

NO. 22-6668

IN THE SUPREME COURT OF THE UNITED STATES

Aaron Lyons, Petitioner

v.

Brian Ladner (Warden),
Derrick Chambers (Superintendent), Respondent

PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT
OF APPEALS

PETITION FOR REHEARING

Aaron Lyons
MDOC# 197782
Central Mississippi Correctional Facility
P.O. Box 88550
Pearl, MS. 39288

Petitioner Pro Se.

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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

COMES NOW Petitioner, Aaron Lyons, Pro Se, and prays this Court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Fifth Circuit Court of Appeals. In support of petition, Mr. Lyons states the following:

STATEMENT OF FACTS

At trial, Aaron Lyons was convicted by a jury of armed robbery and manslaughter and sentenced to thirty years and twenty years to be served consecutively for a total of fifty years.

According to the State's key witness, Lavatrus Harris, Lyons had her to drive him to a local convenience store in the wee hours of the morning in a stolen car. Harris had no idea why Lyons told her to drive him to the store. She pulled up and parked and fell asleep when Lyons exited the car. Harris was awakened by what she thought sounded like gunshots and allegedly saw Lyons run back to the car with a gun and a metal box.

Harris testified that she parked the car and then she and Lyons got into a semi tractor-truck. When exiting the car Lyons wiped off the interior of the car with a purple cloth. He then drove the semi down the road and disposed of the metal box. Allegedly, Lyons used the same purple cloth that he wiped the interior of the car with to then wipe off the metal box that contained the store owner's cash.

Even though Harris testified that Lyons did a significant amount of wiping with the purple cloth while having no gloves on, DNA testing revealed that his DNA was not present on the purple cloth. Harris also testified that she did nothing to aid in the crime. Yet, her DNA was present on the purple cloth that she said was used by Lyons.

Due to Harris' contradicting testimony prosecutors brought in another witness, Sonya Ewell, who testified that Lyons allegedly told her that he had committed the crime and even pointed out the location of the store to her. Because of a medical condition Ewell was in a wheelchair and had to be seated in front of the trial judge's bench while testifying.

Additionally, prosecutors presented a pair of jeans that were found on the side of the interstate that had Lyons' DNA on it. No witness could give a reason why the jeans were on the interstate. No witness including Harris gave any testimony that they saw Lyons with the jeans at all. Harris testified that she did not know where the semi had pulled over at. The State relied heavily on those jeans as the only physical evidence to implicate Lyons. The State greatly emphasized that the jeans placed Lyons at the crime scene even though the jeans were found several miles from the crime scene.

Also, there was another individual charged with the crime originally. That individual is Kenneth Baggett. Baggett had told several witnesses that he had robbed and killed

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the storeowner. These witnesses all gave voluntary statements to police confirming what Baggett had told them. One of the witnesses, Will Hutson, gave an affidavit that he had driven Baggett to the crime scene and watched him commit the robbery and killing. Fibers from the above-mentioned purple cloth and jeans were in Baggett's car.

1. STATES WITNESS CONSTANTLY USED CELL PHONE WHILE TESTIFYING

Sonya Ewell testified at trial that Lyons told her that he had committed the crime. Ewell's testimony was crucial to bolster key witness Harris' testimony which was contradicted by physical DNA evidence. Ewell was using a cell phone while testifying. Lyons could not see this while it was occurring because Ewell was in a wheelchair and seated in her chair in front of the trial bench at an angle that prevented Lyons from seeing her reading and responding to texts while testifying. This fact became known to Lyons after trial was over and he talked on jail phone with a relative that happened to mention it that they had seen it as they were present in the court audience that day. Two relatives present that day gave sworn affidavits to seeing this.

2. PROSECUTORS KNOWINGLY USED PERJURED TESTIMONY AND GAVE FALSE IMPRESSION OF PHYSICAL EVIDENCE.

Lavatus Harris testified that Lyons used a purple cloth that she had never seen before to wipe off the interior of a stolen car and a metal cash box taken from the victim, John Deere. DNA expert, Kathryn Rogers, testified that the purple cloth contained Harris' DNA and not Lyons' DNA. Rogers' testimony came after Harris' testimony. Prosecutors were given a copy of Rogers' DNA findings prior to trial and therefore knew of their witness' DNA being on the cloth. Prosecutors then admitted the cloth into evidence to be seen by jury to corroborate their key witness' known false testimony. This was done during Harris' testimony.

