INDEX OF EXHIBITS:

EXHIBIT 1, U.S. FIFTH CIRCUIT COURT of APPEALS RULING DATED, OCTOBER 11, 2023

EXHIBIT 2, OFFENDER'S REQUEST FOR LEGAL/INDIGENT MAIL

EXHIBIT 3, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, CORRECTIONS SERVICES, OFFENDER FUNDS WITHDRAWAL REQUEST

EXHIBIT 4, PRO SE PETITION FOR EN BANC REHEARING

EXHIBIT 5, PRO SE MOTION FOR CERTIFICATE OF APPEALABILITY AND MEMORANDUM IN SUPPORT

EXHIBIT 6, U.S. FIFTH CIRCUIT COURT OF APPEALS RULING DATED, SEPTEMBER 15, 2023

EXHIBIT 1

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 11, 2023

#728916
Mr. Daniel Lee Beckley
Louisiana State Penitentiary
General Delivery
Angola, LA 70712-0000

No. 23-30268 Beckley v. Hooper
USDC No. 2:22-CV-860

Dear Mr. Beckley,

We will take no action on your petition for rehearing. The time for filing a petition for rehearing under Fed. R. App. P. 40 has expired.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Monica R. Washington, Deputy Clerk
504-310-7705

cc: Mr. Louis Gerard Authement

EXHIBIT 2

OFFENDER'S REQUEST FOR LEGAL / INDIGENT MAIL

NAME: DANIEL BECKLEY

NUMBER: 728916

LOCATION: C-4

BALANCE IN YOUR DRAWING ACCOUNT: $_____

LIST EACH ITEM TO BE MAILED
GIVE THE NAME AND COMPLETE ADDRESS OF EACH PIECE TO BE MAILED:

U.S. FIFTH Circuit Court of Appeals
name
600 S. MAESTRI PL Suite 115
address
NEW ORLEANS, LA 70130
city, state, zip code

DISTRICT ATTY OFFICE, St Charles Parish
name
P.O. Box 680
address
HAHNVILLE, LA 70057
city, state, zip code

name

address

city, state, zip code

ANY DELIBERATE MISREPRESENTATION WILL RESULT IN YOUR MAIL BEING RETURNED

728916
offender's signature and number

classification officer

10/5/2023
date

EXHIBIT 3

4.86

Ind 4 Mats 10.6.23

USPS TRACKING # & CUSTOMER RECEIPT 9114 9012 3080 3236 4160 27
For Tracking or inquiries go to USPS.com or call 1-800-222-1811.

USPS TRACKING # & CUSTOMER RECEIPT 9114 9012 3080 3236 4160 10
For Tracking or inquiries go to USPS.com or call 1-800-222-1811.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
CORRECTIONS SERVICES
OFFENDER FUNDS WITHDRAWAL REQUEST

CODE	DRAWING ACCOUNT
73	☐ Offender club
74	☐ Outside purchase
	☐ Family member
	☐ Educational courses
	☐ Outside bank savings acct #_____
	☐ Newspaper ad for clemency / pardon.
	☐ Other: _____
	_____
79	☐ Court Cost - Civil action number _____
94	☐ Savings Bond

CODE	SAVINGS ACCOUNT
94	☐ Savings Bond
79	☐ Court Cost - Civil action number _____
82	☐ Educational courses

CODE	TRANSFERS - No check will be produced
68T	☐ Transfer from drawing account to savings.

Note: Print name and address in the payee section to the right. Attach necessary documents including a stamped, self-addressed envelope for all outside mail.

DOC NUMBER	NAME: LAST NAME, FIRST NAME, INITIAL
728916	BECKLEY, DANIEL L

LIVING QUARTERS	DATE OF REQUEST MO.	DAY	YEAR	TOTAL AMOUNT
C-4	10	5	23	$ 25.75

Twenty-five 75 DOLLARS
WRITTEN AMOUNT

PAYEE:

VENDOR NO.	*OFFENDER MUST ATTACH A STAMPED, ADDRESSED ENVELOPE FOR ALL OUTSIDE MAIL*

NAME: GENERAL FUND

ADDRESS: C.S.P.

CITY: APAPA STATE: LA ZIP: 70712-

OFFENDER SIGNATURE: [signature]

REQUEST DENIED. REASON:

RIGHT THUMB PRINT

VERIFIED BY:

TITLE:

APPROVED BY: Tilly Mouton

TITLE: ARP Spec 3

EXHIBIT 4

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30268

DANIEL LEE BECKLEY,

Petitioner-Appellant

versus

TIM HOOPER, *Warden, Louisiana State Penitentiary,*

Respondent-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NO. 22-860

PETITION FOR EN BANC REHEARING FOR APPELLANT DANIEL LEE BECKLEY

DANIEL LEE BECKLEY
Petitioner-Appellant, *Pro Se*

CERTIFICATE OF INTERESTED PARTIES

Petitioner-Appellant certifies that the persons having an interest in the outcome of this case are:

1. Daniel Lee Beckley, Petitioner-Appellant
2. Louis Gerard Authement, District Attorney, St. Charles Parish, State of Louisiana
3. Honorable Lance M. Rick, District Court Judge, United States District Court, Eastern District of Louisiana

This certificate is made so that the judges of this Court may evaluate possible disqualification or recusal.

RULE 35(b)(1) STATEMENT

It is the opinion of the Petitioner-Appellant, *Pro Se*, the questions presented by this petition satisfy the criteria of Federal Rule of Appellate Procedure 35(b)(1). The panel decision in regards to Petitioner-Appellant's claim of insufficient evidence to satisfy the *causation* element of Second Degree Murder conflicts with United States Supreme Court precedent, *Burrage v. United States*, 571 U.S. 204, 134 S.Ct. 881 (2014), ignores the mandates of *Model Penal Code* §2.03(1)(a) and eliminates the due process protections of the *Fourteenth Amendment* of the United States Constitution. The panel decision in regards to Petitioner-Appellant's claim of denial of a meaningful appeal conflicts with United States Supreme Court precedent, *Hardy v. United States*, 375 U.S. 277, 84 S.Ct. 424 (1964) and the conformity of that precedent by this Honorable Court in *U.S. v. Neal*, 27 F. 3d 1035, (5th Cir. 1994), *United States v. Selva*, 559 F. 2d 1303, (5th Cir. 1977), *United States v. Gregory*, 472 F. 2d 484 (5th Cir. 1973), *United States v. Garcia-Bonifascio*, 443 F. 2d 914 (5th Cir. 1971), *United States v. Rosa*, 434 F. 2d 964 (5Th Cir. 1970), *United States v. Atilus*, 425 F. 2d 816 (5th Cir. 1970) *Stephens v. United States*, 289 F. 2d 308 (5th Cir. 1961) and turns a blind eye to the due process requirements placed on the judiciary by the *Fourteenth Amendment* of the United States Constitution. Petitioner-Appellant submits a very genuine apology for disturbing this Honorable Court's day-to-day obligations, but Petitioner-Appellant believes with the utmost of sincerity that the issues presented require the full Circuit's attention.

Consideration by the full Court is therefore necessary to secure and maintain uniformity of the Court's decision. The questions are also of exceptional importance in the *Equal Protection* context as the *Fourteenth Amendment* is at issue.

The panel decision creates an avenue for the possibility of the *Fourteenth Amendment's* protections and guarantees to be undermined and allow for convictions to be levied against accused persons with no allegation or proof of any wrongful act on their part that committed the alleged crime while simultaneously creating a world where a convicted person's direct appellate review is nothing more than a meaningless charade.

That is because the Panel held, in an unpublished decision, that the prosecution does **not** have to prove any action or omission on the part an accused to convict them of a crime. The Panel has also held that direct appeals are conducted legitimately when a convicted persons appellate counsel, who was **not** trial counsel, is given an incomplete record on appeal.

These decisions are inconsistent with Supreme Court and Fifth Circuit Precedent and for these reasons, Petitioner-Appellant urges this Honorable Court to rehear the case *en banc*.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases: Pages

State Cases:

Statutes:

ISSUES MERITING *EN BANC* CONSIDERATION

1. Can a conviction for murder stand when there is no evidence of a criminal act that caused or contributed to the death of the deceased.
2. Is the prosecution's burden to prove the elements of the crime charged a mythical entity.
3. Can a State Court ignore the causation requirement in criminal charges that was created under *Burrage*.
4. Are the State Courts in violation of due process when, while on direct review, they do not provide a complete record of the trial court proceedings to appellate counsel who did not serve as trial counsel.
5. Do State Courts have the authority to ignore federal law and United States Supreme Court precedent.
6. Do the equal protection guarantees of the *Fourteenth Amendment* truly exist for minorities and poor people or are those guarantees just an empty promise.

