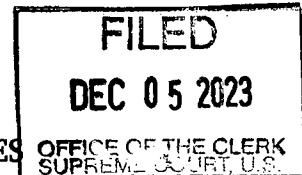


No. **23-6260** ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES

CHARLES E. LINDER JR. - PETITIONER

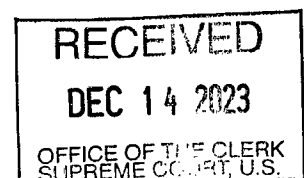
-VS-

KENNETH BLACK - WARDEN - RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

CHARLES E. LINDER, JR., A703210
RICHLAND CORRECTIONAL INSTITUTION
1001 OLIVESBURG ROAD/ PO BOX 8107
MANSFIELD, OHIO 44901



QUESTIONS PRESENTED

1. Trial counsel was ineffective in violation of his Sixth Amendment right under the US Constitution due to his failure to: (1) object to Detective Reese's testimony about his belief that Linder was not under the influence of PCP at the time of the interview and testimony that he had the ability to tell if someone is lying.
2. There was insufficient evidence that Linder used a firearm during the alleged crimes since no firearm was recovered, not all witnesses reported seeing a firearm, and no testing was conducted on the bullet casing.

LIST OF PARTIES

KENNETH BLACK- WARDEN- RESPONDENT

WILLIAM H. LAMB, OHIO ASSISTANT ATTORNEY GENERAL- ATTORNEY FOR
RESPONDENT.

RELATED CASES

- *Linder v. Sheldon*, No. 1:20-cv-1667, U.S. District Court for the Northern District of Ohio, Eastern Division. Judgment Entered May 19, 2023.
- *Linder v. Black*, No. 23-3502, U.S. Court of Appeals for the Sixth Circuit. Judgment Entered November 3, 2023.

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STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at Linder v. Black, 2023 U.S. App. LEXIS 29501; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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

☒ reported at Linder v. Sheldon, 2023 U.S. Dist. LEXIS 88499; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

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

[] 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 3, 2023.

☒ 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).

OPINIONS BELOW

Linder v. Sheldon, 2023 U.S. Dist. LEXIS 88499, 2023 WL 3558005 (N.D. Ohio, May 19, 2023).

Linder v. Black, 2023 U.S. App. LEXIS 29501 (6th Cir. Nov. 3, 2023)

JURISDICTION

The Sixth Circuit Court of Appeals decision was filed November 3, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process rights under the Fourteenth Amendment to the US Constitution

Sixth Amendment right under the US Constitution

STATEMENT OF THE CASE

In Cuyahoga County, Ohio, a jury found Linder guilty of attempted murder (count one), two counts of felonious assault (counts two and three), kidnapping (count four), having weapons while under a disability (count five), and firearm specifications for counts one through four. The trial court sentenced him to an effective prison term of 13 years. The Ohio Court of Appeals affirmed the trial court's judgment, *State v. Linder*, 2018-Ohio-3951, 2018 WL 4705597 (Ohio Ct. App. Sept. 27, 2018), and the Ohio Supreme Court declined to review the case, *State v. Linder*, 156 Ohio St. 3d 1464, 2019- Ohio 2892, 126 N.E.3d 1168 (Ohio 2019) (table).

On July 28, 2020, Charles E. Linder Jr., ("Petitioner") filed his petition for a writ of habeas corpus under 29 U.S.C. 2254. Case docketed 1:20-cv-1667. In his petition, Petitioner argued that (1) his trial counsel rendered ineffective assistance by failing to object to a detective's testimony and move to bifurcate count five from the remaining counts, (2) the trial court erred by denying his motion to suppress his statements to a detective, (3) there was insufficient evidence to support his convictions aside from count four, and (4) the trial court erred by failing to merge counts one and four for sentencing purposes because they are allied offenses of similar import. On May 19, 2023, the district court denied the petition on the merits and declined to issue a certificate of appealability. Petitioner Linder filed a timely notice of appeal where he appealed the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Case docketed 23-3502. Petitioner moved for a certificate of appealability ("COA") and for leave to proceed in forma pauperis.

Petitioner Linder argued that his trial counsel rendered ineffective assistance by failing to object to detective Aaron Reese's testimony that (1) he had the ability to tell if someone is lying, and (2) he did not believe that Linder was under the influence of PCP during their interview. The Sixth Circuit denied a COA stating:

"Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected these claims.

Linder has not shown prejudice resulting from counsel's failure to object to Reese's testimony that he had received training in interviewing and interrogation and that he believed himself to be good at identifying deceptive behavior; that testimony was insignificant compared to the evidence of Linder's guilt, which included testimony from the victim and another witness that Linder attacked the victim and testimony

from Linder's former girlfriend that he admitted guilt. See Linder, 2018 Ohio 3951, 2018 WL 4705597, at *2-3.

Linder has not shown that counsel performed deficiently by failing to object to Reese's testimony that he did not believe Linder was under the influence of PCP during their interview because the state court concluded that Reese's testimony was proper rebuttal, and we are bound by that decision. See *Bradshaw v. Richey*, 546 U.S. 74, 76, 126 S. Ct. 602, 163 L. Ed. 2d 407 (2005) (per curiam); Linder, 2018 Ohio 3951, 2018 WL 4705597, at *7. Moreover, Linder has not shown prejudice resulting from counsel's failure to object, given the considerable evidence of his guilt.

