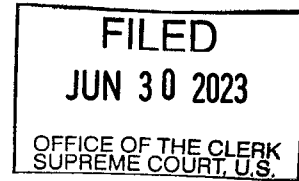


23-5043

ORIGINAL

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

COBY QUINTON CEASER — PETITIONER

VS.

TIM HOOPER, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

COBY QUINTON CEASER
613641, CAMP D FALCON—2
LOUISIANA STATE PENITENTIARY
ANGOLA LOUISIANA 70712

QUESTIONS PRESENTED

1. Can the *Jackson* standard be satisfied when relevant, material, and appreciable evidence is impermissibly kept from the jury?
2. Was Ceaser's trial rendered fundamentally unfair as a result of the prosecution's egregious and insistent misconduct.
3. Was Ceaser deprived of his right to testify in his own defense?
4. Was Ceaser denied the benefit of counsel at a critical stage?
5. Was Ceaser denied his right to present a complete defense?
6. Did Ceaser's appellate counsel render ineffective assistance on appeal?

LIST OF PARTIES

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

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Ceaser respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Fifth Circuit denying a Certificate of Appealability (COA) on his constitutional claims.

OPINIONS BELOW

The order of the Court of Appeals, No. 22-30778, denying a COA appears at Appendix A to the petition and has not been designated for publication. Appearing at Appendix B to the petition is the unpublished order denying Ceaser's motion for reconsideration.

The district court's orders (Appendices C and D) and the magistrate's report and recommendations (Appendix E) are published at *Ceaser v. Hooper*, 2022 WL 17254429 (Slip Copy) (November 28, 2022); and, 2022 WL 17259135 (November 1, 2022) (Slip Copy).

JURISDICTION

The Court of Appeals entered final judgment against Ceaser on May 10, 2023. As such, the Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule 13.1 of the Rules of the Supreme Court of the United States. *See Hohn v. United States*, 524 U.S. 236,253 (1998) (holding denial of COA reviewable).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

No person shall be held to answer for a capital, or otherwise infamous crime ... nor be deprived of life, liberty, or property without due process of law[.]

The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, ... to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I § 1 of the Louisiana Constitution:

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Article I § 2 of the Louisiana Constitution:

No person shall be deprived of life, liberty, or property, except by due process of law.

Article I § 3 of the Louisiana Constitution:

No person shall be denied the equal protection of the laws.

Article I § 13 of the Louisiana Constitution:

When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of ... his right to remain

silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. ... At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment

Article I § 16 of the Louisiana Constitution:

Every person charged with a crime is presumed innocent until proven guilty and is entitled to ... [an] impartial trial[.] No person shall be compelled to give evidence against himself. An accused is entitled to ... compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

La. C. E. art. 404(A)(2)(a)(b)

A. Character evidence generally. Evidence of a person's character or a trait of his character, such as a moral quality, is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(2) Character of victim. (a) Except as provided in Article 412, evidence of a pertinent trait of character, such as a moral quality, of the victim of the crime offered by an accused, or by the prosecution to rebut the character evidence; provided that in the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of his dangerous character is not admissible; provided further that when the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship such as, but not limited to ... parent-child ... it shall not be necessary to first show a hostile demonstration or overt act on the part of the victim in order to introduce evidence of the dangerous character of the victim, including specific of conduct and domestic violence[.]

(b) Evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor[.]

La. C. Cr. P. art. 516

When a defendant has pleaded at the arraignment without counsel, counsel subsequently appointed or procured before trial shall be given a reasonable time within which to withdraw any motion, plea, or waiver made by the defendant, and to enter any other motion or plea.

La. C. Cr. P. art. 766

The opening statement of the state shall explain the nature of the charge, and set forth, in general terms, the nature of the evidence by which the state expects to prove the charge.

La. C. Cr. P. art. 774

The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or the defendant may draw therefrom, and to the law applicable to the case. The argument shall not appeal to prejudice. The state's rebuttal shall be confined to answering the argument of the defendant

La. C. Cr. P. art. 930.3(1)

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

(1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana[.]

La. R.S. 14:20(A)(1).

A. A homicide is justifiable:

(1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

(C) A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.

(D) No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force has a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm[.]

STATEMENT OF THE CASE

A. *Introduction.*

Ceaser was charged, tried, and convicted of second degree murder for the shooting death of his step father—Patrick Myles Sr. (“Myles”). He was sentenced to life imprisonment without the benefits of probation, parole, or suspension of sentence. The direct appeal of his conviction and sentence was unsuccessful. *State v. Ceaser*, 2014-141 (La. App. 3 Cir. 10/1/14); 149 So.3d 301; *writ denied*, 2014-2228 (La. 8/28/15); 175 So.3d 961.

Ceaser filed a timely application for post-conviction relief (“APCR”) in the trial court. Initially, the trial court denied his APCR without directing the State to respond. Ceaser filed a timely writ application to the appellate court who, in turn, granted in part and denied in part. *State v. Ceaser*, 2016-824 (La. App. 3 Cir. 7/12/17); 224 So.3d 1226. Ceaser exhausted the denied claims to the Louisiana Supreme Court and requested a stay of proceedings pending the resolution of the remanded claims.

After the appellate court’s remand, the State responded to Ceaser’s APCR claims one, four, and five. On October 19, 2017, the trial court ignored the appellate court’s instruction on remand, denied relief and said Ceaser failed to raise a claim for which relief can be granted.

Ceaser, again, filed a timely writ application to the appellate court. On June 22, 2018, the appellate court erroneously construed the trial court’s ruling as a merits review and denied Ceaser’s writ application. Ceaser again filed a timely writ application to the Louisiana Supreme Court. On November 14, 2018, the Louisiana Supreme Court issued

two rulings: in *State v. Ceaser*, 2017-1314 (La. 11/14/18); 256 So.3d 289, the court denied relief; however, in *State v. Ceaser*, 18-1162 (La. 11/14/18); 256 So.3d 979, the Louisiana Supreme Court granted Ceaser's writ in part and remanded the case to the trial court with instructions to conduct an evidentiary hearing to determine if Ceaser's appellate counsel rendered ineffective assistance when he failed to argue the deprivation of his right to present a defense and his right to a fair trial after the trial court refused to allow trial counsel to introduce evidence of the victim's dangerous character.

