

24-6454

- No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

ARTHUR ANDERSON — PETITIONER
(Your Name)

VS.

STATE OF LOUISIANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF LOUISIANA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ARTHUR ANDERSON
(Your Name)

670 BELL HILL ROAD
(Address)

HOMER, LOUISIANA 71040
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I.

WHETHER AN UNAVAILABLE WITNESS'S OUT-OF-COURT STATEMENT IDENTIFYING A DEFENDANT AS HER ATTACKER AND SPECULATIVE TESTIMONY IS SUFFICIENT TO ESTABLISH A DEFENDANT'S IDENTITY AS THE PERPETRATOR BEYOND A REASONABLE DOUBT.

II.

WHETHER A DECLARANT'S STATEMENT IDENTIFYING A DEFENDANT AS HER ATTACKER IS ADMISSIBLE UNDER THE HEARSAY EXCEPTION FOR A STATEMENT MADE UNDER BELIEF OF IMPENDING DEATH, IN THE ABSENCE OF EXPRESS TESTIMONY INDICATING THAT DECEDENT HAD LOST ALL HOPE OF RECOVERY OR THAT SHE KNEW DEATH WAS NEAR AND CERTAIN.

III.

WHETHER AN INDIGENT DEFENDANT IS DENIED THE REQUIRED FAIR PROCEDURE AND EQUALITY WHERE COUNSEL APPOINTED FOR APPEAL PREPARED A BRIEF CHALLENGING THE SENTENCE BUT RAISED NO GROUNDS CHALLENGING THE CONVICTION, AND THE STATE COURTS, WITHOUT EXPRESSLY DETERMINING THAT THE APPEAL OF THE CONVICTION, ON WHICH PETITIONER'S PRE SE BRIEF RAISED CONSTITUTIONAL QUESTIONS, WAS FRIVOLOUS, DETERMINED THAT THE APPEAL HAD NO MERIT OR HAD NOT BRIEFED TWO ISSUES.

LIST OF PARTIES

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

☐ 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:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☒ reported at -- 5031 -- 2024 WL 15450 04; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the LOUISIANA SUPREME court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 10/23/2024.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES AMENDMENT VI TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:

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.

THIS CASE ALSO INVOLVES AMENDMENT XIV TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:

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 DEFENSE.

STATEMENT OF THE CASE

THE PETITIONER ARTHUR ANDERSON WAS CHARGED BY A GRAND JURY INDICTMENT WITH COMMITTING TWO COUNTS OF SECOND DEGREE MURDER. PRIOR TO TRIAL, PETITIONER FILED A MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY ONE OF THE VICTIMS PURPORTEDLY IDENTIFYING PETITIONER AS HER ATTACKER. THE TRIAL JUDGE REFUSED TO EXCLUDE THE STATEMENT. INSTEAD, HE STATED THE STATEMENTS WERE ADMISSIBLE AND USABLE AT TRIAL. THE STATEMENTS WERE SUBMITTED TO THE JURY. THE JURY FOUND PETITIONER GUILTY AS CHARGED. THE PETITIONER WAS SENTENCED TO LIFE IN PRISONMENT.

ACCORDING TO THE STATE'S THEORY OF THE CASE, PETITIONER SPECIFICALLY INTENDED TO KILL, OR INFLICT GREAT BODILY HARM UPON, THE TWO VICTIMS, WHEN HE SHOT THEM AFTER HE REAR-ENDED THE FEMALE VICTIM'S CAR AND THEY WERE RAN OFF THE ROAD. NO WITNESSES CAME FORTH TO TESTIFY AT TRIAL THAT HE HAD SEEN PETITIONER SHOOT THE VICTIMS, AFTER REAR-ENDING THE CAR AND THEY WERE RAN OFF THE ROAD. THE STATE'S CASE RESTED ENTIRELY ON THE FEMALE VICTIM'S OUT-OF-COURT STATEMENTS PURPORTEDLY IDENTIFYING PETITIONER AS THE ATTACKER AND THE CIRCUMSTANTIAL INFERENCES ARISING FROM THE TESTIMONY LAW ENFORCEMENT AUTHORITIES. PETITIONER ATTEMPTED TO PROVE HIS INNOCENCE WITH A CLAIM THAT HE WAS NOT IN THE HOOD BLOCK OF CROSBY STREET AT THE TIME OF THE MURDERS. THE

STATEMENT OF THE CASE (CONT'D)

JURORS did not believe the claim that he was not the person who committed the murder and found him guilty as charged. His motion for new trial and post-verdict judgment of acquittal was denied. On the same date, the trial court sentenced petitioner to consecutive terms of life imprisonment without benefit of parole.

