

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TRE'VEON DEMARCUS ANDERSON — PETITIONER

VS.

STATE OF LOUISIANA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Douglas Lee Harville # 27235

Louisiana Appellate Project

P.O. Box 52988

Shreveport, Louisiana 71135-2988

Telephone: (318) 222-1700

Telecopier: (318) 222-1701

lee.harville@theharvillelawfirm.com

APPELLATE ATTORNEY FOR

TRE'VEON DEMARCUS ANDERSON ,
DEFENDANT/APPELLANT/PETITIONER

QUESTION PRESENTED

The State knew Mr. Lawrence Guydell Pierre, an admitted principal to Ms. Chateri Payne's murder and an alleged co-conspirator, would invoke his Fifth Amendment rights when "testifying" before the jury. Nonetheless, the State asked substantive questions of Mr. Pierre at trial. This also forced Mr. Tre'veon Demarcus Anderson's and Mr. Glynn Frierson's attorneys to engage in limited substantive questioning of Mr. Pierre.

Mr. Pierre repeatedly invoked his Fifth Amendment rights in front of the jury. This allowed the State to tender questions "establishing" substantive elements of its case through Mr. Pierre's testimony, which "testimony" the State knew would not counter its theory of Mr. Anderson's guilt. Thus, Mr. Anderson's constitutional right to confront the witnesses against him was violated. *See Douglas v. Alabama*, 380 U.S. 415, 85 S. Ct. 1074, 13 L. Ed. 2d 934 (1965)

This Court should reverse Mr. Anderson's convictions, vacate his sentences, and remand this matter to the First Judicial District Court for further proceedings consistent with this Court's decision. Unless this Court addresses this constitutional violation, defendants will be subject to convictions based on "testimony" from prosecutors who ask leading questions to "prove" their case knowing full well witnesses will invoke their Fifth Amendment rights, allowing the prosecutor's "testimony," which will be immune from cross examination. This Court should grant this writ, correct this error, and provide guidance for a situation likely to weaken the Sixth and Fourteenth Amendments absent action by this Court.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Ms. Alexandra L. Porubsky
Assistant District Attorney
Caddo Parish District Attorney's Office
Appellate Division
501 Texas Street
Shreveport, LA 71101
aporubsky@caddoda.com
(for the State of Louisiana)

RELATED CASES

None.

TABLE OF CONTENTS

QUESTION PRESENTED	i
LIST OF PARTIES.....	ii
RELATED CASES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES CITED	iv
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A	Decision of the Louisiana Second Circuit Court of Appeal, <i>State of Louisiana v. Tre'veon Demarcus Anderson</i> , 55,168-KA (La. App. 2d Cir. 9/27/23), 372 So. 3d 413
APPENDIX B	Decision of the Louisiana Supreme Court, <i>State of Louisiana v. Tre'veon Demarcus Anderson</i> , 23-1427 (La. 4/9/24), 382 So. 3d 842, and 23-1446 (La. 4/9/24), 382 So. 3d 844

TABLE OF AUTHORITIES CITED

	PAGE NUMBER
CASES	
<i>Douglas v. Alabama</i> , 380 U.S. 415, 85 S. Ct. 1074, 13 L. Ed. 2d 934 (1965)	i, 7-10
<i>State v. Laviolette</i> , 06-92 (La. App. 5th Cir. 9/26/06), 943 So. 2d 527	10
<i>State v. Smith</i> , 96-261 (La. App. 3rd Cir. 12/30/96), 687 So. 2d 529.	10
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	
28 U.S.C. § 1257(A)	2
La. R.S. 14:26	5
La. R.S. 14:30.1	5
United States Constitution, Sixth Amendment	i, 3, 13
United States Constitution, Fourteenth Amendment	i, 3, 13

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

The opinion of the highest state court to review the merits, the Louisiana Second Circuit Court of Appeal, appears at Appendix A to the petition and is reported at *State of Louisiana v. Tre'veon Demarcus Anderson*, 55,168-KA (La. App. 2d Cir. 9/27/23), 372 So. 3d 413.

The denial of a writ of certiorari by the Louisiana Supreme Court appears at Appendix B to the petition and is reported at *State of Louisiana v. Tre'veon Demarcus Anderson*, 23-1427 (La. 4/9/24), 382 So. 3d 842, and 23-1446 (La. 4/9/24), 382 So. 3d 844.