The trial court conducted the evidentiary hearing and granted post-conviction relief; however, the relief the trial court provided—an out-of-time appeal—was not the appropriate remedy. The State filed a writ application to the appellate court and claimed the trial court abused its discretion when it granted post-conviction relief. On June 3, 2021, the appellate court agreed with the State and Ceaser's appointed counsel filed a timely writ application to the Louisiana Supreme Court. On October 19, 2021, the Louisiana Supreme Court denied Ceaser's writ application. *State v. Ceaser*, 2021-00970 (La. 10/19/21); 326 So.3d 260.

Ceaser then filed a timely petition for a writ of habeas corpus. On November 28, 2022, the Western District Court, Lake Charles Division, dismissed the petition with prejudice. On December 12, 2022, the district court also denied Ceaser's request for a Certificate of Appealability. On May 10, 2023, the Fifth Circuit Court of Appeals denied Ceaser's request for a COA and, in turn, Ceaser filed a motion and brief in support for a panel rehearing. The pleading was converted into a motion for reconsideration and, on June 8, 2023, the Fifth Circuit Court of Appeals denied the motion.

B. Facts of the Incident.

According to Patrick Myles, Jr.'s ("PJ") trial testimony, Ceaser was not the aggressor of the event that ended with Myles being shot to death. PJ said Ceaser and Myles were fighting because Ceaser refused to get off the phone so Myles could call his estranged wife—Linda Myles. R. pp. 460-61. PJ said he told his dad Ceaser refused to get off the phone and Myles went into the room where Ceaser was and demanded him to hang it up. PJ said Myles did not ask politely and he started an argument that escalated into a physical altercation. PJ said Myles was the aggressor because his dad hit Ceaser first. R. pp. 464-65. He also said Ceaser and Myles did not get along well together and they always fought. PJ explained the fight was physical and punches were thrown with clenched fists. R. p. 471.

Contrary to the prosecution's insinuation that PJ did not see the shooting, Detective Franklin Fondel testified that PJ told him he witnessed the shooting. Forensic Interviewer, Erica Simon, also testified that she interviewed PJ and he told her he saw Myles and Ceaser fighting. PJ told Simon he left home to get his aunt (Jones) and when he returned they were still fighting. He saw both of them hit each other. According to Simon's testimony, PJ saw Myles and Ceaser hit each other after he returned and that is when Ceaser grabbed the gun and shot Myles. R. pp. 422,433. Simon said PJ told her Myles and Ceaser had fought before and Myles had slapped Ceaser. R. p. 434.

Ceaser's mother, Talisha Myles reported the shooting; however, she testified that she did not witness it. Detective Fondel's testimony confirmed that Talisha said she did not see the shooting. R. pp. 180-81. Talisha said she sent for Myles's sister, Nina Jones,

because he was very upset and Jones had a way of calming him down. R. p. 271. Talisha said Ceaser had moved out of her home to live with his grandmother because "he was tired of all of the arguments and the unnecessary whippings" he and his siblings received. According to Talisha, some of the whippings were over the top because they were extremely violent and left marks. She said on one occasion, Myles hit Ceaser "in the face with a belt buckle." R. pp. 286,287.

Ceaser, unable to defend against Myles's attack, was afraid he would be seriously injured, and possibly killed, retrieved a weapon and pulled the trigger twice. In shock, and afraid, Ceaser fled the scene. This petition for a writ of certiorari timely follows.

REASONS FOR GRANTING THE WRIT

Under Rule 10, the Louisiana courts and the United States Fifth Circuit Court of Appeals denied relief and contrarily decided important questions of federal law that has been settled by this Court and has decided important federal questions in ways that conflicts with relevant decisions of this Court as set forth below:

The right to present a complete defense and the *Jackson* standard meet again in this case. Here, the jury's decision to reject Ceaser's self-defense claim was not rational because evidence of the victim's dangerous character was impermissibly kept from the jury. The Court should decide if a defendant being tried for the death of a loved one receives a fair trial, and if the *Jackson* test is truly employed, if the defendant is prevented from presenting relevant and appreciable evidence of the victim's dangerous character when the defendant has established an overt act and prove a reasonable apprehension of danger.

1. **This Court should decide if the *Jackson* standard is satisfied, or misapplied, when relevant and appreciable evidence is impermissibly kept from the jury—especially when the evidence is integral to deciding a defendant’s level of culpability.**

A. *The Magistrate, in deciding Louisiana did not misapply the Jackson standard, said the jury’s decision to reject Ceaser’s self-defense claim was not irrational. The magistrate did not consider or mention the state supreme court’s remand, or the trial court’s grant of post-conviction relief, after Ceaser undermined confidence in the jury’s verdict by showing his trial was adversely affected when relevant and material evidence of the victim’s dangerous character, and the history of physical abuse and assaultive behavior between him and his stepfather, was kept from the jury.*

Relying on the Fifth Circuit Court of Appeals, the Magistrate said “a federal habeas court’s sufficiency of the evidence analysis is restricted to a ‘review of the record evidence adduced at trial.’” Appendix C, p. 15 (quoting *Young v. Guste*, 849 F.2d 970,972 (1988)). The Magistrate then turned to this Court’s jurisprudence and pointed out the two layers of judicial deference applicable to *Jackson* claims in habeas proceedings that must be met before a jury’s verdict may be set aside: if no rational trier of fact could agree with the jury; and if the state court decision to uphold the jury’s verdict was objectively unreasonable. Cf. Appendix C, p. 15; *Coleman v. Johnson*, 132 S.Ct. 2060 (2012).