- His court-appointed counsel filed an appeal brief arguing the sentence was excessive, but raised no other grounds for appeal. His pro se supplemental appeal, which described the insufficient evidence, the refusal to exclude the out-of-court statements made by the victim, and appellate counsel's failure to raise grounds challenging the conviction, was denied by the Court of Appeal, Second Circuit. The petition for rehearing was denied. His writ application seeking discretionary review was denied by the Louisiana Supreme Court.

REASONS FOR GRANTING THE PETITION

I.

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

THE HOLDING OF THE COURTS BELOW THAT AN UNAVAILABLE WITNESS'S OUT-OF-COURT STATEMENTS IDENTIFYING A DEFENDANT AS HER ATTACKER AND CIRCUMSTANTIAL INFERENCES ARISING FROM THE TESTIMONY OF WITNESSES IS CONTRARY TO THE HOLDING OF ONE FEDERAL CIRCUIT. SEE MCKENZIE V. SMITH, 326 F.3d 724, 728 (6th Cir. 2003).

B. IMPORTANCE OF THE QUESTION PRESENTED

THIS CASE PRESENTS A FUNDAMENTAL QUESTION OF THE INTERPRETATION OF THIS COURT'S DECISION IN JACKSON V. VIRGINIA, 443 U.S. 307 (1979). THE ISSUE PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE OPERATION OF THE COURT SYSTEM IN ALL 50 STATES, AND THE DISTRICT OF COLUMBIA. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER CRIMINAL CONVICTIONS, GUIDANCE ON THE QUESTION IS ALSO OF GREAT IMPORTANCE TO DEFENDANTS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN YEARS OF INCARCERATION OR LIFE IMPRISONMENT WITHOUT PAROLE.

THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS CASE HAVE SERIOUSLY MISINTERPRETED JACKSON. THIS COURT HELD IN JACKSON THAT IN A CHALLENGE TO A STATE CRIMINAL CONVICTION THE APPLICANT IS ENTITLED TO RELIEF IF IT IS FOUND THAT UPON THE RECORD EVIDENCE ADDUCED

REASONS FOR GRANTING THE PETITION (CONT'D)
AT THE TRIAL NO RATIONAL TRIER OF FACT COULD HAVE FOUND
PROOF OF GUILT BEYOND A REASONABLE DOUBT, 443 U.S. 2781,
2791-2792.

THE LOWER COURTS REASONING THAT THERE IS A PLETHORA
OF EVIDENCE TO SUPPORT THE JURY'S VERDICT IS UNCONVINCING.
IT RELIED ON AN UNAVAILABLE WITNESS, OUT-OF-COURT STATEMENTS,
AND SPECULATIVE TESTIMONY RIDDLED WITH CONTRADICTIONS AND
INCONSISTENCIES, AND UNUSUAL CIRCUMSTANCES.

THUS THE COURTS BELOW SERIOUSLY MISINTERPRETED
JACKSON BY FAILING TO DISTINGUISH INCOMPETENT EVIDENCE
AND EVIDENCE SUFFICIENT TO ESTABLISH BEYOND A REASONABLE
DOUBT THE DEFENDANT'S GUILT AND HIS IDENTITY AS THE PERPETRATOR.
THE COURT SHOULD CORRECT THAT MISINTERPRETATION AND MAKE
CLEAR THAT IF THE JURY'S VERDICT FINDING THE DEFENDANT
GUILTY IS NOT SUPPORTED BY SUBSTANTIAL AND COMPETENT EVIDENCE,
THE VERDICT SHOULD NOT BE ALLOWED TO STAND, 443 U.S. 2781/
2780 (WHEN SUCH A CONVICTION OCCURS IN A STATE TRIAL IT
CANNOT CONSTITUTIONALLY STAND).

II.

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

THE HOLDING OF THE COURTS BELOW THAT WHEN THE WOUND
IS FROM ITS NATURE MORTAL, AND WHEN, AS A MATTER OF FACT,
THE DECEASED SHORTLY AFTER MAKING HER STATEMENT DIED,