COURSE OF PROCEEDINGS AND DISPOSITION

On March 30, 2022, Daniel Lee Beckley, Petitioner-Appellant, submitted a petition for Federal Habeas Relief pursuant to *28 U.S.C. § 2254*. An order was issued by the federal magistrate judge dated June 30, 2022 ordering the State to respond to the federal habeas petition. The State submitted an initial response. Petitioner-Appellant submitted an answer to this initial response dated August 25, 2022. An order was issued by the federal magistrate dated October 3, 2022, ordering the State to submit a supplemental response. A supplemental answer was filed by the State on October 22, 2022. Petitioner-Appellant submitted a response to the supplemental answer dated October 29, 2022. A report and recommendation was submitted by the magistrate judge dated March 2, 2023. Petitioner-Appellant submitted objections to the report and recommendations on March 22, 2023. The district court submitted a ruling on the habeas petition dated March 23, 2023. Petitioner-Appellant submitted a *Notice of Appeal* to this Honorable Court dated April 21, 2023. Petitioner-Appellant submitted a *Motion for Certificate of Appealability and a Brief in Support* dated June 1, 2023. This Honorable Court issued a denial of the *C.O.A.* request dated September 15, 2023. Petitioner-Appellant now submits this request for an *En Banc* rehearing.

I. District Court ruling

The federal district court denied the petition for federal habeas relief overruling the objections made by Petitioner-Appellant and adopting the report and

recommendations submitted by the federal magistrate judge.

II. **Panel decision**

In an unpublished decision the panel denied the request for a Certificate for Appealability, stating Petitioner-Appellant failed to satisfy the standards set forth in *Slack v. McDaniel*. 529 U.S. 473, 484 (2000).

STATEMENT OF FACTS

On October 13, 2017, Daniel Lee Beckley, was convicted in the 29th Judicial District Court, Parish of St. Charles, State of Louisiana, of Obstruction of Justice, count 1, and Second Degree Murder, count 2. On December 12, 2017 the presiding judge issued consecutive sentences of 30 years and life without parole, probation or suspension of sentence. On January 4, 2018, defense counsel submitted a *Motion for Appeal and Designation of Record*. (Exhibit 1) This motion was granted on March 1, 2018. Defense counsel requested in the motion that all information, including transcripts, from court cases 16-0263 and 16-0468 be included in the appellate record. On July 10, 2018, an appellate record was submitted to the state appellate court. (Exhibit 2) On September 6, 2018, appellate counsel for Petitioner-Appellant submitted her appellate brief. (Exhibit 3) Petitioner-Appellant received the appellate record on September 18, 2018. After investigation of the record, Petitioner-Appellant discovered that the appellate record did **not** contain any information from court cases 16-0263 and 16-0468. Petitioner-Appellant submitted a letter dated September 20, 2018 to the

appellate court alerting them of the missing information and the error in the appellate record. (Exhibit 4) Accompanying this letter was a *Pro Se* motion to designate the record specifically asking the appellate court to order the district court to submit an appellate record with the information and transcripts from court cases 16-0263 and 16-0468. (Exhibit 4) The motion was granted by the appellate court on October 11, 2018. (Exhibit 4) A supplemental record was submitted by the district court dated October 30, 2018. (Exhibit 5) This supplemental record did **not** contain any transcripts from court cases 16-0263 and 16-0468. Petitioner-Appellant submitted a *Writ of Mandamus* to the appellate court asking them to order the district court to comply with both the district court order from March 1, 2018 and the appellate court order from October 11, 2018 and submit an appellate record with the transcripts from court cases 16-0263 and 16-0468. (Exhibit 6) The appellate court denied the writ under a stated reason that neither defense counsel nor Petitioner-Appellant ever requested these transcripts be put into the appellate record. (Exhibit 7) Petitioner submitted a Pro Se appellate brief with one assignment of error; Denial of meaningful appeal based on an incomplete record. (Exhibit 8) The appellate court denied this claim and affirmed the conviction under the stated reasons that if the record was *"inaccurate"* and the *"appellant failed to act"*, *"there is no basis for the appellate court to determine that the trial court erred." The appellate court stated that "neither the defendant nor the State requested the transcripts"* from cases 16-0263 and 16-0468, The appellate court stated that the record

did *"not indicate that the defendant requested any transcripts at the conclusion of any hearings he claims are missing, or that the transcripts which he claims are missing were ever transcribed for any reason."* The appellate court stated, *"there is nothing to show defense counsel or the state requested that the hearings from court cases 16-0263 and 16-0468 be transcribed and placed and filed into the appellate record."* (Exhibit 9) (Petitioner-Appellant submits Exhibit 10, two letters from defense counsel to the presiding judge dated March 15, 2017 and April 25, 2017)

Petitioner-Appellant submitted a *Writ of Certiorari* to the Louisiana Supreme Court detailing the erroneous judgment of the appellate court. (Exhibit 11) The state supreme court issued a one word denial on December 10, 2019.

ARGUMENT AND AUTHORITIES

This Court should grant this petition and rehear the case *en banc*. The issues requiring the full Court's resolution concern the *Fourteenth Amendment's* Equal Protection and Due Process Guarantees. The cause-in-fact standard created in *Burrage v. United States*, 571 U.S. 204, 134 S.Ct. 881 (2014). The burden of proof standard created in *Tot v. United States*, 319 U.S. 463, 63 S.Ct. 1241 (1943). The requirement of due process and equal protection during direct review of a criminal conviction standard created in *Hardy v. United States*, 375 U.S. 277, 84 S.Ct. 424 (1964) and *Griffin v. Illinois*, U.S. at 18, 76 S.Ct. At 590. Review by the full Court is "necessary to secure or maintain uniformity of the Court's decisions." Fed. R. App. P. 35(a)(1). The questions are also of "exceptional importance." Fed. R. App. P. 35(a)(2).

I. The Panel decision has opened the door for convictions to be obtained against accused persons with their being no existence of wrongful acts having been committed by them.

Causation in law has long been considered a hybrid concept consisting of two constituent parts: actual cause and legal cause. H. Hart & A. Honore. Causation in the law 104 (1959). This concept illustrates that a crime requires "conduct" to be the cause of said crime and that a defendant may not be convicted unless his **conduct** is the actual cause and legal cause of the alleged crime. The Model Penal Code state that "conduct is the cause of a result". § 2.03(1)(a). This standard of causation was outlined in *Burrage*.

Murder is the quintessential result crime requiring some action or omission on the

part of the accused to cause or contribute to the death of the alleged victim. Or as simply stated by the Louisiana Supreme Court in *State v. Howard*, 162 La. 719, 111 So. 72 (1927) and *State v Fulco*, 194 La. 545, 194 So. 14 (1940), "Crime cannot exist without combination of criminal act and intent, or intentional doing of wrongful act". That is exactly the opposite of what happened in Petitioner-Appellant's case.

In Petitioner-Appellant's case the pathologist which performed the autopsy testified that no cause of death was determined. The pathologist also testified that no evidence of a means by which death was caused was found. The means is the act. The instant case is different from a "no-body" case where in those type cases the determination of a murder having been committed are formulated through circumstance. In the instant case there was no need because there was an actual body to examine. In ~~from~~ that examination no evidence of a criminal act was found yet Petitioner-Appellant was convicted of murder. A conviction where no evidence was ever presented to show or prove any criminal act on the part of Petitioner-Appellant that caused the death of the deceased. In fact, the prosecution never even alleged any act committed by Petitioner-Appellant that caused or contributed to the death. The Panel decision to deny Petitioner-Appellant relief or a *C.O.A.* is the Panel putting their stamp of approval on this type of conviction. A stamp of approval that can/will be used by future courts to justify convictions of the type of Petitioner-Appellant's.

II. The Panel decision erases the burden to prove the essential elements of a crime carried by criminal prosecutors.

"It is well settled that the Government has the burden of proving each essential element of a crime." *Tot v. United States*, 319 U.S. 463, 63 S.Ct. 1241 (1943)

Causation is an essential element of every crime. Every crime is the **result** of some act or omission committed by someone. A thing "results" when it "arises as an effect, issue, or outcome *from* some action , process or design." The New Shorter Oxford English Dictionary 2570 (1993) quoted in *Burrage v. United States*, 571 U.S. 204, 134 S.Ct. 881 (2014) That is the essence of the *causation* element of every crime. The crime is the result caused by the actions of someone.

In the instant case, the prosecution was **not** held to the standard of proving the *causation* element of the murder charge against Petitioner-Appellant. The prosecution would have to have presented something, anything, to show what Petitioner-Appellant did that caused or contributed to the death of the deceased. That feat was impossible to achieve because as mentioned earlier, their was no evidence that anything was done to the deceased that cause her death. Which brings us full circle to the Panel decision. The Panel decision to deny relief and not grant the *C.O.A* request is the court relieving the prosecution of its burden to prove causation which is an essential element of the crime of murder. This relieving is a direct conflict of Supreme Court precedent. In doing so, the Panel has created an avenue for future prosecutors in future prosecutions to **not** have to fulfill their burden of proof obligations the same way the prosecution in Petitioner-Appellant's case was not required to do.

III. The Panel decision is in direct conflict with United States Supreme Court precedent in both *Hardy v United States* and *Griffin v. Illinois* and their progeny. The decision is also in direct conflict with the precedent established by this Honorable Court.