3. TRIAL EVIDENCE WAS GROSSLY INSUFFICIENT TO WARRANT CONVICTION

DNA evidence completely contradicted State's key witness' testimony. Purple cloth testified by Harris to have been used by Lyons to wipe away evidence had Harris' DNA and not Lyons' DNA. This cloth is the only physical evidence that ties directly to the scene of the robbery and killing. This is because fibers from the purple cloth were found attached to the metal cashbox that was robbed of Deere. This shows that the box was wiped by the purple cloth. No gun was found. The only physical evidence that can remotely be linked to Lyons is a pair of jeans found several miles away from crime scene. No witness testified that they had seen Lyons with the jeans. The jeans were in no way used

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in the committing of any crime. Harris is the only witness who claimed at trial to have been present during the crime being committed.

4. FAILING TO INTERVIEW AND CALL WILL HUTSON, Olivia Boyle, Aimee Pearson AS A WITNESS

Will Hutson gave a video-affidavit statement that he had personally driven Kenneth Baggett to the convenience store and watched him rob and kill Deere. His statement was uncontradicted. Fibers from the purple cloth used to wipe off the victim's property were found in Baggett's car.

Olivia Boyle and Aimee Pearson had voluntarily given statements to law enforcement that Baggett had told them that he had robbed and killed Mr. Deere.

4.(b) FAILING TO PROPERLY USE AVAILABLE EXCULPATORY EVIDENCE

DNA evidence revealed that the purple cloth that was testified by Harris to have been used by Lyons to wipe off the victim's cashbox and a stolen car had Harris' DNA present on it but not Lyons' DNA. This uncontradicted evidence could and would have rendered Harris' testimony as false and unreliable.

REASONS MERITING REHEARING

1. The Fifth Circuit's decision is clearly in conflict with *Waller v. Georgia*, 467 U.S. 39 (1984); and *Brecht v. Abrahamson*, 507 U.S. 619 (1993), emphasizing that any occurrence at trial that violates an accused's public-trial guarantee is a structural error and such errors require automatic reversal.

The WALLER Court has deemed the public-trial guarantee to be such an important cornerstone of the United States legal system that any time that this Constitutional guarantee is prevented reversal of conviction is AUTOMATIC. The Fifth Circuit is in such conflict with WALLER that it did not even deem the public-trial guarantee important enough to hold an evidentiary hearing to establish the validity of the sworn affidavits that Ewell was constantly using a cell phone while testifying.

This Court has an ethical duty by the United States Constitution to establish the law of the land and to assure the Citizens of the United States of America that the lower courts apply the law. When they do not, it is this Court's obligation to HOLD THAT COURT ACCOUNTABLE and see to it that justice is administered fairly. This Court must hear this case and hold the Fifth Circuit accountable for failing to properly apply the law of this Court and relief where relief is due.

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2. The Fifth Circuit's decision is clearly in conflict with *Miller v. Pate*, 386 U.S. 1, 87 S. Ct. 785, 17 L. Ed. 2d. 690 (1967). The Court in *MILLER* has established that the knowing use of false evidence to obtain a conviction cannot survive the law of the Fourteenth Amendment.

The *MILLER* Court reviewed a criminal case nearly identical to this one as the State used false witness testimony to describe a small piece of clothing that scientific analysis proved that testimony to be false. Scientific analysis in Lyons' case proves Harris' testimony to be false as she described the purple cloth to have been used by Lyons to wipe away evidence. The undisputed scientific DNA analysis shows that Harris used the cloth to wipe off the cashbox.

Here again, the Fifth Circuit has disregarded the law set forth by this Court. Thus, this Court must hear this case to ensure that the lower federal Courts respect and honor the rulings set forth by the highest Court in the land.

3. The Fifth Circuit's decision is clearly in conflict with *Jackson v. Virginia*, 443 U.S. 307. The *JACKSON* Court established that every essential element of the crime has to be proven beyond a reasonable doubt in order to convict.

Lyons is convicted of armed robbery. A metal cashbox was robbed of the victim. No trial evidence proved that Lyons possessed the cashbox. Harris' testimony claimed that Lyons had the cashbox. Harris' testimony is not sufficient to place possession of the cashbox with Lyons because of DNA results. Fibers from a purple cloth were attached to the cashbox. Harris claimed Lyons had the cashbox and wiped it with purple cloth. DNA testing showed Harris' DNA on the purple cloth and not Lyons' DNA. This shows that Harris possessed and wiped the cashbox and not Lyons.

The Fifth Circuit's decision is clearly in direct conflict with *O'Laughlin v. O'Brien*, 568 F. 3d 287 (2009 1st Cir.), which case is so strikingly similar, both legally and factually, that the same result reached in *O'LAUGHLIN* must be reached in this case. This Court must grant rehearing and issue a Writ of Certiorari because the failure to do so would allow the Fifth Circuit to continue to apply the wrong standard in deciding Insufficient Evidence claims, and deny justice to those it is entitled to.