THE COURTS HAVE UNIFORMLY HELD THAT THE DECLARANT REALLY BELIEVED THAT DEATH WAS IMPENDING, AND THE STATEMENT HAS BEEN ADMITTED AS A DYING DECLARATION, IS CONTRARY TO THE HOLDING OF TWO FEDERAL CIRCUITS. SEE UNITED STATES V. TWO SHIELDS, 497 F.2d 789, 793 (8TH CIR. 2007); UNITED STATES V. TOMPKINS, 487 F.2d 146, 149 (8TH CIR. 1973); UNITED STATES V. LAWRENCE, 349 F.3d 109, 117 (3d CIR. 2003). IN ADDITION, THE COURT OF APPEALS OF NEW YORK HAS HELD THAT "...THERE MUST BE PROOF THAT THE DECLARANT BELIEVED IT AND HAD NO HOPE OF RECOVERY. THE PRELIMINARY PROOF WAS TOO SLIGHT AND INDEFINITE TO JUSTIFY ADMISSION OF THE STATEMENT." STATE V. SIRZANO, 212 N.Y. 231, 234-236 (N.Y. APP. JULY 14, 1914). ACCORD, UNITED STATES V. TOMPKINS, 487 F.2d 146, 149 (8TH CIR. 1973) (DYING DECLARATION EXCEPTION NOT APPLICABLE WHERE THERE IS "NO EXPRESS TESTIMONY INDICATING THAT THE DECEDENT HAD LOST ALL HOPE OF RECOVERY OR THAT HE KNEW DEATH WAS NEAR AND CERTAIN."); UNITED STATES V. PEPPERS, 302 F.3d 120, 137-38 (3d CIR. 2002) (DYING DECLARATION ADMISSIBLE IF DECLARANT MADE THE STATEMENT WHILE "CONSCIOUS OF IMPENDING DEATH AND UNDER THE BELIEF THAT THERE IS NO CHANCE OF RECOVERY."). SEE ALSO UNITED STATES V. MOBLEY, 421 F.2d 345, 347-348 (5TH CIR. 1970) (ADMISSION OF UTTERANCES OF A DYING PERSON SHOULD BE RECEIVED WITH GREAT CAUTION).

B. IMPORTANCE OF THE QUESTION PRESENTED

THIS CASE PRESENTS A FUNDAMENTAL QUESTION OF THIS COURT'S

INTERPRETATION OF THIS COURT'S DECISION IN SHEPARD V. UNITED STATES, 290 U.S. 95, 99 (1933). THE ISSUE PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE OPERATION OF THE COURT SYSTEM IN ALL 50 STATES, AND THE DISTRICT OF COLUMBIA. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER CRIMINAL CONVICTIONS, GUIDANCE ON THE QUESTION IS ALSO OF GREAT IMPORTANCE TO DEFENDANTS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDING THAT MAY RESULT IN YEARS OF INCARCERATION OR LIFE IMPRISONMENT WITHOUT PAROLE.

THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS CASE HAVE SERIOUSLY MISINTERPRETED SHEPARD. THIS COURT HELD IN SHEPARD THAT IN ORDER FOR A DYING DECLARATION TO BE ADMISSIBLE, THE DECLARANT MUST HAVE SPOKEN WITH THE CONSCIOUSNESS OF A SWIFT AND CERTAIN DEATH. 290 U.S. 96, 100.

THE LOWER COURTS REASONING THAT THE DECLARANT'S DECLARATIONS WERE DYING DECLARATIONS, AND AS SUCH, WERE PROPERLY ADMITTED INTO EVIDENCE IS UNCONVINCING. IT RELIED ON THE SEVERITY OF HER INJURIES, THE CIRCUMSTANCES SURROUNDING HER DECLARATIONS, THE SUBSTANCE AND CONTENT OF HER DECLARATIONS, AND HER SUBSEQUENT DEATH.

THUS THE COURTS BELOW SERIOUSLY MISINTERPRETED SHEPARD - BY FAILING TO DISTINGUISH BETWEEN TESTIMONY INDICATING THE POSSIBILITY OF DEATH, THE AWARENESS OF

DEATH AND TESTIMONY INDICATING THAT THE DECLARANT HAD LOST ALL HOPE OF RECOVERY OR THAT SHE KNEW DEATH WAS NEAR AND CERTAIN. THE COURT SHOULD CORRECT THAT MISINTERPRETATION AND MAKE CLEAR THAT IN ORDER FOR A DYING DECLARATION TO BE ADMISSIBLE THE DECLARANT MUST HAVE SPOKEN WITH THE CONSCIOUSNESS OF A SWIFT AND CERTAIN DOOM.