The major part of this analysis is considering the jury’s responsibility to decide what conclusions should be drawn from the evidence admitted at trial. This is where the problem lies in this case: (1) the jury did not get to consider evidence in support of Ceaser’s justifiable homicide defense; and (2) the state appellate court said the jury would still have voted to convict even if the excluded evidence had been admitted. Even with a twice-deferential standard, the state supreme court’s November 14, 2018 remand,

speaking to the excluded evidence; and the trial court's March 29, 2021, grant of post-conviction relief, undermines the Magistrate's reliance on the state appellate court's position that the "jury reasonably found the defendant did not shoot the victim in self-defense." Appendix C, p. 18 (quoting *State v. Ceaser*, 149 So.3d at 309-10. The Magistrate criticized Ceaser for not withdrawing from the altercation with his stepfather and, contrary to Ceaser's due process and equal protection rights, overlooked the gist of his claim:

Although the defendant claims self-defense, he admitted the victim was not armed. The victim's body showed no evidence of a physical fight. Nothing in the record suggests the defendant had any reason to expect he was facing a life threatening [sic] situation during the argument with the victim. The evidence does not support a finding that the defendant shot the victim out of fear for his life. Under these circumstances, the defendant could not have reasonably believed his life was in danger. He never made any effort to extricate himself from the argument or the fight. Even if the defendant believed the defendant [sic] might physically injure him, there is no evidence that the amount of force used, which resulted in the victim's death, was necessary to prevent the harm. The state met its burden of showing the defendant did not act in self-defense. The jury reasonably found the defendant did not shoot the victim in self-defense.

Appendix C, p. 18 (*State v. Ceaser*, 149 So.3d at 309-10).

Myles's body would not show evidence of a physical fight if he, after initiating the altercation, was prevailing. Ceaser could not beat Myles and Myles was striking him about the head and face in a tight area. The evidence, the crux of Ceaser's argument, of his justifiable homicide claim was unconstitutionally excluded from his trial. And, under Louisiana law, Ceaser did not have to retreat. La. R.S. 14:20(A)(1)(C). In this sad and tragic situation, there are no winners. Everyone involved loss. Although Ceaser was being disobedient, unruly and onerous towards his stepfather, his attitude of disrespect does not negate the truth of the matter: Myles was dangerous and he attacked Ceaser,

whom he had abused before. The severity of the attack made Ceaser believe the beating could possibly lead to his death, so he shot his stepfather before he could be seriously injured.

After the state supreme court's remand for an evidentiary hearing, the trial court found appellate counsel's performance deficient because he failed to argue Ceaser was deprived of his right to present a defense, and of a fair trial, when the trial court refused to allow trial counsel to introduce evidence of Myles's dangerous character. Again, neither the Magistrate, the district court, or the Fifth Circuit Court of Appeals mentioned these facts. The lower federal courts also failed to mention the state appellate court's reversal of relief provided by the trial court.

Ceaser is not arguing the state courts employed the wrong test to gauge the rationality of the jury's verdict. This claim is about an unreasonable application of the *Jackson* standard because appreciable evidence in support of Ceaser's defense was impermissibly excluded by the trial court; and therefore, not considered by the jury. The jury's decision, that Ceaser was not acting in self-defense, is not trustworthy.

According to the Fifth Amendment, no person shall be "deprived of life, liberty, or property without due process of law." The Fourteenth Amendment imposes that same due process requirement on the states. Implicit in the due process clause is an accused's protection against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In *Re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

In this case, the jury was not presented with all of the evidence because Ceaser was deprived of his right to present a defense. In pertinent part, *La. R.S. 14:20* provides, a homicide is justifiable when it is “committed in self-defense by one who reasonably believes that he is imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.” A defendant in a homicide prosecution does not have any burden of proof on the issue of self-defense; rather, the State bears the burden of proving beyond a reasonable doubt that the homicide was not committed in self-defense. *State v. Patterson*, 295 So.2d 792 (La. 1974); *State v. Mincey*, 08-1315 (La. App. 3 Cir. 06/03/09); 14 So.3d 613. The standard in *La. R.S. 14:20* is whether the defendant’s subjective belief that he was in danger was reasonable. *State v. Brown*, 93-1471 (La. App. 3 Cir. 5/4/94); 640 So.2d 488.

2. This Court should decide if Ceaser’s trial was adversely affected and rendered fundamentally unfair because of prosecutorial misconduct.

A. *The federal Magistrate said the trial court was proper when it decided this claim lacked merit. The Magistrate further relied on the state appellate and supreme court’s decision to ignore the trial court’s error, and refusal to follow the appellate court’s instructions, and said the trial court’s decision was not an unreasonable application of, or contrary to clearly established federal law.*

The state courts resolved this claim contrary to this Court’s jurisprudence and the result was the continued violation of Ceaser’s federal equal protection and due process rights. During Ceaser’s trial, the prosecution mischaracterized and manipulated facts in its opening and closing arguments to paint Ceaser in the worst light possible. The prosecution also failed to correct false testimony and was, impermissibly, allowed to treat his mother as a hostile witness. The State’s ability to use its power to intentionally

circumvent state law and affect the outcome of Ceaser's trial is a federal habeas issue because Ceaser's Fourteenth Amendment rights were intentionally violated. The Fourteenth Amendment provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Since the State cannot make or enforce any laws to violate a citizen's rights, it stands to reason that the State cannot manipulate or pervert any laws to do the same. The district court relied on the State's response to this claim after the state appellate court's remand; however, the court did not mention how the trial court refused to even address the merit of Ceaser's claim as instructed. The district court also applied an inapplicable procedural bar—even after the Magistrate said there were “no grounds for [any] procedural default.” See Doc. 17, p. 9. Any claim not preserved for appellate review can only be raised in a properly filed application for post-conviction relief. The Magistrate said:

Relying on La. C.C.P. [sic] Art. 930.3, the State argued that because the defense attorney failed to object to the alleged violations, the error is waived.

Doc. 17, p. 14.

The idea that *La. C. Cr. P. art. 930.3* bars a claim from review in a properly filed application for post-conviction relief is clearly wrong. The article sets forth the grounds relief may be granted on. The applicable provision here is that Ceaser's “conviction was obtained in violation of the constitution of the United States or the State of Louisiana.” *La. C. Cr. P. art. 930.3(1)*.