Linder also argued that there was insufficient evidence to support his convictions other than count four. He contends that there was insufficient evidence to support counts two, three, and five and the firearm specifications because no firearm was recovered, not all witnesses saw a firearm, and no testing was conducted on the bullet casing that was recovered from the crime scene. Linder also contends that there was insufficient evidence to support counts one and two because the prosecution failed to establish the necessary mens rea. The Sixth Circuit rejected this argument stating:

"Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim. A rational trier of fact could conclude that Linder hit the victim with a gun based on the victim's testimony that he did so and that Linder fired a gun based on testimony from Linder's former girlfriend that he admitted doing so. See Linder, 2018 Ohio 3951, 2018 WL 4705597, at *2-3. Thus, there was sufficient evidence that Linder used a firearm during the crimes even though no firearm was recovered, not all witnesses reported seeing a firearm, and no testing was conducted on the bullet casing. A rational trier of fact could also conclude that the prosecution established the necessary mens rea for attempted murder and felonious assault, given the testimony of the victim and other witnesses that Linder engaged in a prolonged, violent attack on the victim. See *State v. Kidder*, 32 Ohio St. 3d 279, 513 N.E.2d 311, 316 (Ohio 1987) (identifying the elements of attempted murder as purposely engaging in conduct that, if successful, would cause another's death); *State v. Bey*, 2019- Ohio

423, 130 N.E.3d 1031, 1040 (Ohio Ct. App. 2019) (stating that felonious assault "includes a mens rea of knowingly"); Linder, 2018 Ohio 3951, 2018 WL 4705597, at *2-3."

REASONS FOR GRANTING THE PETITION

Linder argues that the state prosecution should not be permitted to use a state detective to testify as to the veracity of any of the witnesses, including the defendant. In this case, Detective Reese testified that he could tell that Linder was lying and that he was not on PCP. Linder contends that whether he was under the influence of PCP, that a matter for the trier of fact to decide. In this case, the prosecution claimed that the Detective's testimony was a proper rebuttal.

Linder argues that if the Sixth Circuit Court of Appeals is bound by state law, then the state law must be accurate. In this case, the state law is erroneous. The Sixth Circuit Court of Appeals held:

"Linder has not shown that counsel performed deficiently by failing to object to Reese's testimony that he did not believe Linder was under the influence of PCP during their interview because the state court concluded that Reese's testimony was proper rebuttal, and we are bound by that decision. See *Bradshaw v. Richey*, 546 U.S. 74, 76, 126 S. Ct. 602, 163 L. Ed. 2d 407 (2005) (per curiam); Linder, 2018 Ohio 3951, 2018 WL 4705597, at *7. Moreover, Linder has not shown prejudice resulting from counsel's failure to object, given the considerable evidence of his guilt."

See Linder, 2023 US App. LEXIS 29501, *3-4.

On direct appeal, the Ohio Eighth Appellate District stated:

"It is true that a witness may not express his or her belief or opinion as to the credibility of another witness. *State v. Boston*, 46 Ohio St.3d 108, 128, 545 N.E.2d 1220 (1989). But

Detective Reese did not state his opinion or belief as to the veracity of any witness in this case.”

See *State v. Linder*, 2018-Ohio-3951, P42.

First, Linder argues that during his trial, Detective Aaron Reese’ testimony did bolster the veracity of the victim’s testimony and another witness testimony that Linder attacked the victim and testimony from Linder's former girlfriend that he admitted guilt. Second, Detective Reese’s testimony testified as to Linder’s veracity, by stating that Linder was lying. The Supreme Court of Ohio in *State v. Boston*, 46 Ohio St. 3d 108, held:

“In our system of justice it is the fact finder, not the so-called expert or lay witnesses, who bears the burden of assessing the credibility and veracity of witnesses.”

Id at 129.

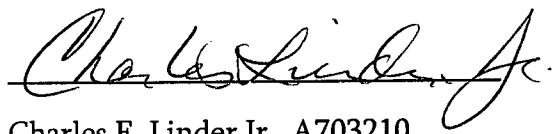
Second, Linder contends that it is well established under Ohio law, that “a police officer may not testify as to a witness's veracity.” *State v. Campbell*, 2014-Ohio-2181, P17, 8th Dist. Cuyahoga citing *State v. Williams*, 8th Dist. Cuyahoga No. 95796, 2011-Ohio-5483, ¶ 56. In *State v. McKee*, 91 Ohio St. 3d 292 (2001), syllabus, the Supreme Court of Ohio held that:

“The experience and knowledge of a drug user lay witness can establish his or her competence to express an opinion on the identity of a controlled substance if a foundation for this testimony is first established.”

However, Linder argues that Detective Reese did not testify that he had experience and knowledge from using drugs to testify on the identity of PCP, especially when a foundation for his testimony was not established.

Next, Linder also argues that there was insufficient evidence to support his convictions other than count four. He contends that there was insufficient evidence to support counts two, three, and five and the firearm specifications because no firearm was recovered, not all witnesses saw a firearm, and no testing was conducted on the bullet casing that was recovered from the crime scene. Linder further claims, in regard to the felonious assault and attempted murder convictions, that the state failed to present sufficient evidence as to his mens rea. According to Linder, all he wanted to do was get his money back from Luckey, who then attacked him. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Linder argues that if ballistic testing would have been conducted on the bullet casing, that a rational trier of fact would not have found him guilty of the offenses because neither his finger prints nor DNA would have been found on the firearm.

CONCLUSION



Charles E. Linder Jr., A703210

11-27-23

Date Petition submitted