4. The Fifth Circuit's decision is clearly in conflict with *Strickland v. Washington*, 466 U.S. 668 (1984). The Fifth Circuit ignored the fact that Lyons' trial counsel stated to the trial court that the defense theory was that someone else had committed the crime. Trial transcripts confirm this stated theory.

Taking this fact in context with the fact that trial counsel did not interview or call any of several known witnesses who had already implicated a third party as the guilty party makes incompetence of counsel obvious on a Constitutional Level.

4(b). DNA results from the purple cloth show that State's main witness, Lavatrus Harris, had

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possession of the cloth as well as possession of the cashbox robbed of the victim due to fibers from the same purple cloth being attached to the cashbox. This proves that Harris and not Lyons had possession of the cashbox and wiped it with the purple cloth.

The Fifth Circuit has ignored this uncontradicted DNA evidence in regards to counsel's lack of using this DNA evidence adequately to exonerate Lyons of robbing the victim of this cashbox. Lyons' convictions center around the robbing of victim of his cashbox.

The Fifth Circuit has ignored crucial evidence when making their STRICKLAND two-prong analysis. This Court has a duty to grant this rehearing to hold the Fifth Circuit accountable and to ensure that justice is administered fairly.

SUGGESTIONS IN SUPPORT OF REHEARING

1. The Mississippi District Court's decision that Lyons has no evidentiary support for his argument of a State's witness using her cell phone while testifying resulted in an unreasonable determination of the facts in light of the evidence presented because Lyons presented two affidavits from trial court audience members that verified witness using cell phone while testifying. The two sworn affidavits IS ~~WILL~~ strong evidentiary support. Therefore, it is highly unreasonable to determine that there is no evidentiary support to this argument.

The District Court went on to opine that this ground is merely "speculative" and "conclusory" based on their determination that there is no evidentiary support. This conclusion is highly unreasonable in light of the fact of the evidence (affidavits) presented. The evidence presented is beyond ample enough to at the very least have an evidentiary hearing to review in-court cameras to make a fully informed decision regarding this Fourteenth Amendment and WALLER violation.

2. The Mississippi District Court's decision that Lyons is barred from federal habeas review of this ground because Lyons' counsel did not contemporaneously object to the admission of the fabric resulted in an unreasonable determination of the facts in light of the evidence presented because in this ground Lyons IS NOT arguing the admission of the fabric. Instead, he is plainly arguing that the State made a false impression of the evidence by way of known false testimony of their star witness that related to Lyons' alleged handling of the purple cloth.

Therefore, it is not reasonable for District Court to place a bar on this issue because Lyons did not ~~WILL~~ object to the admission of the cloth when in this particular ground Lyons is not challenging the legality of the cloth being admitted.

This Court's decision in MILLER did not require there to be a lodged objection to the men's shorts being admitted into evidence. The issue was not the evidence's admission but rather the State's deceptive method of creating a false impression of that evidence.

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3. The Mississippi District Court's decision that Lyons is barred from federal habeas review of this ground because he did not raise the argument of sufficiency of evidence in state court proceedings resulted in an unreasonable determination of the facts in light of the evidence presented because Lyons raised several JACKSON issues in his supplemental direct appeal brief. This was raised under "weight of evidence" heading but clearly attacked insufficiency of the evidence and lack of evidence to prove certain elements.

For example, Lyons stated in his supplemental brief "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. With this statement as well as several others in the supplemental brief that clearly address JACKSON sufficiency issues it is unreasonable to determine that Lyons did not raise an issue of insufficient evidence in his state court proceeding in light of the fact that he presented the said statements.

4. The Mississippi District Court's decision that Lyons being denied the ineffective assistance of counsel claim was proper because the Mississippi Supreme Court reasonably applied STRICKLAND resulted in both an unreasonable determination of the facts in light of the evidence presented and an unreasonable application of STRICKLAND V. WASHINGTON, because counsel's failure to even interview Mr. Hutson, Ms. Boyte, Ms. Pearson, et al. was unreasonable and Lyons' evidence that each individual had already given written and oral statements to police implicating a third party as the guilty party met the first prong of STRICKLAND. As in *Anderson v. Johnson*, 338 F.3d 392 (5th Cir. 2003): "There is no evidence that counsel's decision to forego investigation was reasoned at all, and it is, in our opinion, far from reasonable. Counsel's failure to investigate was not 'part of a calculated trial strategy' but is likely the result of either indolence or incompetence." As the court put it in *Bryant v. Scott*, 28 F.3d 1411, 1415 (5th Cir. 1994), "An attorney must engage in a reasonable amount of pretrial investigation and 'at a minimum... interview potential witnesses and... 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 District Court went on to opine that even though Lyons' attorney did not call these witnesses to testify at trial, the existence of these witnesses and the substance of their statements were presented to the jury. Former district attorney Dee Bates did testify to there have had been witnesses who implicated Baggett. Bates was testifying for the State and was clearly downplaying the witnesses' statements. He stated that Hutson, who had admitted to taking Baggett to go commit the crime, only made vague statements of the facts surrounding the crime scene. Bates lied about this in that there is video evidence viewed by Lyons and his attorney that Hutson had pointed where the exact location at the store was that the victim's body was found. Also, Hutson told police that he saw Baggett take a metal box from victim. This is essential because he knew exactly what type of box that the victim kept his money in. This is not a vague statement but a very specific statement. Had counsel called Baggett this very specific evidence that showed Baggett as the guilty party