I. Forbidden and Inadmissible Character Evidence.

The State went beyond the purpose of an opening argument and introduction of its case and called Myles a “very good man.” Unlike the case the Magistrate cited, trial counsel did not object to the prosecutor’s improper and prejudicial vouching of Myles’s character. Cf. *State v. May*, 94-1205 (La. App. 4 Cir. 4/26/95); 654 So.2d 829,830-32. The Magistrate further claimed Ceaser “failed to demonstrate how this part of the opening statement was an abuse of discretion.” Doc. 17, p. 15. First, the claim was never adjudicated on its merit by the trial court; and secondly, the trial court erroneously ruled Ceaser’s prosecutorial misconduct claim was precluded from review and relief under *La. C. Cr. P. art. 930.3*.

The state appellate court said the trial court erred when it failed to consider Ceaser’s claim and remanded with instructions for a merit consideration. Again, the trial court, with total disregard of the appellate court’s instruction, denied the claim and said Ceaser failed to state a claim relief can be granted on. The appellate court, in error, interpreted the trial court’s denial as a ruling on the merits and also denied relief. The Louisiana Supreme Court chose not to invoke its supervisory jurisdiction. The prosecutor’s statement, that Myles was a very good man, was forbidden character evidence the jury impermissibly heard. Ceaser’s evidence showing his knowledge of Myles’s bad character was improperly excluded.

II. Mischaracterization of Facts and Details.

The district court’s reliance on the State’s response is misplaced. The Magistrate said Ceaser’s trial counsel “clearly corrected the prosecution’s factual misstatements.”

Doc. 17, p. 15. The district court did not point to anything in the record to show where Ceaser's trial counsel, or the trial court, corrected any of the prosecution's factual misstatements. Just because counsel contradicted the State's allegation does not mean the jury believed him—as the verdict clearly shows. The Louisiana jurisprudence the Magistrate cited, and the district court relied on, is not applicable to what happened in this case.

III. Failure to Correct False Testimony.

In recommending relief be denied on this claim, the Magistrate said:

The State pointed out that he could not offer any relevant evidence to counteract the witness' specific testimony that the victim never hit her or her children, nor was there any evidence that the witness was not truthful during her testimony.

Doc. 17, pp. 15-16.

The discussion was never if Myles beat Linda Myles or any children from their marriage. The question was if Myles had a temper or any issues with his anger. Evidence did exist to contradict Linda's claim but because Ceaser was deprived of his constitutional right to present a defense, the evidence was kept out of the record and from the jury.

IV. Presenting Ceaser's Mother as a Hostile Witness.

Ceaser used Louisiana's procedural law, which mirrors federal procedural law, to explain how his due process and equal protection rights were adversely affected when the trial court allowed the prosecution to treat his mother as a hostile witness. The idea was to present Ceaser's mother as a hostile and uncooperative witness who would lie to protect her son. In other words, it was a mischaracterization of the truth of the matter.

Ceaser's mother cooperated with the police and she was instrumental in Ceaser's apprehension. The district court failed to address this specific subclaim.

The district court believes Ceaser's prosecutorial misconduct "claim was properly found to be without merit..." Doc. 17, p. 16. There is no reasoned opinion to uphold this. The trial court was instructed to conduct a merits review of the claim but willfully disobeyed the appellate court's instructions and further maintained the claims were not cognizable on collateral review and that the appellate court was wrong in its assessment. The trial court denied Ceaser's prosecutorial misconduct claim and said it "does not fall under any of the grounds set forth in that article. Therefore, Petitioner has failed to state a claim upon which relief can be granted." Trial Court's 9/21/16, Denial of APCR.

In reversing the trial court's ruling, the appellate court said "the trial court erred in failing to consider [Ceaser's] claims regarding prosecutorial misconduct raised in his application for post-conviction relief." *State v. Ceaser*, 224 So.3d at 1229. Still, the trial court failed to follow the appellate court's direction and denied Ceaser's claim without any consideration. Trial Court's 10/16/16, Denial of APCR. In fact, after the appellate court's remand, the trial court ruled:

Petitioner, COBY QUINTON CEASER, has filed an Application for Post-Conviction Relief in the above entitled matter. Petitioner has alleged five claims that would qualify him for post-conviction. La. C. Cr. P. Art. 930.3 is the applicable law for the evaluation of the grounds for post-conviction relief.

Petitioner has failed to state a claim which relief can be granted for all five claims on his application. Additionally, the attached Motion for Evidentiary Hearing and Motion for Appointment of Counsel are moot and thus denied.

Ceaser again filed a writ application to the appellate court; however, the court interpreted the trial court's denial as a ruling on the merits and denied relief. The state supreme court also denied Ceaser's prosecutorial misconduct claim contrary to clearly established federal law.

This Court has repeatedly underscored the "special role played by the American prosecutor in the search for truth in criminal trials." *Banks v. Dretke*, 540 U.S. 668,696, 124 S.Ct. 1256,1275, 157 L.Ed.2d 1166 (2004). The prosecutor in this case acted as if his interest was to ensure Ceaser be convicted at any cost—even at the expense of justice.

Louisiana Code of Criminal Procedure Article 766 provides that the State's opening statement "shall explain the nature of the charge, and set forth, in general terms, the nature of the evidence by which the state expects to prove the charge." Article 774 of Louisiana's Criminal Code "specifically commands that the argument 'shall not appeal to prejudice.'" *State v. Stovall*, 363 So.2d 658,660 (La.1978).

The Louisiana Supreme Court said a district attorney "should not harbor any personal feelings toward an accused that might, consciously or unconsciously, impair his ability to conduct the accused's trial fairly and impartially," because "[i]n our system of justice, we intrust vast discretion to the prosecutor in deciding which cases to pursue, whether to dismiss the charges, whether to offer a plea bargain, what any plea bargain will entail, and how the trial will be conducted." *State v. King*, 06-2383 (La. 4/27/07); 956 So.2d 562,570; quoting *In re Toups*, 00-0634 (La. 11/28/00); 773 So.2d 709,715.

It is also well established that "a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the

Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue v. People of State of Illinois*, 360 U.S. 264,269, 79 S.Ct. 1173,1177, 3 L.Ed.2d 1217 (1959). The rule forbidding the State’s use of “false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.” *Id.* This is because the “jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life may depend. *Napue v. People of State of Illinois*, *supra*.