JURISDICTION

The date on which the highest state court, the Louisiana Supreme Court, decided the case was April 9, 2024. A copy of that decision appears at Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution, Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Relevant Facts¹

On January 9, 2019, Ms. Chateri Payne, Mr. Tre'veon Demarcus Anderson, and their minor child were at home sharing a meal. Ms. Payne was dressed in her Shreveport Police Department uniform and was preparing to head to work.

Ms. Payne left her home and proceeded to walk toward her vehicle in the driveway. As she did so, an individual stood in the front yard, opposite from the driveway. As Ms. Payne approached her car, that individual fired multiple shots at her. Ms. Payne was struck three times and killed.

At this time, Mr. Anderson was in his home. When he heard the shots, he left his home and saw a person running toward the back of his home. From his front porch, Mr. Anderson fired twice at the person who had murdered Ms. Payne.

The State alleged Mr. Anderson, Mr. Glynn Frierson, and Mr. Lawrence Guydell Pierre conspired to murder Ms. Payne. The State further alleged Ms. Payne was breaking up with Mr. Anderson and was moving to an apartment with their child.

The State alleged Mr. Anderson orchestrated the murder, in part, through a series of texts sent on the night of the shooting. Combining these texts and cell phone location data, the State alleged Mr. Anderson informed Mr. Frierson and Mr.

¹ Mr. Anderson denies involvement in Ms. Payne's murder. However, for purposes of this petition, he realizes the evidence is viewed in a light most favorable to the verdict. Thus, while Mr. Anderson denied involvement in Ms. Payne's murder at trial and continues to do so, he sets forth this statement of facts for this Court, pursuant to court rules.

Pierre of Ms. Payne's location, Mr. Frierson and Mr. Pierre drove to the murder scene, someone killed Ms. Payne, and Mr. Frierson and Mr. Pierre drove away with the murder weapon.

B. Action before the District Court

On March 29, 2022, the Caddo Parish District Attorney filed an Amended Indictment charging Mr. Tre'veon Demarcus Anderson and Mr. Glenn Montreal Frierson with Second Degree Murder in violation of La. R.S. 14:30.1 and Conspiracy to Commit Second Degree Murder in violation of La. R.S. 14:26 and 14:30.1.² R. 4, 9. Specifically, the State alleged that on or about January 9, 2019, Mr. Anderson and Mr. Frierson murdered Ms. Chateri Payne and that they conspired with one another to commit the murder of Ms. Payne. R. 9. On April 4, 2022, Mr. Anderson plead not guilty after waiving formal arraignment. R. 4.

Jury selection for Mr. Anderson and Mr. Frierson occurred from April 4 to April 6, 2022. R. 4-5, 1299-1845. A jury trial followed from April 7 to April 8, from April 11 to April 14, and from April 18 to April 20, 2022. R. 5-7, 1215-32, 1846-2749. On April 20, 2022, the jury returned unanimous verdicts of guilty as charged for Mr. Anderson.³ R. 6-7, 2746-48.

² Mr. Anderson, Mr. Frierson, and Mr. Lawrence Guydell Pierre originally were all charged with Second Degree Murder and Conspiracy to Commit Second Degree Murder. R. 8. However, Mr. Pierre pled guilty to Second Degree Murder before Mr. Frierson and Mr. Lawrence proceeded to trial.

³ Mr. Frierson was found not guilty on both counts. R. 2747.

On May 25, 2022, the State filed a sentencing memorandum. R. 4, 1236-38.

On May 31, 2022, a motion for new trial and a motion for post-verdict judgment of acquittal were filed. R. 7, 1239-44. These motions were denied after a hearing on May 31, 2022. R. 7, 2750, 2758-60.

On May 31, 2022, Mr. Anderson was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for Second Degree Murder. He also was sentenced to 30 years of imprisonment at hard labor for Conspiracy to Commit Second Degree Murder. R. 7, 1245, 2750-63. The sentences were ordered to be served consecutively to one another. R. 7, 2761-62.

A timely motion for appeal was filed on June 22, 2022. R. 4, 1246-48. The Trial Court signed the order for appeal on June 29, 2022. R. 1248.

On September 27, 2023, the Louisiana Second Circuit Court of Appeal affirmed Mr. Anderson's conviction and sentence. On April 9, 2024, the Louisiana Supreme Court denied Mr. Anderson's writ application. This timely petition follows.

