceived to be gunshots and saw Petitioner running back to the car with a metal box and a gun.

Harris then testified that she drove the stolen car to a spot and parked it. They then got into a semi-truck with no trailer attached. Harris said Petitioner wiped off the interior of the car before leaving. Allegedly, Petitioner drove truck down the highway and got out and disposed of the metal money box. In a statement to police Harris wrote a statement that Petitioner used the same purple cloth to wipe off the metal box while not wearing any gloves. Harris claimed that she had not participated in the crime in any other way than she was forced to drive the stolen car and she had not seen any killing or robbery.

No murder weapon was found. The state presented a pair of jeans found on the side of the interstate approximately 7 miles away from the gas station. The jeans were testified by a DNA expert to contain Petitioner's DNA. Prosecutors also presented the purple cloth that Harris claimed Petitioner used to wipe off the interior of the stolen car and the metal money box. The DNA expert testified that the purple cloth did not contain Petitioner's DNA. However, the purple cloth did contain Harris' DNA. Also, police had found the abandoned stolen money box. The money box had fibers from the purple cloth attached all over it.

Prior to Petitioner being charged with the crime another individual, Kenneth Baggett was originally charged. On the same morning of Mr. Deere's murder Baggett was on a crime spree with another individual, Mr. Brister. Baggett pled guilty to breaking into several schools in the wee hours of the same morning of Mr. Deere's murder. He had told a few of his friends including the mother of his daughter that he had robbed and killed Mr. Deere.

These people voluntarily gave statements to the police of what Baggett had told them. Later, another individual, Will Hutson, told police that he had driven Baggett to the store after the two of them had done drugs and watched Baggett rob and kill Mr. Deere. Mr. Hutson said that he saw Mr. Baggett wrap something around the money box

STATEMENT OF THE CASE (continued)

before he got back into Hutson's truck with it. Hutson then dropped Baggett back off at home.

At trial it was revealed that the charges against Baggett were eventuall dropped because of two events that had transpired in the county at that particular time. The first event is that the county sheriff was accused of misapropriating funds.

The second event is that investigators had used "heavy-handed tactics" to get the individuals who implicated Baggett to put their voluntary statements into writing. Later, the individuals were reinterviewed and revealed that the investigators had used threatening language to get them to put their statements into writing but nonetheless their statements were truthful.

The state appellate court denied relief concerning a key state's witness using a cell phone while on the stand. The direct appeal court stated that this claim is not supported by the record and Petitioner did not lodge an objection to this occurrence. The state supreme court stated that this issue lacked an arguable basis.

In so holding the state court ignored the fact presented by Petitioner that the witness in question was in a wheelchair and had to be seated in front of the bench at a particular angle that prevented Petitioner from being able to see in front of the witness. Thus, Petitioner knew nothing of the witness using the cell phone until after the trial was over and a family member brought it up over a phone call that Petitioner made from his cell block.

The district court adopted the state court's reasoning and the Fifth Circuit denied COA for further review.

The state appellate court denied relief concerning prosecutors creating a false impression of the evidence. This was done by using star witness Harris' testimony about the purple cloth even while knowing the DNA results from the testing of the cloth. The state court reasoned that since trial counsel did not object to the purple cloth being admitted into evidence that this issue is not preserved for review. In so holding the state court has not recognized that the raising of this particular issue was not based on any complaint that the purple cloth was admitted. Rather, it was deceptively used by prosecutors in conjunction with Harris' contradicting testimony to convey a false impression that the cloth corrobates Harris' testimony.

The district court adopted the state court's reasoning and the Fifth Circuit denied COA for further review.

The state appellate court denied relief [redacted] concerning there being insufficient evidence to support the guilty verdict for each element of the crime. The state court did not address Petitioner's insufficient evidence claim in his prose supplemental brief in direct appeal. In this supplemental brief Petitioner did mislabel the heading as weight of the evidence. Petitioner's Indigent Appeals counsel had already done a weight of evidence claim in the original brief. Petitioner had no need to do another of the same thing. The state court ignored Petitioner's claim completely and did not address the merits contained in the supplemental brief. App.

Petitioner presented the issue with specific elements of the crime that were clearly unproven at trial.