- III -

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

THE HOLDING OF THE COURT BELOW IN REFUSING TO DETERMINE WHETHER APPELLATE COUNSEL'S FAILURE TO RAISE THE STRONGEST GROUNDS AVAILABLE WAS THE EQUIVALENT OF HIS ATTORNEY WITHDRAWAL IS CONTRARY TO THE HOLDING OF ONE FEDERAL CIRCUIT. SEE LOFTON V. WHITLEY, 905 F.2d 885, 888-889 (5th Cir. 1990) ("LOFTON MAY HAVE BEEN FORMALLY REPRESENTED BY COUNSEL BUT THE FAILURE TO RAISE ANY GROUNDS FOR APPEAL WAS THE EQUIVALENT OF HIS ATTORNEY'S WITHDRAWAL."). IN ADDITION, THE SUPREME COURT OF THE UNITED STATES HAS HELD THAT "IN SEARCHING FOR THE STRONGEST ARGUMENTS AVAILABLE, THE ATTORNEY MUST BE ZEALOUS AND MUST RESOLVE ALL DOUBT AND AMBIGUOUS LEGAL QUESTIONS IN FAVOR OF HIS CLIENT," MCCOY V. COURT OF APPEAL OF WISCONSIN, DIST. 1, 486 U.S. 429, 444 (1980).

B. IMPORTANCE OF THE QUESTION PRESENTED

THIS CASE PRESENTS A FUNDAMENTAL QUESTION OF THE

COURT'S INTERPRETATION OF THIS COURT'S DECISION IN ANDERS V. CALIFORNIA, 386 U.S. 738 (1967). THE ISSUE PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE OPERATION OF THE COURT SYSTEM IN ALL 50 STATES AND THE DISTRICT OF COLUMBIA. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER CRIMINAL CONVICTIONS, GUIDANCE ON THE QUESTION IS ALSO OF GREAT IMPORTANCE TO DEFENDANTS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDING THAT MAY RESULT IN YEARS OF INCARCERATION OR LIFE IMPRISONMENT WITHOUT PAROLE.

THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS CASE HAVE SERIOUSLY MISINTERPRETED ANDERS. THIS COURT HELD IN ANDERS THAT THE STATE DEFENDANT WAS DENIED REQUIRED FAIR PROCEDURE AND EQUALITY WHERE COUNSEL APPOINTED FOR APPEAL PREPARED NO BRIEF BUT ADVISED COURT BY LETTER THAT HE FOUND NO MERIT IN APPEAL, AND STATE COURTS, WITHOUT EXPRESSLY DETERMINING THAT APPEAL, ON WHICH DEFENDANT'S PRO SE BRIEF DID NOT RAISE CONSTITUTIONAL QUESTION, WAS FRIVOLOUS, DETERMINED THAT APPEAL HAD NO MERIT.

THE LOWER COURT'S REASONING THAT THIS ISSUE WAS NOT BRIEFED, AND AS SUCH, WOULD NOT BE ADDRESS IS UNPERSUASIVE. IT RELIED ON A SIXTH AMENDMENT INEFFECTIVE ASSISTANCE OF COUNSEL ANALYSIS INSTEAD OF A FOURTEENTH AMENDMENT

DUE PROCESS AND EQUAL PROTECTION ANALYSIS. 386 U.S. 738/743 (THE CONSTITUTIONAL REQUIREMENT OF SUBSTANTIAL EQUALITY AND FAIR PROCESS CAN ONLY BE ATTAINED WHERE COUNSEL ACTS IN THE ROLE OF AN ACTIVE ADVOCATE IN BEHALF OF HIS CLIENT, AS OPPOSED TO THAT OF AMICUS CURIAE);

THUS THE COURTS BELOW SERIOUSLY MISINTERPRETED ANDERSON BY FAILING TO DISTINGUISH BETWEEN A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND A CLAIM THAT THE STATE COURT OF APPEAL AND APPELLATE COUNSEL FAILED TO DILIGENTLY AND THOROUGHLY SEARCH THE RECORD FOR THE STRONGEST ARGUMENTS AVAILABLE, IN VIOLATION OF HIS DUE PROCESS AND EQUAL PROTECTION RIGHTS. THE COURT SHOULD CORRECT THAT MISINTERPRETATION AND MAKE CLEAR THAT THOSE PROCEDURES ARE INVALID WHEREIN A RICH MAN, WHO APPEARS AS OF RIGHT ENJOYS BENEFIT OF COUNSEL'S EXAMINATION INTO RECORD, RESEARCH OF LAW, AND MARSHALLING OF ARGUMENTS ON HIS BEHALF, WHILE INDIGENT, ALREADY BURDENED BY PRELIMINARY DETERMINATION THAT HIS CASE IS WITHOUT MERIT IS FORCED TO SHIFT FOR HIMSELF.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Arthur Anderson 596378

Date: 01/03/2025