REASONS FOR GRANTING THE PETITION

The State asked Mr. Lawrence Pierre, an alleged co-conspirator and an admitted principal to Ms. Payne's murder, substantive questions before the jury at Mr. Anderson's trial. At the very moment it did so, the State knew Mr. Pierre would invoke his Fifth Amendment right not to testify. R. 2470-78.

In *Douglas v. Alabama*, 380 U.S. 415, 416-17, 85 S. Ct. 1074, 1075, 13 L. Ed. 2d 934 (1965) (all but first alteration in original) (internal footnotes omitted), this Court noted that “[t]he petitioner and one Loyd were tried separately in Alabama's Circuit Court on charges of assault with intent to murder. Loyd was tried first and was found guilty. The State then called Loyd as a witness at petitioner's trial. Because Loyd planned to appeal his conviction, his lawyer, who also represented petitioner, advised Loyd to rely on the privilege against self-incrimination and not to answer any questions. When Loyd was sworn, the lawyer objected, on self-incrimination grounds, 'to this witness appearing on the stand,' but the objection was overruled. Loyd gave his name and address but, invoking the privilege, refused to answer any questions concerning the alleged crime. The trial judge ruled that Loyd could not rely on the privilege because of his conviction, and ordered him to answer, but Loyd persisted in his refusal. The judge thereupon granted the State Solicitor's motion 'to declare [Loyd] a hostile witness and give me the privilege of cross-examination.' The Solicitor then produced a document said to be a confession signed by Loyd. Under the guise of cross-examination to refresh Loyd's recollection, the Solicitor purported to read from the document, pausing after every few sentences

to ask Loyd, in the presence of the jury, ‘Did you make that statement?’ Each time, Loyd asserted the privilege and refused to answer, but the Solicitor continued this form of questioning until the entire document had been read. The Solicitor then called three law enforcement officers who identified the document as embodying a confession made and signed by Loyd. Although marked as an exhibit for identification, the document was not offered in evidence.”

In this case, the State’s conduct largely mirrored that of the prosecution in *Douglas*. With the jury present, the State asked Mr. Pierre “isn’t it correct that you have pled guilty as a principal to the murder of Chateri Payne?” R. 2478; *accord* R. 2480. Mr. Pierre refused to answer, asserting his Fifth Amendment right personally and through counsel. R. 2478-80.

After overruled objections by Mr. Anderson’s attorney, R. 2478-83, the State then asked “sir, I would go back to my earlier questions. You pled guilty as a principal to second-degree murder of Officer Chateri Payne. Pursuant to that plea as a principal, you implicated Mr. Tre’veon Anderson and Mr. Glenn Frierson; is that correct, sir?” R. 2483 (emphasis added). Again, Mr. Pierre refused to answer, asserting his Fifth Amendment right personally and through counsel. R. 2483-84.

After further objections by Mr. Anderson’s attorney, the State asked “Mr. Pierre, on that evening of January 19th – January 9th of 2019, you provided a weapon that’s been identified by this Court as the murder weapon that was owned by your girlfriend and provided to you for use in the murder of Officer Chateri Payne?” R. 2484. Mr. Pierre refused to answer. R. 2485.

Then, after further objections by Mr. Anderson's attorney, the State asked "Mr. Pierre, on that evening of January 9th of 2019, Mr. Glenn Frierson drove you to 1633 or the area of 1633 Midway to provide the weapon that killed Officer Payne?" R. 2485-86. Mr. Pierre refused to answer. R. 2586-87.

Later, after further objections by Mr. Anderson's attorney, the State asked, "pursuant to that statement that you gave to the Shreveport Police Department, sir, you provided information once again that implicated Tre'veon Anderson as a party to the conspiracy as well as – and I believe that statement indicated that he was the shooter and that Mr. Glenn Frierson transported you there and took you away from the scene?" R. 2487-88 (emphasis added). Mr. Pierre refused to answer. R. 2488.

The State then asked "finally on January 8th, pursuant to text messages between you and Mr. Tre'veon Anderson, sir, which is already a part of this record, you-all agreed that on the next day you—all would kill Officer Chateri Payne?" R. 2488 (emphasis added). Mr. Pierre refused to answer. R. 2488.