It does not matter if “the falsehood bore upon the witness’ credibility rather than directly upon the defendant’s guilt. A lie is a lie, no matter what its subject and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.” *Id.*; quoting *People v. Savvides*, 1 N.Y.2d 554,557, 154 N.Y. S.2d 885,887, 136 N.E.2d 853,854-55. Even if the “district attorney’s silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing as it did, a trial that could in any real sense be termed fair.” *Id.* Ceaser is entitled to a new trial “if the false testimony could, in any reasonable likelihood, have affected the judgment of the jury.” *Giglio v. United States*, 405 U.S. 150,154, 92 S.Ct. 763,766, 31 L.Ed.2d 104 (1972); citing *Napue v. People of State of Illinois*, 360 U.S. at 271, 79 S.Ct. at 1178.

3. This Court should decide if a trial counsel may unilaterally decide a criminal defendant will not testify at trial, especially when trial counsel did not even find out if the defendant wished to testify or not.

A. There appears to be a one-sided debate concerning a trial counsel's strategic decisions and a client's autonomy in the United States that only this Court can settle.

The district court adopted the Magistrate's conclusion that Ceaser agreed with his trial counsel's decision to not testify. According to the district court, Ceaser conceded "that he 'was not asked if he wished to testify in his own defense.'" Doc. 17, p. 18 (citing Doc. 1, att. 2, p. 31). The decision whether to testify or not could only be made by Ceaser and not by his attorney. The prejudice can be seen in counsel's reason for not allowing Ceaser to testify. Counsel should have known the prosecution could not discuss or introduce unfounded, irrelevant, and prejudicial allegations. The Magistrate said the "trial court found counsel's suggestion that [Ceaser] should not testify fell within the scope of trial strategy." Doc. 17, p. 16. This contention is contrary to this Court's clearly established jurisprudence. See *Ferguson v. Georgia*, 365 U.S. 570, 582, 81 S.Ct. 756, 5 L.Ed.2d 783 (1961); *Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987). First, Ceaser's trial counsel did not make a suggestion; and secondly, there is no jurisprudence that places counsel's arbitrary decision within the realm of trial strategy.

The district court claims Ceaser did not contest his trial counsel's decision to waive his right to testify in the state courts, nor on habeas. To the contrary, had Ceaser not raised the issue, this discussion would not be taking place. Also, the Magistrate

would not have said Ceaser “properly sought review on all issues at every level of the state court in his post-conviction proceeding.” Doc. 17, pp.9,18.

The Magistrate claimed the record “confirms” Ceaser chose “to follow his counsel’s advice and not testify on his own behalf.” Doc. 17, p. 18. However, the Magistrate failed to show where in the record this allegation resides. Ceaser’s counsel decided he would not allow him to testify during a sidebar discussion. There was never an on the record discussion with Ceaser to ascertain whether he agreed with his counsel’s decision that he would not testify in his own defense.

On collateral review, the trial court correctly identified *Strickland v. Washington*, 466 U.S. 668,688,694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) as the correct legal principle governing Ceaser’s ineffective assistance of trial counsel claims. Nevertheless, the state district court unreasonably determined that:

... Petitioner’s claims, such as counsel’s suggestion not to testify, easily falls within the scope of trial strategy. The Petitioner cannot show that his counsel’s actions were unreasonable or that he was prejudiced by his counsel’s actions. Furthermore, these claims do not rise to the level such that the Petitioner was deprived of a fair trial. Therefore, Petitioner has failed to meet the burden set out in *Strickland* and to state a claim upon which relief can be granted.

See Trial Court’s 9/21/16, Denial of APCR.

Since the trial court’s decision, this Court has settled the debate surrounding this claim in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018). Under *McCoy*, counsel’s action is considered a violation of a client’s autonomy and not ineffective assistance. Both, however, are structural. *Id.*

The appellate court decided Ceaser’s claim has no merit because he failed “to prove that his attorney prevented him from testifying at trial.” *State v. Ceaser*, 224

So.3d at 1230. The Louisiana Supreme Court declined to exercise its supervisory jurisdiction concerning this claim. *State v. Ceaser*, 256 So.3d 289.

In holding that the Sixth Amendment grants the accused, not counsel, the right to make his defense, this Court recognized that a criminal defendant does not have to surrender complete control to his or her counsel because some decisions “are reserved for the client—notably, whether to plead guilty, waive the right to a jury trial, testify in one’s own behalf, and forgo an appeal.” *McCoy v. Louisiana*, 138 at 1508. As far back as 1961, this Court has made clear that “there is no rational justification for prohibiting the sworn testimony of the accused, who above all others may be in a position to meet the prosecution’s case.” *Ferguson v. Georgia*, 365 U.S. 570,582, 81 S.Ct. 756. This Court has been unequivocal in holding that a defendant’s right to testify is guaranteed by: (1) the Fifth Amendment’s privilege against self-incrimination; the Sixth Amendment’s Compulsory Process Clause; and the Fourteenth Amendment’s Due Process Clause. *See Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987).

The Fifth Amendment to the United States Constitution encompasses the right to remain silent as well as the right to not do so. “Every criminal defendant is privileged to testify in his own defense, or to refuse to do so.” *Harris v. New York*, 401 U.S. 222,225, 91 S.Ct. 643 (1971) (citations omitted). “A defendant’s opportunity to conduct his own defense by calling witnesses is incomplete if he may not present himself as a witness. The opportunity to testify is also a necessary corollary to the Fifth Amendment’s guarantee against compelled testimony.

Furthermore, the denial of an accused's right to testify is not amenable to harmless-error analysis. The right "is either respected or denied; its deprivation cannot be harmless." *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944 (1984).