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would have been presented to jury.

Under the circumstances here, the State had the burden to show a strategy supporting the failure to interview Mr. Hutson. Because it failed to do so, Lyons has clearly met the "performance prong" of the *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) test. The question for this Court to answer is whether Lyons was prejudiced by counsel's ineffectiveness.

Williams (Terry) Taylor, 529 U.S. 362 (2000), emphasizes that in determining STRICKLAND prejudice, the court MUST EXAMINE both the trial testimony and the postconviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probability of a different outcome. Again, I direct this Court's attention to the fact that in a sidebar trial hearing Lyons' counsel stated to the trial court that our defense theory is that someone else had committed the crime. Will Hutson provides the ammunition to prove Lyons' defense theory. Hutson would have given specific occurrences and evidence of Baggett being guilty of the crime which is a great deal stronger evidence and testimony than Bates' downplayed general testimony about individuals had merely implicated Baggett. Had the jury heard the testimony of Hutson, there is a reasonable probability of a different outcome.

4(b). The Mississippi District Court's decision that Lyons' counsel did properly use DNA evidence of purple cloth effectively resulted in an unreasonable determination of the facts in light of the evidence presented because no where in the record does it reflect that counsel used the fact that Harris' DNA was on purple cloth and not Lyons to show that Harris possessed the cashbox and not Lyons. This shows that there is motive for Harris to lie about Lyons' involvement because DNA evidence shows that she possessed the property robbed of the victim and she wiped it off and not Lyons. Counsel merely stating that no DNA evidence connects Lyons to scene of homicide is not adequate use of DNA evidence. The District Court here was overreaching for an excuse to justify counsel's deficiency in using this evidence properly.

Had the jury heard why this DNA evidence was so significant in proving Lyons did not rob victim of his possessions and Harris is directly implicated as the guilty party by this evidence, there is a reasonable probability of a different outcome.

CONCLUSION

For the reasons stated, this Court must grant Rehearing of its judgment entered February 27, 2023, and issue a Writ of Certiorari to hold the Fifth Circuit and Mississippi District Court accountable for failing to properly apply the law of this Court and grant Mr. Lyons relief.

Respectfully Submitted,

(Petitioner) Aaron Lyons - 197182
P.O. Box 88550
Pearl, MS 39288

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, this 21st day of March, 2023 to: Lynn Fitch, Attorney General, P.O. Box 220 Jackson, Mississippi, 39205

NO. 22-6668

IN THE SUPREME COURT OF THE UNITED STATES

AARON LYONS, Petitioner

v.

BRIAN LADNER (warden),
DERRICK CHAMBERS (superintendent), Respondent

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, Aaron Lyons, and makes certification that his petition for rehearing is presented to this Court in good faith pursuant to Rule 44. Petitioner further states the following:

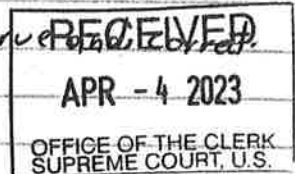
1. This Court entered its judgment denying petitioner a Writ of Certiorari on February 27, 2023. Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay. Furthermore, petitioner believes that based upon the law of this Court and facts of this case, Petitioner is entitled to relief which has been unjustly denied him.

He further believes that if the Fifth Circuit Court of Appeals and Mississippi District Courts are continually allowed to apply the STRICKLAND standard improperly and totally ignore blatant criminal trial constitutional violations such as a key state's witness privately using a cell phone while testifying, a number of people will be denied their constitutional right to due process and a "public" trial.

And further still, petitioner believes that if the above-mentioned lower federal courts are allowed to ignore the merits and not even consider the merits presented in a pro se litigant's appeal simply because the title heading of a particular ground is mislabeled, a number of pro se litigants will be denied various constitutional rights including due process.

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

Executed on this 20th day of March, 2023



Aaron Lyons
(Aaron Lyons)