As in *Douglas*, Mr. Anderson's "inability to cross-examine . . . [Mr. Pierre] as to the alleged confession plainly denied him the right of cross-examination secured by the Confrontation Clause. . . . [Mr. Pierre's] alleged statement that" Mr. Anderson was directly involved in Ms. Payne murder "constituted the only direct evidence that he had done so; coupled with the description of the circumstances surrounding the shooting, this formed a crucial link in the proof both of petitioner's act and of the requisite intent to murder." 380 U.S. at 419, 85 S. Ct. at 1077. As in *Douglas*, while the State's "reading of . . . [Mr. Pierre's] alleged statement, and . . . [Mr. Pierre's]

refusals to answer, were not technically testimony, the . . . [State's] reading may well have been the equivalent in the jury's mind of testimony that . . . [Mr. Pierre] in fact made the statement; and . . . [Mr. Pierre's] reliance upon the privilege created a situation in which the jury might improperly infer both that the statement had been made and that it was true." *Id.*

As in *Douglas*, the State's "questioning" of Mr. Pierre inferred that Mr. Pierre made the statement, prosecutorial statements of "fact" that "could not be tested by cross-examination. Similarly, . . . [Mr. Pierre] could not be cross-examined on a statement imputed to but not admitted by him." *Id.*

Similarly, in *State v. Laviolette*, 06-92, at p.14 (La. App. 5th Cir. 9/26/06), 943 So. 2d 527, 535-536 (internal quotation marks and citations omitted), the Louisiana Fifth Circuit Court of Appeal, citing precedent from this Court, noted that it is reversible error, when "the Government makes a conscious and flagrant attempt to build its case out of inferences arising from use of the testimonial privilege," or when "in the circumstances of a given case, inferences from a witness' refusal to answer added critical weight to the prosecution's case in a form not subject to cross-examination, and thus unfairly prejudiced the defendant." *Accord State v. Smith*, 96-0261, at pp. 16-21 (La. App. 3rd Cir. 12/30/96), 687 So. 2d 529, 542-45.

The State knew Mr. Pierre would invoke his Fifth Amendment rights. R. 2470-78. Nonetheless, as set forth above, the State asked substantive questions of Mr. Pierre in the presence of the jury during the trial. R. 2478-88. Specifically, the State was able to ask pointed questions to establish the motive for Ms. Payne's death

and to lend support to the State's circumstantial evidence that Mr. Anderson conspired with Mr. Pierre and Mr. Frierson to kill Ms. Payne. R. 2478-88. The State was able to use these "questions" to Mr. Pierre, knowing he would not contradict them and that Mr. Anderson could not cross examine on them.

This forced Mr. Anderson's and Mr. Frierson's attorneys to engage in limited substantive questioning of Mr. Pierre, to try to undo the harm done by the State's strategically-chosen suggestive questions. R. 2788-96. However, despite defense counsel's best efforts, Mr. Pierre repeatedly invoked his Fifth Amendment rights in front of the jury during the trial.

The State claimed, and the Louisiana Second Circuit Court of Appeal found, any error related to Mr. Pierre was not prejudicial. St. Br. 13-14; Second Cir. Decision, p. 11. However, the State's case was based on circumstantial evidence linking Mr. Anderson to the murder. By asking leading questions of Mr. Pierre, the State was able to offer direct "evidence," including an alleged co-conspirator's statement to police that he and Mr. Anderson were involved in the murder and the conspiracy.

It is impossible to know what the jury's verdict would have been without this unconstitutionally offered "direct evidence." Accordingly, there is no basis to find this error was harmless.

For these reasons, Mr. Anderson's constitutional right to confront the witnesses against him was violated. The Louisiana Second Circuit Court of Appeal

and the Louisiana Supreme Court erred when they affirmed Mr. Anderson's convictions and sentences.

This Court should reverse Mr. Anderson's convictions, should vacate his sentences, and should remand this matter to the First Judicial District Court for further proceedings consistent with this Court's decision. In the alternative, Mr. Anderson prays for this Court to grant the writ and to docket this matter for full briefing and oral argument.

CONCLUSION

The petition for a writ of certiorari should be granted. To address this violation of the Sixth and Fourteenth Amendments, this Court should reverse Mr. Anderson's convictions, should vacate his sentences, and should remand this matter to the First Judicial District Court for further proceedings consistent with this Court's decision.

Respectfully submitted,
/s/ Douglas Lee Harville
Douglas Lee Harville # 27235
Louisiana Appellate Project
P.O. Box 52988
Shreveport, Louisiana 71135-2988
Telephone: (318) 222-1700
Telecopier: (318) 222-1701
lee.harville@theharvillelawfirm.com
APPELLATE ATTORNEY FOR
TRE'VEON DEMARCUS ANDERSON ,
DEFENDANT/APPELLANT/PETITIONER

Date:
July 8, 2024