In Louisiana, as in the federal courts, an appeal from a felony conviction is an absolute right. La. Const. Art. VII, Sec. 10 (1921); La. Const. Art. V, Sec. 5(D)(2) (1974). The Fourteenth Amendment guarantees a criminal appellant pursuing first appeal as of right certain minimum safeguards necessary to make that appeal adequate and effective. *Griffin v. Illinois*, 351 U.S. 12, 20, 76 S.Ct. 585, 591 (1956). In *Griffin* the Supreme Court held that the procedures in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution and that a transcript of the trial court proceedings was a prerequisite to a decision on the merits of an appeal.

In *Hardy v. United States* the Supreme Court made it crystal clear beyond question that a criminal defendant has a right to a complete transcript of the trial court proceedings, particularly where....counsel on appeal was not counsel at the trial.

This Honorable Court has held in a multitude of cases that when a criminal defendant is represented on appeal by counsel other than the attorney at trial, the absence of a substantial and significant portion of the record, even absent any showing of specific prejudice or error, is sufficient to mandate reversal. This precedent was established by this Honorable Court in the following cases:

U.S. v. Neal, 27 F. 3d 1035, (5th Cir. 1994), *United States v. Selva*, 559 F. 2d 1303, (5th Cir. 1977), *United States v. Gregory*, 472 F. 2d 484 (5th Cir. 1973), *United States v. Garcia-Bonifascio*, 443 F. 2d 914 (5th Cir. 1971), *United States v. Rosa*, 434 F. 2d 964 (5Th Cir. 1970), *United States v. Atilus*, 425 F. 2d 816 (5th Cir. 1970) *Stephens v. United States*, 289 F. 2d 308 (5th Cir. 1961)

Petitioner-Appellant presents that during his direct appeal, Petitioner-Appellant was represented by counsel who was not his counsel at trial and that the appellate record given to appellate counsel was missing a substantial amount of significant material.

The appellate record was submitted to the appellate court on July 10, 2018. (See Exhibit 2) Appellate Counsel for Petitioner-Appellant submitted her appellate brief on September 6, 2018. (See Exhibit 3) A supplemental appellate record was submitted to the appellate court on October 30, 2018 (See Exhibit 5) in response to an order issued by the State appellate court dated October 11, 2018. (See Exhibit 4) What is easy to see by the exhibits is that the record in possession of appellate counsel was incomplete. This fact can also be seen in an order issued by the State appellate court on December 3, 2018, where the appellate court acknowledged that the appellate record was incomplete. (See Exhibit 4, Last Page) However, the supplemental record itself was incomplete due to the fact that none of the transcripts from any of the trial court proceedings were included. A total of 14 missing transcripts. Petitioner-Appellant is submitting as exhibits 7 of the omitted transcripts: Exhibit 12 December 13, 2016 Motions Hearing Transcript,

Exhibit 13 January 18, 2017 Trial Court Proceeding Transcript, Exhibit 14 March 8, 2017 Trial Court Proceeding Transcript, Exhibit 15 April 19, 2017 Motions Hearing Transcript, Exhibit 16 August 28, 2017 Trial Court Proceeding Transcript, Exhibit 17 September 6, 2017 Trial Court Proceeding Transcript and Exhibit 18 September 18, 2017 Motions Hearing Transcript. All of this material was not made available to Petitioner-Appellant's appellate counsel during Petitioner-Appellant's direct appeal.

The precedent is clear, when a first appeal is conducted in the manner Petitioner-Appellant's was the convicted person is entitled to a reversal of his conviction. The Panel decision however issued a ruling denying relief and a *C.O.A.* request. That is a violation of the Equal Protection Clause of the United States Constitution. That is also the reason Petitioner-Appellant is submitting this petition for an En Banc rehearing. To give the entire court an opportunity to render a ruling that conforms to the established precedent of the Supreme Court and this Honorable Court.

CONCLUSION

The rules of Federal Appellate procedure dictate that En Banc consideration hinges on only to standards. To ensure uniformity in its rulings with the Supreme Court and the Appellate Court itself and if the issue involved is one of exceptional importance. Petitioner-Appellant has satisfied both requirements and therefore urges this Honorable Court to grant the En Banc rehearing requested by Petitioner-Appellant.

Done and Signed this 5 day of October, 2023.

TIMELINESS OF SUBMISSION

Federal rules of Appellate Procedure state that a petition for En Banc rehearing must be submitted 14 days after the date of the judgment being challenged. Petitioner Appellant received this Honorable Court's ruling on Monday, September 25, 2023. This submission is being delivered to the Classification Department here at the Louisiana State Penitentiary for mailing on Thursday, October 5, 2023, therefore the petition is timely.

Daniel Lee Beckley
D.O.C. No. 728916
Louisiana State Penitentiary
Angola, La 70712

CERTIFICATE OF SERVICE

I Daniel L. Beckley do hereby certify that the foregoing has been mailed to the Office of the District Attorney, Parish of St. Charles, State of Louisiana by U.S. mail.

Done and signed this 5 day October, 2023

Daniel Lee Beckley
D.O.C. No. 728916
Louisiana State Penitentiary
Angola, La 70712

INDEX OF EXHIBITS

Exhibit 1 Motion for Appeal and Designation of Record

Exhibit 2 Original Appellate Record

Exhibit 3 Appellate counsel Appellate Brief

Exhibit 4 Error Letter, *Pro Se* Motion for Designation of Record, Appellate Court Order Dated October 11, 2018, Appellate Court Order Dated December 3, 2018

Exhibit 5 Supplemental Appellate Record

Exhibit 6 *Pro Se* Writ of Mandamus

Exhibit 7 Appellate Court Ruling on Writ of Mandamus

Exhibit 8 *Pro Se* Appellate Brief

Exhibit 9 Appellate Court Ruling on *Pro Se* Appellate Brief

Exhibit 10 Defense Counsel Letters to Trial Judge Dated March 15, 2017 and April 25, 2017

Exhibit 11 Pro Se Writ of Certiorari to the Louisiana Supreme Court

Exhibit 12 December 13, 2016 Motions Hearing Transcript

Exhibit 13 January 18, 2017 Trial Court Proceeding Transcript

Exhibit 14 March 8, 2017 Trial Court Proceeding Transcript

Exhibit 15 April 19, 2017 Motions Hearing Transcript

Exhibit 16 August 28, 2017 Trial Court Proceeding Transcript

Exhibit 17 September 6, 2017 Trial Court Proceeding Transcript

Exhibit 18 September 18, 2017 Motions Hearing Transcript

ATTACHMENTS

United States Fifth Circuit Court of Appeals Ruling on Petitioner-Appellant's Request for a Certificate of Appealablity

United States District Court for the Eastern District of Louisiana Ruling on Petitioner-Appellant's Petition for Federal Habeas Corpus Relief

EXHIBIT 5

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DANIEL L. BECKLEY *Petitioner/Appellant*	)	CASE NO. 23-30268
VS.	)	**MOTION FOR CERTIFICATE OF APPEALABILITY**
TIM HOOPER, WARDEN *Respondent/Appellee*	)	

MOTION FOR CERTIFICATE OF APPEALABILITY

Pursuant to the mandates of 28 U.S.C. § 2253, I Daniel L. Beckley, Petitioner/Appellant, do hereby officially request of this Honorable Court a ***Certificate of Appealability*** (COA) to appeal the denial of his Federal Habeas Petition. Petitioner/Appellant asserts that throughout his criminal prosecution, direct appeal and post-conviction proceedings, his *Fourth*, *Sixth*, *Eighth* and *Fourteenth Amendment* Rights of the United States Constitution were violated and seeks to have these violations corrected.

Petitioner/Appellant attaches with this motion a *Brief in Support* that will clearly and concisely outline said violations of Petitioner/Appellant's constitutional rights.

Therefore, Petitioner/Appellant prays that this Honorable Court review the *Brief in Support* and grant Petitioner/Appellant's Motion for a *Certificate of Appealability.*

Done and signed this 1 day of JUNE, 2023

Daniel L. Beckley
DOC No. 728916
Angola, La 70712

CERTIFICATE OF SERVICE

I, Daniel L. Beckley, do hereby certify that a copy of the foregoing has been mailed to the Office of the District Attorney, St. Charles Parish, State of Louisiana.