Ceaser presented to the lower courts that his trial counsel prevented him from testifying after being threatened by the State to introduce investigative reports concerning an allegation of sexual abuse he was never charged with, or convicted of. The prosecutor told counsel the State could "bring out that [Ceaser] was charged with sexually abusing the people in the house." He went on to say the State could "bring all of that out, that he was investigated for having anal sex with his brother. We have those reports too. We can open up the whole can of worms." Ceaser's trial counsel responded, "Not if my client doesn't testify." R. pp. 208-09. A review of the trial record reveals Ceaser did not waive his right to testify. The record also reveals Ceaser was not asked if he wished to testify in his own defense.

4. The Court should decide if arraignment is a critical stage requiring the presence of counsel, especially when subsequent counsel desires to change the formal plea and is not allowed to.

The state district court dismissed Ceaser's claim as invalid and said:

Petitioner argues that he was denied his Sixth Amendment right to counsel at his arraignment, which is a "critical stage" in a criminal proceeding. However, Petitioner is incorrect. The minutes reflect that on November 22, 2010, the Petitioner waived his right to have counsel present for arraignment purposes only. Therefore, Petitioner has failed to state a claim upon which relief can be granted.

The appellate court agreed with the trial court and, contrary to clearly established federal law, said "arraignment was not a critical stage requiring the presence of counsel." *State v. Ceaser*, 224 So.3d at 1232. The federal district court said Ceaser failed

to bring forth anything “to challenge the state district court’s denial or substantiate his claim that when he waived the presence of an attorney at his arraignment the waiver was not knowing and voluntary.” Doc. 17, p. 20. To the contrary, Ceaser presented a copy of court minutes, and unsuccessfully requested a copy of the transcript, that establishes his claim. Not only did the trial court insist Ceaser waive his counsel’s presence for arraignment purposes, that court refused to allow Ceaser’s counsel to change the defense to justifiable homicide. The trial court’s decision had an adverse affect on Ceaser’s right to present a defense:

When a defendant has pleaded at the arraignment without counsel, counsel subsequently appointed or procured before trial shall be given a reasonable time within which to withdraw any motion, plea, or waiver made by the defendant, and to enter any other motion or plea.

La. C. Cr. P. art. 516.

On October 25, 2010, Ceaser appeared in open court for arraignment. According to the court minutes, Ceaser appeared without counsel and the court questioned him. The minutes also reflect Ceaser requested counsel for arraignment. The minutes show a colloquy of the proceeding exists. Ceaser, to no avail, requested a copy of the colloquy so he could supplement his claim under the doctrine of particularized need. In fact, the appellate court took judicial notice of Ceaser’s request but concluded it was “not necessary to grant Relator’s request for the transcript at this point, as we find that the arraignment was not a critical stage of the proceeding in this case.” *State v. Ceaser*, 224 So.3d at 1232.

On November 22, 2010, the minutes show Ceaser again appeared for arraignment via simultaneous audio-visual transmission without counsel. After being questioned by

the court, Ceaser waived his attorney's presence for the purpose of arraignment; however, Ceaser did not waive his right to counsel at this critical stage of the proceedings against him voluntarily, knowingly, or intelligently. On that same day, ADA David Kimball filed a successful motion to set Ceaser's case for trial. This all happened during a critical stage while Ceaser was alone and without the benefit of counsel.

The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." *Montejo v. Louisiana*, 556 U.S. 778, 786, 129 S.Ct. 2079, 2085, 173 L.Ed.2d 955 (U.S. La. 2009); (citing *United States v. Wade*, 388 U.S. 218, 227-28, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967); *Powell v. Alabama*, 287 U.S. 45, 57, 53 S.Ct. 55, 77 L.Ed.2d 158 (1932)). Although a Sixth Amendment right may be waived, the "relinquishment of the right [must be] voluntary, knowing, and intelligent." *Montejo v. Louisiana*, 556 U.S., at 786, 129 S.Ct., at 2085; (citing *Patterson v. Illinois*, 487 U.S. 285, 292, n. 4, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988); *Brewer v. Williams*, 430 U.S. 387, 404, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977); *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)).

In *State v. Carter*, the Louisiana Supreme Court acknowledged the right to counsel attaches at critical stages, which includes arraignments. The *Carter* court said the right to counsel exists during "pre-trial confrontations which can be considered critical stages." The Louisiana Supreme Court went on to adopt this Court's definition of a "critical stage" as a "critical pretrial confrontation ... where the results might well settle the accused's fate and reduce the trial to a mere formality." *State v. Carter*, 94-2859 (La. 11/27/95); 664 So.2d 367, 373; (citing *United States v. Wade*, 388 U.S., at

224, 87 S.Ct., at 1931); see also *United States v. Gouveia*, 467 U.S. 180, 189, 104 S.Ct. 2292, 2298, 81 L.Ed.2d 146 (1984) (A “critical stage” is a pretrial proceeding where “the accused [is] confronted, just as at trial, by the procedural system, or by his expert adversary, or by both.”) (quoting *United States v. Ash*, 413 U.S. 300, 310, 93 S.Ct. 2568, 2574, 37 L.Ed.2d 619 (1973)). Accordingly, an “arraignment is a critical stage in a criminal proceeding.” See *State ex rel. Johnson v. Henderson*, 239 So.2d 347, 348, 256 La. 825 (La. 1970); see also *Hamilton v. Alabama*, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961); *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963).

5. **This Court should decide if Ceaser was deprived of his constitutional right to present a complete defense when the trial court refused to allow trial counsel to submit material, relevant, and appreciable evidence to show Ceaser’s knowledge of the victim’s dangerous character.**

The federal district court reduced Ceaser’s substantive constitutional claim to a state law claim. The prosecution intentionally ignored and violated Louisiana evidentiary rules and the aggressor doctrine. As a result, Ceaser’s Sixth and Fourteenth Amendment rights to a fair trial, due process, and equal protection were violated. In a clear abuse of discretion, the trial court misapplied Louisiana evidence law and the aggressor doctrine to exclude Ceaser’s appreciable evidence to support his justifiable homicide defense. The trial court’s error rendered Ceaser’s trial fundamentally unfair and was violative of due process. See Doc. 17, p. 20 (citing *Bronstein v. Wainwright*, 646 F.2d 1048 (5th Cir. 1981); *Anderson v. Maggio*, 555 F.2d 447 (5th Cir. 1977).