The district court sided with the state court's reasoning and the Fifth Circuit denied COA for further review.

The state appellate court denied relief concerning prosecutors displaying a photo of the deceased victim during closing arguments. The state court reasoned that the record does not indicate that the judge abused his discretion by allowing the photo to remain, nor does record indicate prosecutors intended to inflame the jury through using photo. In so holding the state court failed to recognize that any and all evidentiary purposes for all photographs used were fulfilled during the trial-in-chief portion of the trial. There was no evidentiary purpose for the photograph to be on display during closing arguments.

The district court sided with the state court's reasoning and the Fifth Circuit denied COA for further review.

The state appellate court denied relief concerning Petitioner's counsel being ineffective. The state court decided that this claim does not meet the prongs of Strickland v. Washington, 466 U.S. 668, 687-88 (1984).

In so holding the state court decided that it was not deficient performance for counsel to A.) not call witnesses who had already given statements to police that a 3rd party had committed the crime, B.) at the very least explain to the jury the significance of Harris' and not Petitioner's DNA being present on the only physical evidence (purple cloth) that ties to the scene of the robbery by way of fibers from cloth stuck to the money box, C.) not admitting into evidence nor showing jury a FBI report that shows that fibers from the cloth and jeans were found all throughout the original suspect's car, D.) and/or not objecting to a photograph of deceased victim being displayed during closing arguments which served absolutely no evidentiary purpose.

The district court sided with the state court's reasoning and the Fifth Circuit denied COA for further review.

REASONS FOR GRANTING WRIT

1. THE FIFTH CIRCUIT DENIED COA AND THUS SIDED WITH DISTRICT COURT'S DECISION WHICH CONFLICTS WITH RELEVANT DECISIONS OF THIS SUPREME COURT. THERE EXISTS A VERY UNUSUAL CIRCUMSTANCE OF A PROSECUTOR'S WITNESS USING A CELL PHONE WHILE TESTIFYING. THE FIFTH CIRCUIT BY WAY OF THE DISTRICT COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION CONCERNING THIS BUT THIS MATTER OF UNUSUAL CIRCUMSTANCE WARRANTS THIS COURT'S ATTENTION.

The Fifth Circuit has adopted that the record does not indicate that the trial court observed the witness using cell phone. Two(2) sworn affidavits were submitted by trial audience members saying they clearly saw this occurrence. The fact of these affidavits being presented negates the [redacted] position that this issue is merely "speculative and conclusory..." as adopted from the district court.

The Fifth Circuit also adopted from the district court that Petitioner did not lodge an objection to this occurrence. As presented several times this witness was in a wheelchair and was seated at an angle that prevented Petitioner from seeing in front of witness.

The cell phone usage flagrantly violates Petitioner's right to a public trial that is guaranteed by the federal 6th Amendment. This witness' communications were "private" while testifying in a "public" trial. No one knew what the communication entailed except the witness (Sonya Ewell).

This very Court has ruled in Waller v. Georgia, 467 U.S. 39 (1984) that the public trial guarantee is of the utmost importance to our judicial system. The Fifth Circuit and district Court have either ignored or forgotten this. Neither court even thought of the public trial guarantee as being important enough to at least order an evidentiary hearing to review in-court cameras that would have corroborated the two(2) affidavits.

The Fifth Circuit adopted the district court's reasoning that the trial record does not indicate that the cell phone was being used to communicate with or ask advice from a yet to be called witness located outside the court. Petitioner does not know for certain whether this witness was communicating with a yet to be called witness nor whether this witness was communicating with someone hired by overzealous prosecutors to instruct witness of what to say.

But in so holding the district court was searching for Petitioner to provide specific reasons why this witness using cell phone was prejudicial. In so holding both federal courts have have went against this Court's ruling in Waller which states: "... the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee." This Court has ruled and categorized violations of the public trial guarantee to be structural error. SEE WALLER

This presents that the Fifth Circuit went against another of this Court's decisions: ... structural defects ... requires automatic reversal of the conviction ..." Brecht v. Abrahamson, 507 U.S. 619 (1993) quoting in part Arizona v. Fulminante, 499 U.S. 279, 307, 111 S.Ct. 1246, 1263, 113 L.Ed. 2d 302 (1991).