Done and signed this 1 day of June, 2023

Daniel L. Beckley

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DANIEL L. BECKLEY *Petitioner/Appellant*	)	CASE NO. 23-30268
VS.	)	**BRIEF IN SUPPORT OF MOTION CERTIFICATE OF APPEALABILITY**
TIM HOOPER, WARDEN *Respondent/Appellee*	)	

STATEMENT OF THE CASE

On May 31, 2022, Petitioner/Appellant filed a petition for Federal Habeas Relief to the United States District Court for the Eastern District of Louisiana under 28 U.S.C. § 2254 challenging his current incarceration. The petition asserted twenty-eight (28) for review. The Federal Magistrate issued an order dated June 30, 2022, ordering the Respondent to submit to the district court a complete record of the "all pleadings, briefs, memoranda, and other documents filed in connection with any application for post-conviction relief or appeal, transcripts of *all* proceedings held in any state court, and all state court dispositions." The Respondent submitted an answer to the district court's order that was dated March 29, 2022. Petitioner/Appellant submitted a response to the answer submitted by the Respondent traversing the answer dated August 25, 2022. Due to the incomplete record submitted by the Respondent and the false assertions made in their answer, the Federal Magistrate issued a second order dated October 13, 2022, ordering the Respondent to comply with the original order and to supplement its answer. The Respondent submitted a supplemental answer

correcting the false assertions made in their original answer and a supplemental record. Petitioner/Appellant submitted a supplemental response traversing the supplemental answer filed by the Respondent. Petitioner/Appellant has not seen the original record or the supplemental record submitted by the Respondent. Petitioner/Appellant made multiple requests and an official motion to the district court to view the record submitted by the Respondent. All requests were denied by the Federal Magistrate therefore, Petitioner/Appellant does **not know** what information was submitted by the Respondent and has been **denied** the opportunity to verify the information.

The Federal Magistrate submitted a Report and Recommendation to the petition filed by Petitioner/Appellant recommending that the petition be denied with prejudice. The date of the report is March 2, 2023.

Petitioner/Appellant timely submitted objections to the Federal Magistrate's report and a motion for the district court to perform a *De Novo* review of the objected portions of the report pursuant to Federal Civil Code 28 U.S.C. § 636(b)(1); Fed. R. Civ. Proc. 72(b). The motion was denied by the district court and Petitioner/Appellant was notified that his objections had been "overruled" by the district court.

On April 21, 2023, Petitioner/Appellant submitted to the United States District Court for the Eastern District of Louisiana a *Notice of Appeal* and a motion to proceed in *Forma Pauperis*. The district court issued an order dated April 25, 2023 granting the motion to proceed in *Forma Pauperis*.

This Honorable Court issued to Petitioner/Appellant a letter informing him that the appeal had been docketed and that Petitioner/Appellant had forty (40) days to submit his

Motion for *Certificate of Appealability* and *Brief in Support*. The letter was dated May 2, 2023. Petitioner/Appellant now submits his *COA* motion and *Brief in Support*.

ISSUES PRESENTED FOR APPELLATE REVIEW

1. The evidence presented was insufficient to prove a murder actually happened, therefore the federal district court was in error when they ruled to deny relief based on this claim.
2. The evidence presented was insufficient to satisfy the *causation* element of second degree murder, therefore the federal district court was in error when they ruled to deny relief based on this claim.
3. Trial counsel provided ineffective assistance by failing to request a *Daubert* hearing to challenge the expert pathologist's declaration of the death of Jorion White being a homicide, therefore the federal district court was in error when they ruled to deny an evidentiary hearing to fully adjudicate this issue.
4. Trial counsel provided ineffective assistance for failing to seek the assistance of an expert in toxicology to aid the defense at trial therefore the federal district court was in error when they ruled to deny an evidentiary hearing to fully adjudicate this issue.
5. Trial counsel provided ineffective assistance by failing to investigate an alibi defense, therefore the federal district court was in error when they ruled to deny an evidentiary hearing to fully adjudicate this issue.
6. Trial counsel provided ineffective assistance by failing to impeach the suppression hearing testimony of Detective Joseph Dewhirst at trial, therefore the federal district court was in error when they ruled to deny an evidentiary hearing to fully adjudicate this issue.

7. The (Louisiana) trial court erred by denying Petitioner/Appellant's motion to suppression items seized from Petitioner/Appellant's vehicle, therefore the federal district court was in error by denying relief based on this issue.

8. The (Louisiana) trial court erred by denying Petitioner/Appellant's motion for Bill of Particulars, therefore the federal district court was in error by denying relief based on this issue.

9. The (Louisiana) trial court erred by overruling Petitioner/Appellant's objection to the death of Jorion White being declared a murder, therefore the federal district court was in error by denying relief based on this issue.

10. Appellate counsel provided ineffective assistance by failing to raise the claim that the (Louisiana) trial court erred by denying Petitioner/Appellant's motion to quash his arrest, therefore the federal district court was in error by denying an evidentiary hearing to fully adjudicate this issue.

11. Appellate counsel provided ineffective assistance by failing to raise the claim that the (Louisiana) trial court erred by denying Petitioner/Appellant's motion to suppress items seized from Petitioner/Appellant's vehicle, therefore the federal district court was in error by denying an evidentiary hearing to fully adjudicate this issue.

12. Appellate counsel provided ineffective assistance by failing to investigate a complete record of he trial court proceedings in preparation of her appellate brief on behalf of Petitioner/Appellant, therefore the federal district court was in error for denying an evidentiary hearing to fully adjudicate this issue.

13. Petitioner/Appellant was denied meaningful appeal due to the incomplete appellate

record submitted by the (Louisiana) trial court, therefore the federal district court was in error by denying relief based on this issue.

STATEMENT OF THE FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW

The United States District Court for the Eastern District of Louisiana **denied** Petitioner/Appellant a *De Novo* review of the objected to portions of the federal magistrate's report. This review is mandated by Federal Civil Code 28 U.S.C. § 636(b)(1); Fed. R. Civ. Proc. 72(B). The district court is in error for denying to Petitioner/Appellant **procedural due process** as it pertains to federal civil rules regarding federal habeas petitions.

In regards to issue number one of this *Brief in Support*, the federal district court has erred in its understanding of the claim raised by Petitioner/Appellant. Petitioner/Appellant has asserted that there is insufficient evidence to prove an actual "killing" has occurred. Petitioner/Appellant is asserting that there is **no** evidence that proves Jorion White's life was **taken** from her.

In regards to issue number two of this *Brief in Support*, the federal district court has decided to ignore the elements of the crime of Second Degree Murder. *Causation* is an **essential element** of Second Degree Murder. Petitioner/Appellant asserts that there is **no** evidence to prove any action or inaction, on the part of Petitioner/Appellant, that caused the death of Jorion White.

In regards to issue number three of this *Brief in Support*, the district court has misinterpreted the actual challenge being made by Petitioner/Appellant. An expert witness **must** provide a basis in scientific methodology when their expert opinion is one that involves

scientific (medical) information. Petitioner/Appellant is challenging the methodology used by the expert pathologist **not** her qualifications.

In regards to issue number four of this *Brief in Support*, the district court failed to consider the entirety of this case from a medical standpoint. With **no** known cause of death ever being determined in this case and the acknowledgment by the coroner that Adderall was found in Jorion White's system as well the toxicology report revealing that grain alcohol was also found in Jorion White's system the assistance of an expert in toxicology, from an investigative standpoint, was key considering that Adderall mixed with alcohol can cause sudden cardiac failure.

In regards to issue number five of this *Brief in Support*, the district court applied the law incorrectly pertaining to the defense that counsel decides to present at trial falling under the under of trial strategy versus defense counsel's **actual preparation** of possible defenses, in this case an alibi defense, to possibly present at trial from an investigative standpoint.

In regards to issue number six of this *Brief in Support*, the district court, in failing to perform a *De Novo* review, did not see that the federal magistrate concluded that defense counsel did indeed provided **deficient** performance, the first prong of *Strickland*, by not impeaching Detective Joseph Dewhirst with the previously withheld police report form the Kenner Police Department and the argument made by Petitioner/Appellant in his objection to satisfy the **prejudice** prong of *Strickland*.

In regards to issues number seven, eight and nine of this *Brief in Support*, the district court did **not** follow proper procedural protocol in their decision to affirm the State's procedural default defense against said claims.

In regards to issues number ten, eleven and twelve of this Brief in Support, the district court simply ignored the fact that appellate counsel did **not** have a complete record of the trial proceedings for which to investigate and utilize to find the claims Petitioner/Appellant asserts she failed to raise. Although these claims are separate they unify completely when looked at in totality where, the lack of the complete record caused a lack of investigation which in turn abridged the possible claims that could have been raised by appellate counsel. In laymen terms, the (Louisiana) trial court, by not submitting a complete record of what happened in this criminal prosecution, kept, impeded, appellate counsel from being an "active advocate" of Petitioner/Appellant's cause to which **all** of the reviewing courts sanctioned by not addressing the actions of the trial court.

In regards to issue number thirteen of this Brief in Support, Petitioner/Appellant asserts that while on direct appeal Petitioner/Appellant made multiple requests to have the missing transcripts made part of the appellate record. This was done through multiple motions as well as a Writ of Mandamus. The state appellate court in denying this claim falsely asserted that Petitioner/Appellant made no attempts to have the missing transcripts put in the appellate record, never made any requests for the transcripts and did not follow proper state procedure for requesting the missing transcripts. The falsehoods of these assertions was proven to the federal district court which they simply ignored.