According to the district court, Ceaser’s federal constitutional right to present a defense has not been violated. In the Report and Recommendation, the Magistrate failed to mention two very important things wrong with the appellate court’s decision denying

Ceaser relief: (1) on November 14, 2018, the Louisiana Supreme Court reversed the appellate court's decision on this claim; and (2) on March 29, 2021, the trial court granted post-conviction relief on this claim. The only problem with the trial court's favorable ruling was the remedy. The trial court should have vacated Ceaser's conviction and sentence and remanded the matter for a new trial; instead, the court granted him an out-of-time appeal. In its initial denial, the trial court claimed the court's decision to allow or deny evidence to be admitted at trial could not be raised in an application for post-conviction relief.

The appellate court remanded the case to the trial court; still, the trial court failed to follow the appellate court's instructions. When Ceaser applied for supervisory writs the second time, the appellate court denied Ceaser's writ application. Ceaser then filed a writ application to the Louisiana Supreme Court who remanded the matter to the district court to:

... conduct an evidentiary hearing to determine whether relator received ineffective assistance of appellate counsel for counsel's failure to argue that relator was denied his fundamental right to present a defense and therefore deprived of a fair trial as a result of the trial court's refusal to allow defense counsel to introduce evidence of the victim's dangerous character.

State v. Ceaser, 256 So.3d 979.

After the evidentiary hearing, the trial court granted Ceaser an out-of-time appeal limited to whether he was denied his constitutional right to present a defense and if his appellate counsel was ineffective on direct appeal. The State sought writs and the appellate court granted and said:

The State seeks review of the trial court's March 29, 2021, ruling that Relator received ineffective assistance of appellate counsel and the reinstatement of

Relator's right to appeal his conviction and sentence. The issue before the trial court was whether appellate counsel was ineffective for not disputing the trial court's exclusion of certain evidence intended to show the character of the victim. In order to prove prejudice of appellate counsel, Relator must "establish that the appellate court would have granted relief had the issue been raised." *State v. Ceaser*, 16-824 (La. App. 3 Cir. 7/12/17); 224 So.3d 1226, writ denied, 17-1314 (La. 11/14/18); 256 So.3d 289. The trial court applied the wrong burden of proof when it found Relator's "appeal probably would have reached a different result." Furthermore, this claim is flawed because the trial court **did not completely bar** the introduction of the evidence regarding the character of the victim Relator contends should have been admitted, it simply denied admission through a specific witness who had no knowledge of the events, Appellate counsel cannot be ineffective for failing to raise a La. Code Evid. art. 404(B) issue when the trial court did not prohibit the introduction of said evidence. Therefore, the ruling of the trial court is vacated.

State v. Ceaser, 21-00265 (La. App. 3 Cir. 6/3/21); - - So.3d - -.

The appellate court's opinion is flawed for several reasons. For instance, the appellate court said "the trial court did not completely bar" evidence of Myles's character but "simply denied admission through a specific witness who had no knowledge of the events." The trial court specifically told Ceaser's trial counsel there was "no witness who is going to be able to testify to that." R. p. 202. The trial court excluded the evidence based on faulty premises. First the trial court refused to admit the evidence because Ceaser's counsel did not have "a victim on the stand." The trial court also said the evidence was inadmissible because the judge thought counsel was trying to impeach the witness. The reason counsel was trying to introduce the evidence, as the trial court acknowledged, was to show Myles's "violent nature." R. p. 202. Better said, counsel wanted to offer the evidence to show Ceaser's "state of mind (his reasonable belief of his own danger)[.]" See *State v. Lee*, 331 So.2d 455,461 (La. 1975).

Under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 16 of the Louisiana Constitution, a criminal defendant is guaranteed a meaningful opportunity to present a complete defense. See *State v. Griffin*, 2015-0125 (La. App. 4 Cir. 9/16/15); 176 So.3d 561,575. The trial court and the State prevented Ceaser from presenting evidence that is both reliable and relevant to his case. *Griffin*, 176 So.3d at 575; citing *State v. Casey*, 99-0023, p. 18 (La. 1/26/00); 775 So.2d 1022,1037.

The context of the event that caused the Louisiana Supreme Court to exercise its supervisory jurisdiction has to be examined. The purpose of the evidentiary hearing was 2-fold: (1) Did Ceaser receive ineffective assistance on appeal when counsel failed to argue he was denied his fundamental right to present a complete defense? (2) Was Ceaser deprived of a fair trial after the trial court refused to allow counsel to introduce evidence of Myles's dangerous character. See *State v. Ceaser*, 256 So.3d 979. During Linda Myles's testimony, counsel asked if she knew Myles had been arrested for battery. The State objected and asked counsel if Myles had "a criminal record." The State then asked to approach the bench. R. pp. 198-99. According to the trial court, since Myles's convictions were not felonies, the evidence was inadmissible. Ceaser's counsel believed the court was barring the evidence because of the witness. The court informed counsel that no witness was going to be able to testify about Myles's dangerous character because he (Myles) could not testify. The court believed Ceaser's counsel was trying to impeach Linda. Although the court acknowledged the evidence may be admissible, it nevertheless failed to allow counsel to present the evidence to support Ceaser's defense.

The trial court committed reversible error when it refused to allow counsel to introduce evidence of Myles's dangerous character and deprived Ceaser of his right to present a complete defense. In considering the exceptions under *La. C.E. art. 404(A)(2)*, the court acknowledged the "history of assaultive behavior between the victim and the accused." R. p. 211. Still, the court argued the Defense would have to prove "the defendant and the accused lived in a familial or intimate relationship," after having stated it was "satisfied that that portion of it ha[d] been satisfied." R. pp. 211-12. The court knew there were specific instances where Myles had assaulted Ceaser but still misconstrued the Article. See R. p. 212.