Petitioner has attempted to find case law involving a key witness using a cell phone while testifying and has not been able to find a single one. Thus, Petitioner concludes that this is an unusual circumstance that warrants review by this Court and the granting of this certiorari.

Additionally, for this violation to go uncorrected and this conviction to stand in light of this issue will undoubtedly open doors for overzealous prosecutors across the nation to instruct their key witnesses to use their cell phones while testifying to receive real time texts from someone on what to say in order to gain an unfair conviction.

This will also give green light to trial judges to not have to pay attention and be on the lookout for occurrences in their trial courts that may severely violate rights. In Petitioner's trial the judge should have made himself aware of the witness using the cell phone. Even though this witness had to be seated in front of the judges bench because of the wheelchair it was still the judges duty to ensure that all federal rights were honored. This Court's decision on this matter affects the thousands and thousands of criminal trials that take place every year. Thus, certiorari should be granted to correct this error.

2. THE FIFTH CIRCUIT DENIED COA AND THUS SIDED WITH DISTRICT COURT'S DECISION WHICH CONFLICTS WITH RELEVANT DECISIONS OF THIS SUPREME COURT.

The Fifth Circuit has adopted that which the state court has reasoned that Petitioner is procedurally barred from raising this issue because he did not lodge an objection to the purple cloth being admitted at trial. This particular issue does not bring into question the admission of the purple cloth. Rather, it illuminates the deception of prosecutors who used Harris' false testimony, that they knew was false, to gain a conviction.

Prosecutors knew of the purple cloth's DNA results prior to trial. They knew their star witness' DNA was on cloth and not Petitioner's DNA. Yet, they still used Harris' false testimony that Petitioner used the cloth to wipe away evidence of the crime. They made no attempt to correct Harris' testimony while it was being delivered. They even emphasized the cloth being used by Petitioner in their closing argument. This was spoken of to falsely corroborate Harris' false testimony.

Therefore, the Fifth Circuit's adoption of this issue pertaining to the admission of the purple cloth is grossly erroneous. This issue pertains to prosecutorial misconduct in the way of the known false testimony being used in relation to the purple cloth and the DNA results of the purple cloth. NOT the admission of the cloth.

"This very Court has held"... the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence." Miller v. Pate, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed. 2d 690 (1967).

In MILLER prosecutors produced a pair of men's boxer shorts that were stained with paint. Prosecutors knew that it was paint on the shorts but misrepresented it as blood to corroborate their theory. In Petitioner's case prosecutors produced a purple cloth that was "stained" with their star witness' DNA and misrepresented this fact to give the false impression that this corroborated the witness' testimony and thus corroborate the prosecutors' theory.

In MILLER the petitioner was not barred from raising this issue because he failed to object to the shorts being admitted. As in this Petitioner's case, the issue was not about the admission of the shorts but it was a matter of prosecutorial misconduct.

Not only did the Fifth Circuit go against this Court's decision in MILLER but it also went against its own decision in an earlier case: "A due process claim that a state knowingly used perjured testimony at trial or allowed untrue testimony to go uncorrected presents a mixed question of law and fact, and thus we will review the underlying facts for clear error and the conclusions from the facts de novo." Fairman v. Anderson, 188 F. 3d 635 at 640 (5th Cir. 1999).

The Fifth Circuit has decided on this issue in a manner that conflicts with relevant decisions of this Court. E.G. MILLER v. PATE, et al. Thus, certiorari should be granted to correct this error.

Additionally, the state court decided wrongly that this issue is procedurally barred, Fifth Circuit agreed, and did not consider this legal issue and adjudicate on the merits. Therefore, this Court has authority to review this issue de novo and adjudicate on the merits. SEE Wiggins v. Smith, 539 U.S. 510, 531 (2003).

Also, for this injustice to stand can and will give green light to overzealous prosecutors across the nation to underhandedly and purposely mislead juries by misrepresenting evidence by using false testimony which will ultimately lead to thousands of innocent people being convicted falsely.

3. THE FIFTH CIRCUIT DENIED COA AND THUS SIDED WITH DISTRICT COURTS DECISION WHICH CONFLICTS WITH RELEVANT DECISIONS OF THIS SUPREME COURT AS WELL AS THE FIFTH CIRCUITS OWN DECISION

The Fifth Circuit has adopted the district courts decision that Petitioner is procedurally barred from raising this issue because he did not raise this issue in state court proceedings. This assumption by the lower federal courts is simply untrue. As Petitioner has presented to both lower federal courts, his pro se supplemental direct appeal state court brief was accidentally labeled "weight of evidence" instead of "sufficiency of evidence." Petitioner is a mere layman in legal procedures and made a simple mistake. Petitioner's Indigent Appeals state counsel had already did a weight of evidence issue in the original brief.

In taking a look at Petitioner's prose state court supplemental brief it is clear that he is arguing insufficiency of evidence. Notwithstanding the heading, the merits of the issue challenges the sufficiency of the evidence. E.G., Petitioner stated "It is unimaginable how Lyons' (Petitioner's) conviction could have been beyond a reasonable doubt..." App. D p. 81A

Petitioner also stated "So even if you take Harris' testimony as absolute truth, there is absolutely no evidence that Lyons is the one who robbed the victim." App. D p. 81A. "The very essential element that Lyons is the individual who robbed the victim was not proven at all, let alone proven beyond a reasonable doubt." App. D p. 82A.

These are examples from the supplemental brief that show and prove the argument is about insufficiency of evidence. In cases involving insufficient evidence this Honorable Court has ruled on the necessary criteria clearly in Jackson v. Virginia, 443 U.S. 307, "... the relevant question is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307 (1979) at 319. Here, the above-mentioned examples from the supplemental brief are surely arguing the criteria that this court has set in JACKSON in regards to the essential elements being proven beyond a reasonable doubt.

In addition to the 5th Circuit deciding this issue in a way that conflicts with this Court in JACKSON, all prior appellate courts chose not to address this legal issue. Being convicted beyond a reasonable doubt is the cornerstone of this nation's criminal legal system. To not consider this issue would be a manifest miscarriage of justice. Again, the state court nor the lower federal courts adjudicated on the merits of this issue. Therefore, this Court has authority to review this issue de novo and adjudicate on the merits. SEE Wiggins v. Smith, 539 U.S. 510, 531 (2003).

Also, the 5th Circuit has adopted a decision that is in conflict with one of the Fifth Circuit's own decisions. "... pro se petitions must be construed liberally..." Koch v. Puckett, 907 F. 2d 524, 530 (5th Cir. 1990).

This ground is a textbook reason why the Fifth Circuit made that decision in KOCH. As a prose litigant Petitioner made a simple mistake in the heading as the argument in the merits clearly involve insufficiency of evidence. Had Fifth Circuit construed Petitioner's pro se supplemental brief liberally as they had already decided should be the case then they would have quickly realized what the merits were really attacking. In this prose brief Petitioner cited "The due process clause of the Fourteenth Amendment requires that every fact necessary to constitute the crime which is charged must be proven beyond a reasonable doubt in order to convict." Cage v. Louisiana, 498 U.S. 39 (1990). App. D p. 81A. Here again is another example on what the Petitioner was addressing in this issue as insufficiency of evidence.

This issue Petitioner truly believes is not an ordinary occurrence in criminal appeals. The merits argued is clearly distinguishable from the heading itself. Because of this fact this issue should be settled by this Court. Thousands of people are in the legal system each year who cannot afford counsel and must do their appeal pro se. What this Court decides on this matter will affect all of these pro se petitioners. This Court may review "exceptional cases." SEE Heckler v. Campbell, 461 U.S. 458 (1983).

For all of the forgoing reasons this certiorari should be granted.

4. THE FIFTH CIRCUIT DENIED COA AND THUS SIDED WITH DISTRICT COURT'S DECISION. A GREAT NUMBER OF CITIZENS ARE UNFAIRLY AFFECTED BY PROSECUTORS' PLOYS TO AFFECT OTHERWISE FAIR AND IMPARTIAL JURIES. THESE PLOYS VEER SIGNIFICANTLY AWAY FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

The Fifth Circuit has adopted via district court that there is no indication in the record that prosecutors intended to inflame the jury when they displayed a picture of the victim during closing arguments.

During the trial-in-chief the victim's identity had been clearly established. Manner of death had been clearly established. This was done thru the use of different photographs while there was a witness on the stand to explain the evidentiary purpose of the displayed photograph.

During closing arguments there was no witness on the stand to explain or identify anything or anyone. Any person of reason will conclude that prosecutors used the photo to inflame the jury since all evidentiary purposes had been established during the general trial and no witness or expert was on the stand in closing arguments. When coupling the unnecessary photograph with the fact that prosecutors referred to Petitioner as a "cold-blooded killer" during closing argument it is clear that the photograph was used as a ploy to taint the jury in a trial that prosecutors could only produce circumstantial evidence and hearsay testimony. This surely robbed Petitioner of his right to a Sixth Amendment fair and impartial jury.

The displaying of a victim's photograph during closing arguments is a far departure from the accepted and usual course of judicial proceeding. Therefore, this writ should be granted.

5. THE FIFTH CIRCUIT'S MISAPPLICATION OF TWO PRONGS STANDARD OF STRICKLAND WARRANTS THIS COURT'S ATTENTION

(a.) The district court's opinion, which was accepted by the Fifth Circuit, misapplied the Strickland v. Washington, 466 U.S. 668, 687-88 (1984) two prong test in important ways. First, the Court flagrantly misstated the record. It stated that former district attorney, Dee Bates, had given testimony that had presented the existence of these witnesses and the substance of their statements. The existence of these witnesses were spoken of but there was no substance of their statements that was spoken of.

Mr. Bates was clearly against Petitioner as he testified for the State. He only gave vague testimony that a few witnesses made statements. No detail was given. For example, Will Hutson told police that a 3rd party, Kenneth Baggett, had robbed victim. He had said that he saw Baggett with a metal box that he had taken from victim. This is important because he had personal knowledge that the victim had his money in very specific container. This fact was not remotely spoken of by Bates.

Also, Hutson had directly and accurately told and shown police exactly where the victim's body was located after Baggett had shot him. The main witness against Petitioner had no such knowledge even though she claimed to have been present.

Bates' vague testimony either did not mention or severely downplayed these very crucial facts that would have raised significant doubt of Petitioner's guilt to any reasonable juror.

Second, the Court presented McCoy v. Cabana, 794 F.2d 177, 183 (5th Cir. 1986) which say "Complaints of uncalled witnesses are not favored in a federal habeas corpus proceeding because, among other reasons, allegations of what a witness would have testified are largely speculative." The Court's reliance on MCCOY is very bizarre as Petitioner's case is quite opposite. For Petitioner, witnesses had already given statements voluntarily years before Petitioner was indicted. These statements were already in written form and one witness had even made a video statement. Trial counsel knew what the witnesses would have testified because he had full access to what they had already told police. No speculation was required.

This Court requires, in making the prejudice analysis under STRICKLAND, that the reviewing court consider all of the evidence in the record. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Rompilla v. Beard, 545 U.S. 374 (2005). Wiggins v. Smith, 539 U.S. 510 (2003). Williams (Terry) v. Taylor, 529 U.S. 362 (2000). Under this test, it is inappropriate to consider the evidence in the light most favorable to the verdict. It is clear that the lower federal courts here disregarded this principle. As it has in several other cases, the court began its analysis by setting out the version of the facts given by the state court of appeals in its direct appeal opinion. SEE MCCOY, supra. Sayer v.

two-prong analysis. The record clearly reflects that there was no evidentiary witness on the stand to give evidentiary purpose to the photograph of victim on display during closing arguments. The record also clearly reflects that all identification needed for victim and crime scene including manner of death of victim was fully performed during trial-in-chief.

Because the Fifth Circuit Court of Appeals has truncated the scope of Strickland v. Washington, 466 U.S. 668, 687-88 (1984), two-prong review, this Court should grant certiorari.

Also, there is a nationwide problem of prosecutors unfairly and purposely using photographs of deceased victims at times that serve no evidentiary purpose. It is done to play on the jury's passion. There has been no consequence for prosecutors for doing this. Therefore, it constantly continues in numerous cases. If prosecutors did not find this play to be helpful to unfairly gain convictions they would not continue to do this so liberally. This issue warrants this Court's attention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Aaron Lyons

Date: January 17, 2023