Finally, in regards to **all** of the ineffective assistance claims, both trial and appellate, **no** evidentiary hearings were ever conducted to adjudicate the claims to determine in Petitioner/Appellant deserved relief. Therefore, it is Petitioner/Appellant's position that the ineffective claims were never properly adjudicated and the federal district court failed to act.

ARGUMENT

THE FEDERAL DISTRICT COURT ERRED BY DENYING RELIEF ON ISSUE NUMBER ONE: INSUFFICIENCY OF EVIDENCE TO PROVE AN ACTUALLY KILLING OCCURRED

Petitioner/Appellant asserts that the State presented no evidence that proves that Jorion White's life was taken from her. The cause of death declared in the instant case was "Homicidal Violence of Unknown Means". **No** medical cause was ever determined. That is the crux of the argument being presented for debate by Petitioner/Appellant. With no known medical or physical cause of death being determined, how can Jorion White's death be deemed a homicide.

There are five acknowledged manners of death; natural, accidental, suicide, homicide and undetermined. The manner of death assigned is dependent upon the cause and circumstances surrounding said cause. For example; scenario 1, an individual slips in the shower and hits their head. The blow to the head causes an aneurism which in turn causes the individual to die. The cause of death is the aneurism. The aneurism was caused by the blow to the head from the slip. The slip was an accident. The manner of death in this situation is an accidental death.

Scenario 2, an individual has lived for 85 years and in that time the health of that person decreases. That person's health decreases so much so that one die their heart fails and they die. The cause of death was heart failure due to old age. The manner of death is a natural death.

Petitioner/Appellant presented these two scenarios to illustrate a very important point. In order for **any** manner of death to be determined, there must exist a chain of events that can be shown and proven that led to the death of the individual. In the instant case, no chain of events

exists that can be pointed to that shows the cause of Jorion White's death nor the circumstances surrounding her death. *Speculation* and *assumption*, the basis of circumstantial evidence, can **never** decide a scientific/medical fact. The State's case is centered on the testimony of individuals who are drawing conclusions based on how they feel and what they think. Not one single person that testified ever said that Petitioner/Appellant was an abusive or dangerous person. Not one single person that testified ever said they witnessed Petitioner/Appellant ever mistreat anyone. But, even if they did, those words would still **not** provide any information to what caused Jorion White's death. Jorion's life had to be **taken** from her for her death to be called a murder and there is no evidence of this. *Speculation* and *assumption* are **not** evidence.

When a situation such as the one in the instant case exists, the rational manner of death is undetermined. But, when the emotion surrounding the death of Jorion White and the circumstances of how and where she was found come into play, society demands that someone be held accountable. In that realm all rational thought and reasoning are cast to the side. That is what Petitioner/Appellant is fighting against. Not evidence, because there is none, but society's demands. However, the judicial system has demands as well. The judicial system demands that when an accusation and/or declaration is made evidence to prove that accusation and/or declaration must be presented and if not, the accusation and/or declaration is empty and lacks legitimacy. The State declared that Jorion White's life was taken from her. However, the State **never** provided any evidence, **never** provided any proof, that it was. If the record cannot provide an answer to the following question then the federal district court was in error for denying Petitioner/Appellant the relief he sought on this claim:

What is the medical cause of Jorion White's death and how did it happen?

THE FEDERAL DISTRICT COURT ERRED BY DENYING RELIEF ON ISSUE NUMBER TWO: INSUFFICIENCY OF EVIDENCE TO SATISFY THE *CAUSATION* ELEMENT OF SECOND DEGREE MURDER

There is only one question that the record must answer to satisfy the causation element of second degree murder;

What did Daniel L. Beckley to Jorion White that caused or contributed to her death? A review of the record will not provide an answer to this question.

Petitioner/Appellant was convicted of **causing** Jorion White's death..... How?

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE NUMBER THREE: TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO REQUEST A *DAUBERT* HEARING TO CHALLENGE THE EXPERT PATHOLOGIST'S DETERMINATION THAT JORION WHITE'S DEATH WAS A HOMICIDE.

On December 13, 2016, trial counsel for Petitioner/Appellant objected to the death of Jorion White being called a homicide. The grounds of the objection was that there was no evidence that showed anything was done to Jorion that caused her death. The trial judge overruled the objection and trial counsel requested that the objection be noted in the record. Trial counsel, with this objection, challenged the declaration that Jorion White's death was a homicide citing the medical findings, or lack of medical findings, needed to support the homicide declaration.

Federal Rules of Evidence 702, Testimony of Expert Witnesses, states the following:

> *"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:"*

c. *"The testimony is the product of reliable principles and methods..."*

This federal procedural rule is followed in the Louisiana Judicial System. This federal expert testimony rule draws from the holdings of the United Supreme Court in ***Daubert vs. Merrell Dow Pharmaceuticals***, 119 S.Ct. 1175 where the supreme court set forth a five point checklist to determine the reliability of expert testimony. The first test of the reliability of expert testimony is "*whether the expert's technique or theory can be or has been tested..*"

Judicial court's, both civil and criminal, have determined through the utilization of this rule that when an expert testifies and gives their opinion regarding scientific information, the expert **must** provide scientific evidence to support that opinion. Medical testimony is also scientific testimony. Now, the *Daubert* standard is not the end-all, be-all regarding the admissibility of expert testimony and, vigorous cross examination trough the adversarial testing process is adequate to show an expert's testimony is unreliable, however, if the entirety of the criminal prosecution or civil dispute is based solely on the determination made by the expert, a lot of time and money can be saved if there existed a forum to determine if that determination is valid or invalid..... one does exist, the *Daubert* hearing.

In the instant case, it was the expert pathologist's determination that the death of Jorion White was a homicide prompting the coroner of St. Charles Parish to rule Jorion's death a homicide therefore instituting a criminal prosecution of murder against Petitioner/Appellant. It is undeniable and immune to debate that the defense's focus should have been on the expert pathologist's methods in coming to her determinations and conclusions.

During cross examination, defense counsel asked the expert pathologist, Dr. Marianna Eserman, how she determined Jorion's death was a homicide. Dr Eserman answered "*no 16 year old should be found dead and nude on the side of a road from natural cause*".

When asked by defense counsel if a 16 year old could die of natural causes, Dr. Eserman replied "*Yes*". Dr. Eserman's answer provided **no** scientific information. Dr. Eserman's answer was her own personal opinion. Further, Dr Eserman admitted that a 16 year old could die from natural causes. At this point, and with this answer given by Dr. Eserman, defense counsel had at their disposal a means to invalidate the entire murder prosecution through invalidating Dr. Eserman's homicide determination. The *Daubert* hearing. Did defense counsel **not** know this viable avenue existed for them to use in defense of Petitioner/Appellant? Did defense counsel **not** know the rules regarding expert testimony requirements for admissibility? Dr. Eserman clearly gave an answer that did that was subjective and based in **emotion.** What reliable scientific principle and method does emotion based answers fall under?

The federal district court has **mistakenly** determined that Petitioner/Appellant, in his ineffective assistance of counsel claim, is challenging the qualifications of Dr. Eserman. That is **not** what is being challenged through the ineffective claim. What **is** being challenged, and has been made very clear by Petitioner/Appellant throughout his post-conviction and federal habeas proceedings, is **what** was the **scientific** methodology used by Dr. Eserman to deem Jorion White's death a homicide. Based on the trial testimony given by Dr. Eserman there was none. Trial counsel had a duty defend Petitioner/Appellant against this unreliable and totally unsubstantiated expert opinion. The trial judge sitting as the trier-of-fact cannot accept the expert's opinion if that opinion has been proven to be unacceptable by evidentiary rule.

Therefore, trial counsel was ineffective for not using the Daubert hearing to effectively nullify the murder prosecution by eliminating what the murder prosecution was based upon. The feelings and emotions of the expert pathologist, Dr. Marianna Eserman.

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE NUMBER FOUR: TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO SEEK THE ASSISTANCE OF AN EXPERT IN TOXICOLOGY TO AID THE DEFENSE AT TRIAL

The issues involving this claim are simple. First, this issue challenges the investigative measures used by defense counsel in regards to the information provided in the toxicology report that ethanol, grain alcohol, was found in Jorion White's system, and the acknowledgment made by Dr. Brogel that the Schedule II controlled substance Adderall, an amphetamine, was also found in Jorion White's system. It was learned through research and study that alcohol mixed with amphetamines can cause cardiac arrest resulting in death. Second, this issue shines a light on the capabilities and resources Petitioner/Appellant has when attempting to develop his claims.