The court's appreciation of *La. C.E. art. 404(A)(2)* was misplaced. The court had been satisfied that Ceaser and Myles had "lived in a familial or intimate relationship such as, but not limited to, the husband-wife, parent-child, or concubinage relationship." See *La. C.E. art. 404(A)(2)*; R. pp. 211-12. Counsel also explained that "where the victim was abusive either to my client or in the family situation that those would be admissible." R. p. 205. The court dismissed counsel's argument and said the Article does not specify counsel's position. R. p. 206. Counsel went on to tell the court he "would argue that domestic violence, if it is on the mother and it's in front of the children, it's also domestic violence of the children." Counsel also told the court that if it so desired, he could "have an expert come in th[at] afternoon to testify to that." R. pp. 206, 212. Unfortunately, the court responded: "I don't care. Your objection is noted for the record." R. p. 212.

Later on, while discussing the domestic violence exception, the court told

Ceaser's trial counsel the exception was not always there:

That didn't used to be in there ... they put it in there, I think, to cover the battered wife deal where the wife gets beat up over a number of years and finally just snaps and kills the husband. And that was put in there as a defense for her. But it reads a little broader than that, but it is directed about not first showing a hostile demonstration. Okay, if you have that relationship, then you don't have to show a first hostile demonstration to introduce evidence of the character of the victim against the accused because it's his state of mind that we are interested in. It's his state of mind that he says I felt threatened because of his prior acts to me, that I felt like I had to pull a gun and shoot him.

R. p. 218.

Trial counsel responded, "if it's domestic violence, it's domestic violence." R. p.

218. The court conceded the veracity of counsel's argument but was unwilling to relent:

It does say "domestic violence"; but I am limiting that, instances of conduct and domestic violence specifically to him. So, the original objection to the question concerning simple battery is at this point in time going to be sustained. I am going to specifically instruct the jury to disregard that question and to disregard any answer that this witness may have given. And later on if you develop through other testimony, then we will readdress it; but that's the scope of what we are talking about ... Your objection is noted for the record, and the State's objection is noted for the record as well. I understand both of you probably don't agree with me. That's my job to make a decision, and I have done so. Do you have any questions about where you are supposed to go?

R. pp. 220-21.

The court prevented counsel from presenting Ceaser's affirmative defense of justifiable homicide. Counsel also argued, in addition to the familial relationship between Ceaser and Myles, there was also "evidence of a hostile demonstration or an overt act" by Myles. See *La. C.E. art. 404(A)(2)*. Counsel reminded the court that Myles had entered the bedroom where Ceaser was lying in bed while talking on the phone. Even further, according to PJ's out-of-court statements and trial testimony, it

was Myles who initiated the confrontation that resulted in his death. R. pp. 275-76,433-34,460-61,464-65,471. Still, the court sided with the State and said the jury should decide who was the aggressor. See R. pp. 493-94.

Trial counsel argued the evidence showed Myles went into the room where Ceaser was. The State and the court's contention that Ceaser was "engaged in an unlawful activity" is not supported by any evidence. R. pp. 493-94. Ceaser was deprived of his constitutional right to present his defense, his Due Process and Equal Protection rights, and his right to an impartial and fair trial.

6. **This Court should decide if Ceaser's appellate counsel rendered ineffective assistance when he failed to argue Ceaser was deprived of his right to present a complete defense.**

Contrary to the district court's appreciation of this claim, on March 21, 2021, Ceaser was granted post-conviction relief on this issue in the trial court. The Magistrate failed to mention the Louisiana Supreme Court's reversal, or the evidentiary hearing, concerning this claim. The district court adopted the Magistrate's recommendation in its entirety.

On collateral review, the state district court correctly identified *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 as the correct legal principle governing Ceaser's ineffective assistance of appellate counsel claim. Even so, the court denied the claim. The Louisiana Supreme Court later remanded the matter for an evidentiary to determine if: (1) Ceaser's appellate counsel rendered ineffective assistance when he failed to argue the deprivation of Ceaser's right to present a defense; and (2) Ceaser was deprived of a fair trial after the trial court excluded evidence of Myles's dangerous

character. After the evidentiary hearing, the trial court granted post-conviction relief but erroneously ordered an out-of-time appeal limited to whether Ceaser was deprived of his right to present a defense at trial.

In reversing the trial court's ruling, the appellate court said the "trial court applied the wrong burden of proof when it found [Ceaser's] 'appeal probably would have reached a different result.'" *State v. Ceaser*, 21-00265 *supra*. It was the appellate court who applied the wrong standard of review when it said Ceaser had to "establish that the appellate court would have granted relief had the issue been raised." *Id.*, quoting *State v. Ceaser*, 224 So.3d 1226. The correct legal principle, established by this Court, is governed by *Strickland's* 2-part test. See *United States v. Phillips*, 210 F.3d 345,348 (5th Cir. 2000). In other words, Ceaser only had to show there is a reasonable probability the outcome on appeal would have been different and not that the appellate court would have actually granted relief. The federal district court did not address the trial court's grant of post-conviction relief.

A counsel's performance on appeal is judged under *Strickland's* 2-prong test. *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). To be considered effective on appeal, an appellate counsel is not required to raise every non-frivolous issue. *Id.*, at 835. However, just as it means for a trial counsel, an appellate counsel must perform in a reasonably effective manner. *Id.* "The appellate lawyer must master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal." *McCoy v. Court of Appeals of Wisconsin*, Dist. 1, 486 U.S. 429,438, 108 S.Ct. 1895, 100 L.Ed.2d 440 (1988). "In searching for

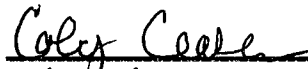
the strongest arguments available, the attorney must be zealous and must resolve all doubts and ambiguous legal questions in favor of his or her client." *McCoy v. Court of Appeals of Wisconsin*, at 444.

Ceaser is not suggesting the issue raised by his appellate counsel was not important; however, had he raised and litigated the claims that were preserved for review on direct appeal, there is a reasonable possibility they would have been more successful than a single insufficient evidence claim. Considering Ceaser was denied his right to testify and his right to present a defense, a claim challenging the sufficiency of the evidence would have been more effective in strengthening those claims. Alone, appellate counsel's claim was not enough.

CONCLUSION

For the foregoing reasons Ceaser's petition for a writ of certiorari should be granted.

Respectfully submitted,


Coby Quinton Ceaser

Date: June 30, 2023