The Federal Magistrate did **not** dispute the medical findings of these two substances being found in Jorion White's system because they **were** found. The State did **not** dispute these facts either. Neither the State or the Federal Magistrate presented a defense of "trial strategy" to combat the claim of ineffective assistance of trial counsel raised by Petitioner/Appellant. What the magistrate challenged was the lack of information provided by Petitioner/Appellant to show what information an expert in toxicology would have provided on the defense's behalf. That is **not** an attack on the facts of the claim. That is an attack on the Petitioner/Appellant's efforts and due diligence. What must be acknowledged by all involved is that Petitioner/Appellant is **both** indigent and incarcerated. Petitioner/Appellant does **not** have any money whatsoever to hire an investigator to locate toxicology experts and conduct interviews with these experts that produce

documentation for Petitioner/Appellant to present to the courts. Petitioner/Appellant does **not** have access to the internet for which to search for experts or medical and scientific information. What Petitioner/Appellant does have is an antiquated and out-of-date prison library which Petitioner/Appellant was forced to use to perform his research on this scientific and medical matter, to which, Petitioner/Appellant did quote and reference in his arguments for this claim. For the magistrate to make the assertions she did is **extremely** unfair. Were the playing fields level and Petitioner/Appellant had any form of proper resources and access then the assertions made by the magistrate against Petitioner/Appellant would be legit because it would show the lack of due diligence on the part of Petitioner/Appellant to substantiate his claims with viable information. However, the playing field is **not** level and the access available to Petitioner/Appellant amounts to nil. Petitioner/Appellant is being denied **not** because of the merits of his claim but because of the conditions in which he is forced to exist. This is no different than a foot race between two competitors where one competitor has the ability to run and the other competitor is **forced** to **crawl** on his hands and knees. How in the world can this be deemed **fair**. The *Fourteenth Amendment* of the United States Constitution says that there is supposed to be **fairness** between the accuser and the accused. This claim should have been decided on the facts not on unfairness.

Trial counsel has a duty to perform reasonable investigation into possible defenses and if an investigation into a possible defense is unnecessary trial counsel must provide reasons as to why the investigation is unnecessary. There was **no** evidentiary hearing conducted on any of the ineffective assistance claims raised by Petitioner/Appellant therefore, **no** information has ever been provided by defense counsel as to why he did not seek assistance from an expert.

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE NUMBER FIVE: TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO INVESTIGATE AN ALIBI DEFENSE

The Federal Magistrate concluded that it was a matter of trial strategy that defense counsel failed to present an alibi defense at trial. The magistrate also decided to agree with the state courts that Petitioner/Appellant failed to show what information would have been learned had trial counsel actually investigated the possible alibi defense.

Petitioner/Appellant asserts that the federal district court applied an incorrect standard in assessing a failure to investigate claim against trial counsel under ineffective assistance. The federal district court deemed it "trial strategy" as to why the alibi defense was not employed at trial. However, "trial strategy" has nothing to do with a counsel's **investigation**. In ***Foster v. Wolfenbarger***, 687 F.3d 702, the United States Court of Appeals for the Sixth Circuit held that Foster, the Petitioner, received ineffective assistance of counsel for counsel's failure to investigate an alibi defense. In ***Mosley v. Butler***, 762 F.3d 579, the United States Court of Appeals for the Seventh Circuit ruled that Mosley, the Petitioner, received ineffective assistance of counsel by trial counsel failing to investigate an alibi defense. Also the Seventh Circuit Court of Appeals in ***Stitts v. Wilson***, 713 F.3d 887, again ruled that trial counsel provided ineffective assistance by not investigating an alibi defense. The State sought certiorari with the United States Supreme Court but was denied in ***Stitts v. Wilson***, 134 S.Ct. 1282.

In the possession of defense counsel was the Coroner's Report created by the St. Charles Parish Coroner which stated the date of death as April 24, 2016. Also in defense counsel's possession was the autopsy report created by the expert pathologist of the Jefferson Parish

Forensics Center which also stated that the date of death was April 24, 2016. In a bill of particulars motion filed by the defense, defense counsel specifically asked on what date did Jorion White die. In their reasons to deny the defense this bill of particulars motion, the State stated very clearly that the answer to that question was provided in the discovery that had been provided to the defense. The coroner's report and the autopsy report was the information provided in the discovery. Concrete information signed and sworn to concerning the date that Jorion White died, April 24, 2016, which was a Sunday.

During the investigation several people were interviewed by law enforcement. Ms. Michelle Price, the mother of the Jorion White, Ms. Lachelle Williams, a friend of the family, and Petitioner/Appellant himself all of whom told investigators that on Sunday, April 24, 2016, Petitioner/Appellant was with Ms. Price at church and then later in the day continued to search for Jorion White. These interviews were transcribed and provided to defense counsel by the State in their discovery. Petitioner/Appellant also told defense counsel that on Sunday, April 24, 2016 he was with Ms. Price at church where the pastor of the church, Phil Jeansen prayed over both Ms. Price and Petitioner/Appellant. All of this information was known to defense counsel yet, no investigation was done by defense counsel regarding this obvious alibi defense.

The Federal Magistrate quotes case law that says Petitioner/Appellant must show what would have been learned had an investigation been conducted. That defense is moot because the transcribed interviews show what would have been learned. That on Sunday, April 24, 2016, the day Jorion White died, Petitioner/Appellant was with her mother the entire day. This information would have come from four different people.

Because no *De Novo* review was conducted by the federal district court judge and

no evidentiary hearing was ever conducted, adjudication of this issue has **never** occurred.

The Federal Magistrate also makes reference to events that took place during Petitioner/Appellant's trial. The magistrate refers to testimony given by the Deputy Coroner, Mr. Barry Minnich, who testified that he merely made the pronouncement of death on April 24, 2016. If Mr. Minnich's testimony is to be given any value then we must also value Mr. Minnich's testimony that Jorion White's death could have been called an "accident", "natural", "suicide" or "homicide". This speaks to the first claim of this brief where Petitioner/Appellant asserts that there is insufficient evidence to prove that Jorion White's death was murder. We must also give value to Mr. Minnich's testimony in regards to how the coroner of St. Charles Parish, Dr. Brian Brogel, came to his conclusions regarding Jorion White's death, we **need to** "**ask**" Dr. Brogel himself. It was Dr. Brogel, who declared the date of death of Jorion White in his coroner's report. It is Dr. Brogel's signature on the coroner's report **not** Mr. Minnich. Dr, Brogel **never** testified **countering** the assertions he made in **his** coroner's report. The magistrate cannot ***cherry-pick*** parts of testimony in the hopes of supporting her position.

The Federal Magistrate also referenced the trial testimony of Dr. Eserman. Where Dr. Eserman testified the conditions of the body **"could"** be consistent with being dead for two and a half days. This testimony does **not** match her autopsy report. Dr. Eserman could have placed this information in her autopsy report but she did not. The **signed** autopsy report states the date of death as April 24, 2016. If we are to give value to this testimony contradicting the autopsy report, what value, if any, should be given to the report's cause of death "Homicidal Violence".

Remember, the defense **specifically** asked for the date of death of Jorion White in their bill of particulars motion and that motion was **denied** because the State said the answer was in

the discovery the defense was provided. The **sworn** to documentation provided to the defense stated April 24, 2016 as the date of death. Interview statements from multiple people stated that on April 24, 2016, Petitioner/Appellant was with Ms. Price the entire day. Petitioner/Appellant told defense counsel that he was with Ms. Price that Sunday, April 24, 2016. This is the information defense counsel was working with, yet **no** investigation into an alibi defense was conducted. An evidentiary hearing should be conducted to find out why.

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE NUMBER SIX: TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO IMPEACH THE SUPPRESSION HEARING TESTIMONY OF DETECTIVE JOSEPH DEWHIRST WITH THE WITHHELD KENNER POLICE REPORT, D81237-16

The Federal Magistrate deemed that defense counsel's failure to use the withheld police report to impeach Detective Dewhirst was *deficient* performance. However, the magistrate ruled that Petitioner/Appellant did not meet the second prong of the *Strickland* test to establish ineffective assistance. See Report and Recommendations, Page 82, Lines 1-2. An objection to this determination by the magistrate was made and in the objection Petitioner/Appellant outlined how he was prejudiced by the failure to impeach.

Petitioner/Appellant asserts that because he was denied a *De Novo* review of this issue by the federal district court judge, a proper adjudication of the issue, in regards to whether Petitioner/Appellant proved prejudice, **never** happened. Further, no evidentiary hearing was conducted to allow defense counsel to explain why he chose to not use the withheld police report to impeach Detective Dewhirst. "Trial strategy" is only a cognizable defense when counsel explains his perspective at the time to justify the strategy. Also "trial strategy" is only a

cognizable defense where it is shown that trial counsel's client was aware of the trial strategy and agreed to it. No information was provided because no evidentiary hearing was conducted.

THE FEDERAL DISTRICT COURT ERRED BY RULING THAT THE PROCEDURAL BAR AGAINST ISSUES NUMBER SEVEN, EIGHT AND NINE OF THIS BRIEF ARE "ADEQUATE"

The federal courts are prevented from reviewing a claim in a federal habeas petition when a procedural bar has been issued on said claim if the procedural bar is both "independent of the federal claim and adequate to the support the judgment". On federal habeas review, the federal court looks to the **last** reasoned opinion of the state courts to determine whether denial of relief was on the merits or based on state law procedural grounds.

On issues number seven, eight and nine, the **last** state court to render a decision was the Louisiana Supreme Court. The Louisiana Supreme Court issued a procedural bar stating that the issues were "repetitive" under La.C.Cr.P. Article 930.4. "Repetitive" means a repeat. On these issues, the state district court issued a ruling stating that the issues were raised on direct appeal and therefore would not be reviewed on post-conviction under La.C.Cr.P. Article 930.4 (A) as being repetitive. These issues were **not** raised on direct appeal as acknowledged by the Fifth Circuit Court of Appeals, State of Louisiana, and that court issued a ruling stating that because the issues were known to Petitioner/Appellant and Petitioner/Appellant failed to raise them on direct appeal a procedural bar of La.C.Cr.P. Article 930.4 (C) is issued. As stated earlier in the argument the Louisiana Supreme Court ruled that the claims were "repetitive" and under La.C.Cr.P. Article 930.4 they were procedurally barred. The Louisiana Supreme Court did **not** provide a specific subsection of the Louisiana Criminal Code, but the supreme court did provide a specific reason, "repetitive".

The federal habeas courts are not to correct misapplication of state procedural bars. However, the federal habeas courts **must** determine if the procedural bar is "adequate". To be "adequate" a procedural bar must have "foundation in the record". This is where the federal district court has committed error.

The **last** reasoned opinion on these issues was given by the Louisiana Supreme Court. That decision was that these issues were "repetitive" under 930.4. The Louisiana Criminal Code, under article 930.4, provides only **one** situation in regards to repetitiveness, La.C.Cr.P. Article 930.4 (A). This is the procedural bar that the federal habeas court **must** determine as having "**foundation in the record**" to be deemed "**adequate**" to prevent federal habeas review. Petitioner/Appellant asserts that the record does **not** support this judgment because the record does **not** show that these issues were raised on direct appeal. The reason for this is because the issues were raised for the **first time** in Petitioner/Appellant's *First Uniform Application for Post-Conviction Relief*. The procedural bar that the federal district court acknowledges is the one issued by the Fifth Circuit Court of Appeals, State of Louisiana, the 930.4 (C). That court was **not** the **last** court to render a decision on these issues. The court of appeals is also **not** the highest court in the State of Louisiana. **Both** of those distinctions belong to the Louisiana Supreme Court and that courts ruling is **inadequate** because it has **no** foundation in the record. Therefore, the federal district court is in error for not reviewing theses issues. Had a *De Novo* review been conducted by the federal district court judge, in accordance with the federal civil rules regarding § 2254 habeas petitions, this error would have been discovered and proper adjudication of these issues would have occurred. Petitioner/Appellant is now forced to request a *COA* from this Honorable Court on an issue that should have been properly handled already.

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE NUMBER TEN: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO RAISE THE CLAIM THAT THE TRIAL COURT ERRED BY DENYING PETITIONER/APPELLANT'S MOTION TO QUASH THE ARREST

In regards to issue number ten in the report and recommendations the Federal Magistrate argues that Petitioner/Appellant has the burden to prove, by a preponderance of the evidence, that the representations in the arrest affidavit are false. The magistrate also argues that Petitioner/Appellant has not shown that this claim is "clearly stronger" than any of the claims actually raised by appellate counsel or that there is a reasonable probability that the appellate court would have vacated or reversed the trial court judgment if the proposed claim had been asserted. Therefore, for these two reasons Petitioner/Appellant is not entitled to relief on this claim.

"To prevail on a claim that appellate counsel was constitutionally ineffective, a Petitioner must show that his appellate counsel unreasonably failed to discover and assert a non-frivolous issue and establish a reasonable probability that he would have prevailed on this issue on appeal but for counsel's deficient performance." ***Briseno v. Cockrell***, 274 F.3d 204, 207 (5th Cir. 2001); ***Smith v. Robbins***, 528 U.S. 285-86

"Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." ***Jones v. Barnes***, 463 U.S. 745, 751-52 (1983)

These two quotes were used by the magistrate in support of her recommendation to deny relief on this issue. The Federal Magistrate declined to acknowledge in her argument the stipulation created in both *Briseno* and *Smith*, where ineffective appellate counsel starts with an "**unreasonable failure**" to "**discover**" a "**non-frivolous issue**". This is where Petitioner/Appellant will begin his argument.

Let it be made abundantly clear that this issue existed in transcripts that were **purposely omitted** from the appellate record. The same appellate record appellate counsel **investigated** to prepare her appellate brief. One question; Because this issue was **not** included in the appellate record that was investigated by appellate counsel, how can appellate counsel "**discover**" this issues existence? Was it not made clear in *Briseno* and *Smith* that a "**failure to discover a non-frivolous issue**" is the first indication that ineffective assistance of appellate counsel has occurred? This "failure to discover" on the part of appellate counsel was a direct result caused by the appellate record being incomplete and appellate counsel **not** securing a complete record for which to investigate. Appellate counsel assumed representation **not** knowing the complete history of the case.

Petitioner/Appellant asserts that it is not only below professional standards to render legal representation without a complete history of what has transpired in the case, but also a dereliction of duty and completely irresponsible. What if a doctor assumed care of a critically ill patient but was unaware that the previous doctor used a particular medication that caused the patient to experience seizures and severe headaches. The new doctor runs a high risk of prescribing the same medication the previous doctor prescribed therefore causing the patient to again endure agony and pain. Had the new doctor known the **complete history** of the patient's prior medical care this prior medication risk would be zero. Appellate counsel for Petitioner/Appellant did exactly that and because of this Petitioner/Appellant suffered during direct appeal. Therefore, as outlined in both *Briseno* and *Smith*, appellate counsel's "**unreasonable failure to discover a non-frivolous issue**" constituted *deficient* performance.

Petitioner/Appellant is now tasked with proving that a reasonable probability existed that

this issue would have prevailed on appeal. The only way Petitioner/Appellant knows to do this, is to provide a case where this same issue was raised and the reviewing court ruled in that Petitioner's favor.

In ***State v. Lamartiniere***, 362 So2d 526 (La. 1978), the Louisiana Supreme Court denied the State's request for supervisory writs after the 21st Judicial District Court granted the defendant's motion to suppress. The supreme court held that: *"intentional misrepresentations in an affidavit in support of the warrant invalidated the warrant".*

The Louisiana Supreme Court furthered addressed this issue in ***State v. Williams***, 448 So.2d 659 (La. 1984), where the court stated:

"Minor inaccuracies in assertions in affidavit for arrest warrant may not affect validity of warrant, but if intentional misrepresentations designed to deceive issuing magistrate are made by affiant seeking to obtain warrant, warrant must be quashed."

This Honorable Court has also addressed this issue in ***United States of America v. Morris***, 477 F.2d 657 (CA 5(La) 1973), where it is stated

"When an affidavit for arrest warrant or search warrant contains inaccurate statements which materially affect its showing of probable cause, any warrant based on it is rendered invalid."

In ***State v. Rey***, 351 So.2d 489 (La. 1977), the Louisiana Supreme Court adopted the reasoning of this Honorable Court in ***United States v. Thomas***, 489 F.2d 664 (5th Cir. 1975)

> *"...when faced with an affidavit containing inaccurate statements the preferred approach is to excise the inaccurate statements and then examine the residue to determine if it supports a finding of probable cause. If, however, the misrepresentations were intentionally made, a different result is required. Because these distorted statements constitute a fraud upon the courts and represent impermissible overreaching by the government, a warrant based on an affidavit containing intentional misrepresentations must be quashed."*

All of the preceding citations clearly state that intentional misrepresentations made in an affidavit invalidate the issued warrant.

In his affidavit for arrest warrant, Detective Joseph Dewhirst submitted false timestamps of surveillance video footage. The timestamps submitted by the detective state that a vehicle matching the description of Petitioner/Appellant's was seen on a Phoenix St. surveillance camera in Kenner, La, the residence of Petitioner/Appellant, at "0025" hours (12:25am) on April 22, 2016. The actual time-stamp of the Phoenix St. camera was 2333 hours (11:33pm) on April 21, 2016. The affidavit also states that a vehicle similar to Petitioner/Appellant's was seen on a St. Rose Ave surveillance camera in Destrehan, La, the street where Jorion White's body was found, at "0035" hours (12:35am) on April 22, 2016. The actual time-stamp on the St. Rose camera was 11:35pm. The affidavit made **no** mention of the actual timestamps. That is a material omission of the facts. The incorrect timestamps given in the affidavit is an undeniable misrepresentation of the facts. The question now shifts to whether or not the misrepresentations were intentional. Petitioner/Appellant asserts the following to prove they were:

Detective Joseph Dewhirst created a scenario within his affidavit of a specific time-frame to travel from Phoenix St. in Kenner to St. Ave in Destrehan. The actual timestamps gave a **two minute** difference between the two locations. It is **physically impossible** to travel that distance in that amount of time. The St. Charles Parish Sheriffs traveled there assumed route to see how long it would take to make the trip. After the timed drive was completed Detective Dewhirst changed the times to match the timed drive. Further, Detective Dewhirst provided two completely different reasons as to why the timestamps were different.

In his police report Detective Dewhirst stated that the Phoenix St. camera was off

because of a "power outage". Video surveillance systems have built in batteries to compensate for power outages, that being said, Detective Dewhirst did **not** provide any information from Entergy to support his power outage statement. The police report further states that the St. Rose camera was off due to "daylight savings time". Daylight savings time in 2016 occurred on March 13. That would mean that this video system was inaccurate for more than two months and the owner never bothered to correct the problem, also, digital video surveillance systems **automatically** adjust for daylight savings time. Anyone with a cell phone knows this. However, Detective Dewhirst's testimony is different from this information. In his testimony, Detective Dewhirst states that when the officers checked the surveillance cameras they simply checked their watches and discovered that the timestamps were "incorrect". However, there are **no** police reports from **any** of these "officers" verifying this testimony given by Detective Dewhirst. As-a-matter-of-fact **no** names of any of these "officers" were ever given. The reason for the inconsistencies and the unsupported "power outages" and "daylight savings time" statements is because Detective Dewhirst is attempting to cover-up his affidavit falsehoods with more falsehoods. *When you tell a lie you have to tell **more** lies to cover the first lie.* These false timestamps were **intentional**. Without them, it is very difficult to accept the scenario of events outlined by Detective Dewhirst's in his affidavit.

Detective Dewhirts also states in his affidavit that he had Petitioner/Appellant's vehicle seized based on information he learned during interviews and the search of the home in Kenner. However, it was learned that Petitioner/Appellant's vehicle was seized **before** the interviews were conducted and **before** the search of the home was conducted. More falsehoods in the affidavit. Because of these falsehoods, according to this Honorable Court and the Louisiana

Supreme Court, the motion to quash the arrest should have been granted.

The greatest weapon to prove that the arrest warrant should have been quashed was Detective Dewhirst's under oath testimony at the December 13, 2016 motions hearing where, Detective Dewhirst "disavowed" his arrest affidavit. When Detective Dewhirst disavowed the affidavit that automatically invalidated the arrest warrant.

None of this information was known to appellate counsel when she created her brief because this information was purposely kept out of the appellate record for her to see. Had she seen this and raised this issue the appellate court would have had **no** choice but to rule in Petitioner/Appellant's favor. Appellate counsel provided ineffective assistance by not raising this issue. Thus, the federal district court was in error for not granting an evidentiary hearing on this issue.

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE NUMBER ELEVEN: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO RAISE THE CLAIM THAT THE TRIAL COURT ERRED BY DENYING PETITIONER/APPELLANT'S MOTION TO SUPPRESS ITEMS SEIZED FROM HIS VEHICLE

"To prevail on a claim that appellate counsel was constitutionally ineffective, a Petitioner must show that his appellate counsel unreasonably failed to discover and assert a non-frivolous issue and establish a reasonable probability that he would have prevailed on this issue on appeal but for counsel's deficient performance." ***Briseno v. Cockrell***, 274 F.3d 204, 207 (5th Cir. 2001); ***Smith v. Robbins***, 528 U.S. 285-86

"Unreasonably failed to assert a non-frivolous issue." That is the first prong of ineffective assistance of appellate counsel. In regards to issue eleven, the magistrate does **not** address the search of Petitioner/Appellant's vehicle incident to an illegal arrest of Petitioner/Appellant.

On April 25, 2016, Petitioner/Appellant was ankle-shackled to the floor of a locked room at the St. Charles Parish Sheriff's Department by Detective Joseph Dewhirst. This restraint lasted for approximately **three** hours. During this time Petitioner/Appellant's vehicle was searched at the St. Charles Parish Sheriff's Department. This **extended** restraint of Petitioner/Appellant constituted an arrest. This arrest was done **without** an arrest warrant. Also, this arrest was done **without** probable cause. A **fact** acknowledged by Detective Joseph Dewhirst in his affidavit for arrest warrant. Because there was **no** arrest warrant and **no** probable cause, this arrest of Petitioner/Appellant was **illegal**. Any items seized during a search conducted after an illegal arrest are inadmissible at trial because the items were illegally obtained, *Fruit of the Poisonous Tree.*

"*Reasonable probability that he would have prevailed on this issue on appeal but for counsel's deficient performance.*" This is the prejudice prong of ineffective assistance. Searches conducted incident to an illegal arrests are **illegal**.

THE FEDERAL DISTRICT COURT ERRED BY DENYING AN EVIDENTIARY HEARING ON ISSUE TWELVE: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO INVESTIGATE A COMPLETE RECORD

The federal district court is applying the law incorrectly in regards to issue number twelve. This issue involves appellate counsel's duty to **investigate**. Because the appellate record was missing fourteen transcripts, appellate counsel did **not** investigate any of that information. This issue has **nothing** to do with claims raised or not raised. A consciences investigation is a duty **owed** to Petitioner/Appellant by appellate counsel as his advocate and that simply did **not** happen. Appellate counsel provided ineffective assistance on this issue.

THE FEDERAL DISTRICT COURT ERRED BY DENYING RELIEF ON ISSUE NUMBER THIRTEEN: PETITIONER/APPELLANT DENIED MEANINGFUL APPEAL BASED ON AN INCOMPLETE RECORD

The last reasoned opinion involving this issue was given by the Louisiana Supreme Court. The supreme court issued a procedural bar that this issue was "repetitive" and barred under La.C.Cr.P. Article 930.4. Petitioner/Appellant **did** raise this issue during direct appeal. However, the issue was raised again on post-conviction under the "*interests of justice*", La.C.Cr.P. Art. 930.4 (A). The miscarriage of justice involving this issue is that during direct appeal the appellate court denied the claim ruling that Petitioner/Appellant **never** requested the missing transcripts be put in the appellate record. This is a blatant and reprehensible falsehood. Petitioner/Appellant requested the transcripts through two motions and a writ of mandamus.

CONCLUSION

Petitioner/Appellant asserts that the preceding information is factual and true and humbly requests this Honorable Court grant him a *COA*.

Signed this 1 day of June, 2023

Daniel L. Beckley, ~~728916~~
Louisiana State Penitentiary
Angola, La 70712

CERTIFICATE OF SERVICE

I Daniel Beckley, do hereby certify that a copy of the foregoing has been mailed to the Office of the District Attorney, St. Charles Parish, State of Louisiana.

Signed this 1 day of June, 2023

Daniel L. Beckley

EXHIBIT 6

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 15, 2023
Lyle W. Cayce
Clerk

No. 23-30268

DANIEL LEE BECKLEY,

Petitioner—Appellant,

versus

TIM HOOPER, *Warden, Louisiana State Penitentiary*,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-860

UNPUBLISHED ORDER

Before SMITH, SOUTHWICK, and WILSON, *Circuit Judges*.

PER CURIAM:

Daniel Lee Beckley, Louisiana prisoner # 728916, was convicted of second-degree murder and obstruction of justice, and he is serving consecutive sentences of life imprisonment and 30 years. He now seeks a certificate of appealability (COA) to appeal the district court's denial and dismissal of his 28 U.S.C. § 2254 application challenging those convictions. As a threshold matter, Beckley contends the district court did not review his

objections to the magistrate judge's report *de novo*. But the district court specified in its order that it had reviewed the entire record and considered Beckley's objections. "Absent evidence to the contrary, this court is compelled to believe that the district court performed this duty." *Warren v. Miles*, 230 F.3d 688, 694–95 (5th Cir. 2000).

Beckley raises several issues he contends entitle him to a COA. He first asserts the evidence presented at trial was insufficient to support his conviction because it did not establish that the victim was murdered or that he caused the death of the victim. He next argues that he was denied a meaningful appeal because various unidentified pretrial transcripts were not included in the appellate record. He further contends that the district court erred in concluding that three of his claims of trial court error were procedurally defaulted. In addition, Beckley maintains that trial counsel rendered ineffective assistance by (1) failing to seek a hearing pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 594-95 (1993), to challenge a deputy coroner's conclusion that a homicide occurred; (2) failing to call an expert toxicologist; (3) failing to investigate a viable alibi defense; and (4) failing to impeach a detective's testimony. He also alleges that appellate counsel rendered ineffective assistance by failing to raise the denial of his motion to quash his arrest and the denial of his suppression motion, and by failing to request transcripts from all trial-court hearings. Though Beckley raised additional claims in the district court, he does not brief them before this court, and those claims are abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 612–13 (5th Cir. 1999).

To obtain a COA, Beckley must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court has denied relief on the merits, a COA applicant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or

wrong." *Slack*, 529 U.S. at 484. If the district court's denial of relief is based on procedural grounds, a COA may not issue unless the prisoner shows that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* Beckley has not made the required showing.

Accordingly, the motion for a COA is DENIED. Because Beckley has not satisfied the COA standard, we do not reach his contention that the district court erred by failing to conduct an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534–35 (5th Cir. 2020).

Certified as a true copy and issued as the mandate on Oct 10, 2023

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit