

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Eastern District of Louisiana
Name Louisiana State Penitentiary, Angola, La.	Prisoner No. 112762	U.S. District No. 90-1634 EASTERN DISTRICT OF LOUISIANA FILED SECT. MAG. 4 JUN 1 1990 LORETTA G. WHYTE CLERK
Place of Confinement		
Miguel A. Rosales vs. John Whitley, Warden,		
Name of Petitioner (include name upon which convicted)		Name of Respondent (authorized person having custody of petitioner)
William J. Guste, Jr.		V.
The Attorney General of the State of:		

PETITION

- Name and location of court which entered the judgment of conviction under attack 24th Judicial District Court, Jefferson Parish, Gretna, Louisiana
- Date of judgment of conviction February 3, 1986.
- Length of sentence Life, without benefit of parole, probation or suspension of sentence,
- Nature of offense involved (all counts) Second Degree Murder

5. What was your plea? (Check one)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check one)

- (a) Jury
- (b) Judge only

7. Did you testify at the trial?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

FEE	<u>Pauper</u>
PROCESS	<u>HC</u>
X CHARGE	<u>HC</u>
INDEX	<u>HC</u>
ORDER	<u>HC</u>
HEARING	
DOCUMENT No.	<u>1</u>

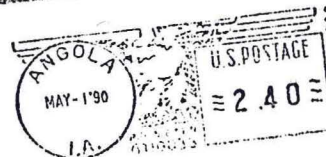
DATE OF ENTRY MAY 10 1990
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600061
Miguel A. Rosales
112762 Camp A ~~6000~~ A-11-10
Louisiana State Penitentiary
Angola, Louisiana 70712

INDIGENT

INDIGENT

ANGOLA PRISON
RODEO
EVERY SUNDAY
IN OCTOBER



Clerk of Court
United States District Court
Eastern District of Louisiana
500 Camp Street
New Orleans, Louisiana 70130

Legal Matter

9. If you did appeal, answer the following:

(a) Name of court Court of Appeal, Fifth Circuit, State of Louisiana.

(b) Result Affirmed.

(c) Date of result November 10, 1986. Case No. 86-KA-268

(d) Grounds raised Unknown

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court 24th Judicial District Court, State of Louisiana

(2) Nature of proceeding Post-Conviction Relief

(3) Grounds raised Suppression of evidence favorable to defense by the State; Insufficient jury instructions; Ineffective Assistance of Counsel; Insufficient evidence to justify a conviction.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result Denied

(6) Date of result January 4, 1988.

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

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(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result N/A

(6) Date of result N/A

(c) As to any third petition, application or motion, give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result N/A

(6) Date of result N/A

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No Louisiana Supreme Court No. 88-KH-2178

(2) Second petition, etc. Yes No Denied February 2, 1990.

(3) Third petition, etc. Yes No

(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: THE PROSECUTION SUPPRESSED EVIDENCE FAVORABLE TO PETITIONER'S DEFENSE.

Supporting FACTS (tell your story *briefly* without citing cases or law): The prosecutor suppressed favorable evidence for Petitioner's defense, namely Police Report.
See attached brief for more facts and legal argument.

B. Ground two: INSUFFICIENT EVIDENCE PRESENTED AT TRIAL TO BASE A LAWFUL AND JUST CONVICTION.

Supporting FACTS (tell your story *briefly* without citing cases or law): During Petitioner's trial there was insufficient evidence presented to warrant a conviction. See attached memorandum of law for more facts and legal argument.

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C. Ground three: THE TRIAL COURT'S CHARGE TO THE JURY WAS IMPROPER AND PREJUDICE TO PETITIONER.

Supporting FACTS (tell your story *briefly* without citing cases or law): See attached Memorandum of Law for more facts and legal arguement.

D. Ground four INEFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL.

Supporting FACTS (tell your story *briefly* without citing cases or law): See attached hereto for more facts and legal argument.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mr. Frederick King, Jefferson Parish, Gretna, Louisiana.

(b) At arraignment and plea Mr. Frederick King, Jefferson Parish, Gretna, Louisiana.

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(c) At trial Mr. Frederick King, Jefferson Parish, Gretna, Louisiana.

(d) At sentencing Mr. Fredrick King, Jefferson Parish, Gretna, Louisiana.

(e) On appeal Jefferson Parish Public Defender's Office, Gretna, La.

(f) In any post-conviction proceeding None

(g) On appeal from any adverse ruling in a post-conviction proceeding None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes No N/A

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4-5-1990.
(date)

Miguel Rosales
Signature of Petitioner

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IN FORMA PAUPERIS DECLARATION

United States District Court For The EASTERN District
Of Louisiana

MIGUEL A. ROSALES
(Petitioner)

v.

JOHN WHITLEY, WARDEN,
(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERIS

I, Miguel A Rosales, declare that I am the petitioner in the ~~above entitled case; that in support of my motion to proceed without pre-~~ paying fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes () No (x)

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

in 1985 --- about \$600.00 per month

2. Have you received within the past twelve months any money from any of the following sources?

A. Business, profession or form of self-employment?	Yes ()	No (x)
B. Rent payments, interest or dividends?	Yes ()	No (x)
C. Pensions, annuities or life insurance payments?	Yes ()	No (x)

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d. Gifts or inheritances?

Yes ()

No (x)

e. Any other sources?

Yes ()

No (x)

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own cash, or do you have money in checking or savings account?

Yes (x) No (include any funds in prison accounts.) If the answer is "yes," state the total value of the items owned.

See certificate attached hereto.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes () No (x)

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

None

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I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed On: April 5, 1990.

Doc # 112762 Miguel Rosales
Signature of Petitioner

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 92.43 on account to his credit at the LSP institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said LSP institution _____

DRAWING 7.85
SAVINGS 84.58

DATE

APR 10 1990

CERTIFIED

Vivian Worsham
Authorized Officer Of
Institution

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ORDER

Considering the foregoing application and affidavit,

IT IS ORDERED that the petitioner in the above entitled case be ~~and he hereby is~~ permitted to proceed without prepayment of fees or costs, or security therefor.

New Orleans, Louisiana, this ____ day of _____, 19__.

UNITED STATES MAGISTRATE

M of 1/3/70
Motion Denied
Petitioner has sufficient funds to pay \$5.00 filing fee
[Signature]
U.S. Magistrate

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIGUEL A. ROSALES,
PETITIONER,

NO. _____

VERSUS

JOHN WHITLEY, WARDEN,
LOUISIANA STATE PENITENTIARY,
RESPONDENT.

MEMORANDUM OF LAW

1.
STATEMENT OF THE CASE

On August 8, 1985, the Jefferson Parish Grand Jury indicted Miguel A. Rosales for Second Degree Murder relative to the July 4, 1985, death of Kelvin Gregory Mitchell. On September 4, 1985, Rosales enter a plea of not guilty to the charge. Prior to trial, defense counsel moved for and received discovery from the State who averred that they had no favorable evidence to the defense. The trial began with voir dire on January 21, 1986. On January 28, 1986, the jury returned a verdict of Second Degree Murder. On February 3, 1986, Rosales was sentenced to the mandatory sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. A Motion For Appeal was timely filed. Said Appeal to the Court of Appeal, Fifth Circuit, State of Louisiana, No. 86-KA-268, was Affirmed on November 10, 1986.

Petitioner next sought Post-Conviction Relief Application in Trial Court by raising the following claims for relief, to-wit:

- (1) Suppression of evidence favorable to defense
by the State;

- (2) Insufficient evidence to justify a conviction;

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- (3) Improper jury instruction; and
- (4) Ineffective assistance of counsel.

The matter was DENIED on January 4, 1988, by Honorable Joseph F. Grefer, Judge, 24th Judicial District Court, without an evidentiary hearing. On January 26, 1988, Petitioner filed "Notice Of Intention To Apply For Remedial Writs And Review" with the Trial Judge, who refused to set a return date upon same or otherwise comply with Rule 4-2 and 3 of the Louisiana Uniform Rules --- Court of Appeals.

On Or about June 20, 1988, Petitioner mailed the Court of Appeal, Fifth Circuit, State of Louisiana, a petition for Writs of Certiorari, Habeas Corpus, Review, and Post-Conviction Relief Application, and was DENIED on July 20, 1988, under Docket Number 88-KM-499.

On July 25, 1988, Petitioner filed Notice of Intention to Apply For Remedial Writs and Review with the Court of Appeal, Fifth Circuit, State of Louisiana, who then set August 22, 1988, for the filing of the Writ of Certiorari in the Louisiana Supreme Court. After 18 months in the Supreme Court, the matter was DENIED on February 2, 1990, in Case No. 88-KH-2178.

It is for these reasons that Petitioner seeks redress before this Honorable Federal District Court.

3.
STATEMENT OF THE FACTS

On July 4, 1985, Kelvin Gregory Mitchell, B/M, age 21, known generally as "Big Dut", was drinking/using drugs and dancing in the street at noon on Inch Drive in Harvey, Louisiana, when a single 38 cal revolver shot to the back of the head killed him. Several witnesses placed from 20 to 200 other people in the streets at the time of the crime. On this date no witnesses provided the police with any information as to the identity of the perpetrator, except that he was light skin spanish male, 5'11", who left the scene on foot to unknown locations.

The victim was rushed to West Jefferson Hospital whereas he was pronounced dead. The victim's family joined at the hospital, along with police, and could not offer any reason or justification for the shooting, nor were they present at the shooting scene. No witnesses, friends, girl friends, neighbors, or anyone else from the shooting scene came to the hospital to offer aid, blood, prayer, or any help to the victim or to the police.

At no time on July 4, 1985, did any alleged eyewitness to the crime ever come forward and tell the police who shot Mr. Mitchell. The victim was a known drug dealer in the local neighborhood and local school yards and lived in the black neighborhood know as the "Electric Avenue" area who openly sold narcotics on the streets.

Twenty-four hours later, on July 5, 1985, at 12:00 noon, Jefferson Parish Deputy Barry Wood began a canvass of the crime scene neighborhood and located Valerie Marie Williams, N/F, 7/19/58, who stated that she witnessed the shooting and that her sister (Hellen Williams) had been dating the victim and that a light skin spanish male 25-30 years old, short black hair combed back, moustache, 5'11" tall, with a slim build, "thought" to be wearing dark colored pants and shirt, committed the crime and "thought" to drive off in a black van following the shooting. This testimony was adduced at trial.

The next break came on July 10, 1985, when Detective Wood interviewed Jerry Hawkins, a friend of the victim and the Petitioner, who was then recently confined in the Jefferson Parish Correctional Center, on drug charges, with other drug charges pening in Orleans Parish, told Detective Wood that he was fifty feet from the shooting and saw Rosales "standing over" the victim with a silver colored snub nose revolver in his hand. Hawkins further stated that the perpetrator immediately put the gun under his shirt within five seconds following the shooting, but could not aver if the perpetrator "walked" or "drove" off in a

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black van. Hawkins further told Detective Wood that Petitioner was the killer and was wearing all black clothing and had "white highlight in his hair" in an attempt to disguise himself. Hawkins was arrested on July 5, 1985, in the crime area and neighborhood for cocaine sales and jailed in Jefferson Parish by the same officers investigating the murder crime. Hawkins testified to these facts before the trial jury in this case and revealed that he "felt" that it was his duty to help the police solve this murder, but failed to confess to selling drugs upon the streets or school yards or shooting dope, robbing, stealing, or murdering to support his drug habit.

On July 15, 1985, the next witness interviewed by Detective Wood was Modesto Mateo, N/M, 1/12/61, a black spanish male from the Dominican Republic with deportation troubles, and lived across the street from the shooting on Inca Drive, but did not see the shooting, but alleged to have seen the "shooter" running North on Mahatten Blvd. Shortly afterwards from his second floor apartment, Mateo stated that he knew the Petitioner for seven years and that he was wearing black pants and black shirt, was slim built with short black hair and carrying a small silver/chrome colored gun "in his hand" with something white colored wrapped around his wrist and hand that carried the gun. Mateo did not know of the shooting until later when he arrived at the scene of the shooting when other spanish speaking males "told him" that they "thought" Rasales had shot the victim. From this set of facts, Mateo stated that he knew the Petitioner had shot the victim.

On July 18, 1985, two weeks after the murder, Detective Wood and Detective James Trapani interviewed Helen Williams and Jeanette Williams, B/F, sisters of Valerie Marie Williams. Helen Williams was a girlfriend of the victim and failed to come to the shooting scene or to the hospital to see or help the victim, or to notify the police with any details of

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the crime while still fresh on her mind so that the murderer of hr loved one could be brought to justice for over two weeks. Helen and Jeanette Williams gave postive identification of the Petitioner on this date to Detective Wood and Detective Trapani in the form of taped interviews while appearing before the Grand Jury in this case. It is unclear how these unknown witnesses knew of the Grand Jury hearing in this case on this date.

Helen Williams told Detectives that she saw Petitioner next door to her sister's house on the date of the shooting talking to a man named Raymond; that 200 people was in the street dancing and drinking when she saw Petitioner follow the victim and then shot him once in the back of his head; that she was 15 to 20 feet away from the crime; Petitioner was wearing dark brown pants and plaid shirt; had a moustache, no side burns, and had a full head of hair combed back.

Jeanette Williams gave a taped statement to Detective Wood and Detective Tranpani on July 18, 1985, saying that she was popping fire-crackers at the scene and that her two sisters, Helen and Valerie, were with her in the street; that she saw Petitioner with a "big silver gun" in his hand for 2 to 3 minutes after the shooting; that Petitioner was 5'5" tall, wearing shoulder length hair, moustache; that she could not describe the clothing; that a black/gray van was involved at the scene; that she saw the Petitioner actually pulling the trigger; that 60 to 70 people were in the streets; that Petitioner came from West Bank Ecpressway and left in the same direction following the shooting.

On July 23, 1985, Detective Wood interviewed Ulyssess (Smitty) Smith, N/M, 7/22/44, who stated that he was driving a black van and was present at the scene to buy drugs and head the shot in question; did not see Petitioner with a gun and did not know who did the shooting due to so

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many people present; did not see Petitioner at the scene; that he was about 8 to 10 feet from the suspect at the time of the shooting.

No gun, motive, clothes, fingerprints, or any other evidence whatsoever was produced before the trial jury as evidence against Petitioner to connect him to this crime. Petitioner produced alibi witnesses with perfect police records to support his contentions that he was elsewhere when the crime took place.

Following trial, conviction, and direct appeal, Petitioner sought the Police Reports in this case from Jefferson Parish Sheriff's Office Records Of Identification under LSA-R.S. 44.3 and received a narrative Report, Item No. G-2591-85, that was signed by Detective Barry Wood.

See Exhibit "A" attached hereto. After reading these reports and receiving the confidetail information from within the Jefferson Parish Sheriff's Office, Petitioner contends that the State suppressed favorable evidence to his defense that would have caused a differant verdict in this case if the suppressed evidence had been supplied upon the Discovery Motion for his defense. Further, the State totally failed to supply the statement of Helen Williams made to Detectives and now avers that no such statement was taken. This is contrary to Detective Wood's Police Report at Page 10.

CLAIM # 1:

THE PROSECUTION SUPPRESSED EVIDENCE FAVORABLE TO PETITIONER'S DEFENSE.

In pretrial motions, Petitioner's Counsel filed demands for discovery of any and all evidence favorable within possession of knowledge of the State of Louisiana. The prosecution alleged that they had no such evidence and that none existed.

During trial, five witnesses consisted of the State's total evidence, to-wit: Helen William, Jeanette Williams, and Valerie Marie Williams; Jerry Hawkins; and Modesto Mateo. Since trial, Petitioner received Detecti

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Barry Wood's official Police Report and find that the State did in fact knowingly suppress favorable evidence that should have been afforded to Petitioner's defense prior to trial as prayed. The gist of the State's witnesses' testimony at trial will be listed, infra, then compared to the Police Reports, infra, to show the suppressed evidence.

(1) TRIAL TESTIMONY: Valerie Marie Williams gave Detective Wood a statement on July 5, 1985, the day after the shooting, that the perpetrator was wearing dark colored pants and dark color shirt, 5'11", tall, medium to slim build, moustache, 3" side burns, short black hair combed back, light skin spanish male, 25-30 years old; Valerie stated that she was standing in her apartment door with her two sisters, Helen and Jeanette, when the shooting took place; that she never saw the perpetrator before; that the perpetrator walked up behind the victim with a gun in his hand and shot the victim one time in the back of his head without warning with 10 to 30 people in the street; that the perpetrator walked behind a black van after standing and staring at her for 2 to 3 minutes with the gun in his hand; that she identified Petitioner from the five picture photographic line-up following a grand jury hearing.

POLICE REPORTS AND NOTES: Detective Wood testified that Valerie Marie Williams gave statements on July 5, 1985, in the same room at her mother's house while Jeanette Williams was present and aware of the nature of the meeting and said all the above, except that she did not give a description of any 3" sideburns on the perpetrator, and that Valerie had changed the clothing description three (3) times from dark pants and shirt to plaid pants and shirt, to plaid pants with white short-sleeve shirt with zipper.

TRIAL TESTIMONY ON CROSS EXAMINATION: Valerie Marie Williams stated under oath that she never gave Detective Wood any change of clothing worn by the perpetrator and that Detective Wood was wrong in this regard; that she gave a description to Detective Wood that the perpetrator

did have 3" sideburns and that Detective Wood was wrong in testifying that she failed to give the 3" sideburn statement on July 5, 1985.

ARGUMENT:

The State should have produced Detective Wood's notes, taped interview, and signed statements of Valerie Marie Williams to defense prior to trial, as well as during trial, because her description of the perpetrator was totally different than all other witnesses because of the 3" sideburns and three (3) clothing descriptions. This information was favorable to the defense to impeach other witnesses, or to knock out Valerie's complete testimony. The jury actually believed that Detective Wood was lying because Detective Wood and the prosecutor failed to produce the notes, taped interviews, and signed statements. Petitioner's confidential informant within the Jefferson Parish Sheriff's Office informed Petitioner since trial, conviction, and appeal, that this information exist within the Records and Identification of said Office.

(2) TRIAL TESTIMONY: Jeanette Williams gave testimony that she and her sisters, Valerie and Helen, were standing outside the apartment on the sidewalk, popping firecrackers when the victim was shot; she stated that she saw the perpetrator with a big silver gun and actually saw him pull the trigger; did not see the perpetrator behind the victim when the trigger was pulled; that perpetrator was 5'4" or 5'5" tall with shoulder length hair slicked back; a moustache, could not give any description of clothing; averred that 60 to 70 people was in the streets drinking and smoking dope; that she saw the perpetrator walk away from the shooting toward West Band Expressway behind a black/gray van; that perpetrator stood there after the shooting about 4 or 5 minutes holding the gun; that she identified Petitioner as the murderer; she further testified that Detective Wood came to her mother's house on July 5,

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1985, and showed Valerie some pictures and got identification on Petitioner at that time; that the same pictures were shown to Jeanette by Detective Wood who did not ask her to identify anyone because he did not know of her as a witness, nor did she tell Detective Wood that she was a eye-witness and wanted to help solve the murder or had any information of the crime whatsoever.

POLICE REPORT: On February 4, 1987, Petitioner obtained a copy of Jeanette Williams^o statement made to the Jefferson Parish Sheriff's Office. The statement was taken by Detective Trapani on July 18, 1985 at 4:30 P.M., NOT by Detective Wood as stated by Detective Wood during trial. This statement is full of conflicting testimony that sharply differs from that during trial, to-wit: Jeanette told Detective Trapani that the perpertrator "went into his pocket and pulled the gun"; that he walked up behind the victim and shot him; that he had black hair, was spanish, and wore a "black and white shirt and burgundy or brown pants"; was 5'5" or 5'8" or 9"; had a big silver gun with a black ring around it, was 7 to 10 feet from the shooting.

ARGUMENT: The prosecutor lead the jury to believe that Detective Wood obtained the statement from Jeanette on July 18, 1985, when in fact it was Detective Trapani who obtained the statement on July 18, 1985, two weeks after the crime and while viewing the same five pictures shown to her on July 5, 1985 by Detective Wood along with her sister Valerie. This identification was tained because Detective Wood showed the pictures to Jeanette on July 5, 1985, for no reason because it was not known to Detective Wood that she was a eyewitness to the crime. We must ask ourselves why Detective Wood should show Jeanette pictures of suspects if she was not wanted as a witness? Good police officers don't do things like this. Wood manufactured a witness with the help of Valerie coaching her as what to say and when to appear before the Grand Jury in this case in order to get a spanish male for the killing

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of the black victim. This is suppression of favorable evidence to the defense because the defense did not know the witnesses was lying as to who took the statement, the date, or the conflicting testimony therein. The prosecutor should have advised the Court, defense, and jury that the witness had given a conflicting statement to the Sheriff's Office and then produce the statement for impeachment purposes.

(3) TRIAL TESTIMONY: Helen Williams testified that she saw the Petitioner next door to her sister's house on the date of shooting talking to a man named Raymond, who lived there, but who did not testify at the trial; that 200 people were in the street dancing and drinking when she saw Petitioner follow the victim and then shoot the victim once in the back of his head; that she was standing 15 to 20 feet from the crime on the street; that Petitioner was wearing dark brown pants and plaid shirt; had a full moustache, no side burns, and a full head of hair combed back; that she was never questioned by police or gave a statement until the July 18, 1985 Grand Jury appearance when Detective Wood showed Helen five pictures in his police car, with both sisters sitting in the back seat with her, and then "picked" Petitioner's picture after discussing the case her sisters and their identification for two weeks; she also stated that she did not know if Petitioner walked off or drove off in a black van.

POLICE REPORT: Since trial, conviction, and appeal, Petitioner sought and demanded the Police Reports of Helen Williams under the provisions of R.S. 44.3 because a confidential informant within the Jefferson Parish Sheriff's Office advised him that a taped statement of July 18, 1985, interviewing Helen Williams was available in the Office of Records and Identification and was taken by Detective Wood and Detective Trapani that conflicted with her trial testimony; the official within the Sheriff's Office informed Petitioner that there was no such interview. However, at Page 10 of the Police Report it clearly shows

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that Helen's testimony was taped and was available during trial.

ARGUMENT: Because of conflicting views of clothing, color of clothing, hair length, sideburns, color of hair, unreasonable delay in giving statement, and viewing photographic line-up with suggestions from her sisters, the State should have produced same upon request for discovery motion as its contents were favorable to defense.

(4) TRIAL TESTIMONY: Jerry Hawkins, a certified junkie and known drug dealer, and a known Jefferson Parish Sheriff's Office informant, was busted for possession with intent to sell cocaine on July 5, 1985, near the murder scene, and placed in the Jefferson Parish Correctional Center and then decided to seek help from Detective Wood on July 10, 1985, by telling him of alleged information of the murder of the victim herein; that he saw Petitioner "standing over" the victim with a silver snug nose revolver in his hand for five (5) seconds before placing it under his shirt; that he was wearing all black; that he knew Petitioner and the victim; that he did not live in the neighborhood; that he was not going to be rewarded in his drug cases by the State for his testimony; was 50 feet from shooting; did not know if Petitioner drove off in a black van or walked away.

POLICE REPORT: Page 11 of said Police Report clearly shows that Jerry Hawkins told Detective Wood that his view of the crime had the Petitioner with "white highlight" in his hair and using a .38 Special Pistol. Hawkins further said that Petitioner was wearing all black.

ARGUMENT: Jerry Hawkins is in fact a "Agent" of the State thru the Jefferson Parish Sheriff's Office and his testimony should not have been classified as an "informant" before trial and denied to Petitioner's defense. Further, his statement that Petitioner had dyed his hair white prior to the crime was exculpatory and should have been available for the jury to consider as this evidence was totally different from all other witnesses during trial. The prosecutor failed to inform the Judge.

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jury, or defense counsel that Hawkins gave conflicting views of hair color and color of clothing in the police reports. Further, since conviction and sentence, Petitioner has received reliable information that Jerry Hawkins was "rewarded" by Jefferson Parish and Orleans Parish on his drug charges for his testimony in this case. This is contrary to Hawkins testimony during trial and the prosecutor's message to the trial jury.

(5) Since trial, conviction, and appeal, Petitioner's confidential informant within the Jefferson Parish Sheriff's Office has informed Petitioner that Detective Wood interviewed several other witnesses at the murder scene in this case who informed Detective Wood that the Petitioner, Miguel A. Rosales, was not the perpetrator in this case. However, the State failed to provide these exculpatory statements in the discovery litigation.

Further, Raymond (last name unknown), the next door neighbor of Helen Williams, 1112 Inca Drive, told Detective Wood that he did not see nor talk to Petitioner prior to the shooting as alleged by Helen Williams. This was exculpatory evidence and should have been given in the discovery litigation.

Detective Wood interviewed Ulysses (Smitty) Smith on July 23, 1985, who told Wood that he was present at the shooting and did not see the perpetrator. Smith further told Wood that he was 8 to 10 feet from the shooting and that Petitioner was not at the scene of the crime. This exculpatory evidence is the purest form from eye witnesses and should have been provided in discovery litigation so that the defense could have used Smith's testimony during trial to refute the State's witnesses. Petitioner has just as much right to witnesses who give statements averring that he was not present or the murderer as the State does to the witnesses who avers guilt toward a defendant in a criminal proceeding.

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LEGAL ARGUMENT

Petitioner contends that the prosecution and the State of Louisiana should have made all favorable evidence known to him and his defense counsel, before, during, and after trial because it was sought in discovery litigation prior to trial. Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). "The State's duty of disclosure is imposed not only upon its prosecutor, but also on the State as a whole". Quoted from Fulford v. Maggio, 692 F. 2d 3545, n.2 (5th Cir. 1982) citing United States v. Bryant, D.C. App. 132, 439 F. 2d 642 on remand, 331 F. Supp. 927, aff'd 145 D.C. App. 259, 448 F. 2d 1182 (1971); United States v. Jensen, 608 F. 2d 1349 (10th Cir. 1979). ~~Further, if this information had been known to the trial jury in this case, then a different verdict would have been rendered in this case.~~

Accordingly, conviction and sentence should be reversed on this claim and argument.

CLAIM #2:

INSUFFICIENT EVIDENCE PRESENTED AT TRIAL TO BASE A LAWFUL AND JUST CONVICTION.

It is Petitioner's contention and position that there was insufficient evidence presented at the trial upon which to base a conviction under the jurisprudence established in Jackson v. Virginia, 433 U.S. 307, 99 S. Ct. 2781 (1979); State v. Shapiro, 431 So. 2d 332 (La. 1983); State v. Graham, 422 So. 2d 123 (La. 1982). The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the Court to review the evidence upon which a criminal conviction is based to determine whether it is minimally sufficient. The Petitioner in this case has not been afforded due process and his conviction cannot stand, as convicted, unless, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could conclude

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that the State proved the essential elements of the crime beyond a reasonable doubt.

In the instant case, the conviction is based solely on the testimony of Helen, Jeanette, and Valerie Williams, Jerry Hawkins, and Modesto Mateo. The prosecutor's opening statement to the jury painted a picture to the jury that Petitioner's crime took place in a high crime area where drugs and thugs dwell together and that all people in that area must be suspects or wrong doing. With this poison in their minds, the jury were guilt-prone before hearing any evidence.

On July 5, 1985, the day following the murder, Detective Wood located Valerie Marie Williams who stated that her sister's (Helen) boyfriend was killed by a light skin spanish male with a moustache and 3" sideburns, 25-30 years old, short black hair combed back, 5'11" tall, wearing dark colored pants and shirt and was thought to have drove off in a black van, but then changed the clothing description two more times to Detective Wood to plaid pants and plaid shirt, to plaid pants and short-sleeved white shirt with zipper. It is indeed strange that this alleged witness did not come forward on the day of the crime and give police an immediate description of the shooter so they could arrest him, nor did she rush to the street or hospital to offer help and prayer to her sister's love one. On the other hand, how could this alleged witness desire to solve the crime in this case, but refuses to assist in busting drug dealers in her neighborhood that are seen and known to her, or the thieves who sells or buys same from her friends. This is the State's "star" witness, but not the type citizen that should be believed without supporting reliable evidence, which was not done.

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Next, on July 10, 1985, Detective Wood interviewed Jerry Hawkins, a local certified junkie and drug dealer in the Jefferson Parish Correctional Center, whose conscience was hurting him and wanted to help "solve" the murder that he was "told about" while selling drugs near the murder

scene to school children and others the day following the shooting. Mr. Hawkins thought it was his civic duty to help Detective Wood with any information of the murder to help "clean up the neighborhood" after Detective Wood and his team arrested Mr. Hawkins the day after the shooting near the crime scene selling cocaine. Of course, this non-tax paying citizen did not want any "favor" or "reward" in return for his help in cleaning up the neighborhood as he was only in jail for cocaine charges for "sales" in Jefferson Parish and another cocaine sales charge in Orleans Parish which would be a sure shot to the Louisiana State Penitentiary for a life term. With this in mind, Mr. Hawkins gave statements that he saw Petitioner "standing over" the victim with a silver colored snub nose revolver, had "white highlight in his hair", was ~~wearing black pants and black shirt~~, had moustache, and walked away or drove away from the scene in a black van. However, Mr. Hanwins failed to confess to his drug violations and other crimes committed by him and his friends to further cleanse his ailing conscience.

On July 18, 1985, two weeks after the shooting, Jeanette Williams, gave a description of perpetrator's clothes as black and white shirt and burgundy or brown pants, was 5'5" or 5'8" or 9", had shoulder lenth hair and moustache, and had a big silver gun. Again it is hard to understand why this citizen took two weeks before she came forward in identifying the perpetrator in this crime and assisting police to "solve" the crime. Further, this witness is the only witness who viewed the perpetrator with shoulder lenth hair. All other witnesses saw short black hair. This alleged witness also said that the perpetrator was wearing a white shirt with black design and burgundy or brown pants. No other witness allegetly saw this type clothing on the Petitioner. This testimony was unbelievable to all concern. Of course, we must remember that this statement was first obtained in the back seat of Detective Wood's police car after Jeanette testified before the Grand Jury with her two sisters, Helen and Valerie,

helping her select Petitioner's picture from the stack of five pictures that were shown to her by Detective Wood on July 5, 1985. After reviewing the same pictures twice and having the aid of her sisters pointing out the one to select, she was then able to identify this Petitioner. This is gross error and should not be permitted.

On July 18, 1985, two weeks after the shooting, and in the back seat of Detective Wood's police car with Jeanette and Valerie, Helen Williams identified the Petitioner as the perpetrator from the same five pictures Detective Wood's had shown her sister, Jeanette, and with the assistance of Jeanette and Vlaeries. Helen averred that the shooter had no sideburns, had a full head of hair, moustache, and was wearing dark brown pants and plaided shirt. ~~Helen was the alleged girlfriend of the victim and never went to his aid in the street or hospital to offer any help or prayer and then waited two weeks to even notify the police that she knew anything about the crime. "A reasonable trier of fact" could not fairly find guilt from her testimony.~~

On July 15, 1985, Modesto Mateo lived down the street from the crime and knew Petitioner for seven years and gave police a statement saying that Petitioner was running down the street following the shhoting, but did not know of the shooting until later when some "told" him about it at the scene. Mr. Mateo said Petitioner was wearing a black shirt and black pants and carrying a small silver gun in his hand.

All witnesses gave a totally differant view of the crime in spite of the fact that they all alleged to have been from 7 to 50 feet from the crime. The clothing description is broad daylight concerns us the most because the descriptions are just too far apart to be believed by a "reasonable trier of fact". The Williams' sisters statements took root thru Valerie who gatered rumors against Petitioner at the scene and then passed it on to her sisters who gave statements two weeks after the crime, with Valerie assisting in their identification. Valerie put

3" sideburns on the perpetrator and short black hair, while her sister Jeanette put shoulder lenth hair and no sideburns on the perpetrator, and sister Helen describing the perpetrator with no sideburns and a full head of hair. The clothing by the sisters totally conflicted with each other, other witnesses, and police reports and should be totally disbelieve by a "trier of reasonable facts". The sisters simply could not get their stories stright in the police report, with each other, or during trial because they simply did not see what they said they saw at the scene of the crime.

Modesto Mateo did not witness any crime, and in fact, did not know of the shooting when visiting the scene after the shooting and was "told" that someone "thought" that it was the Petitioner who committed the crime. His testimony should be disregarded and not believed as he was only seeking attention when giving a worthless statement. That leaves only Jerry Hawkins "singing the blues" in jail on serious drug charges in two Parishes. "Singing", "Shooting" (dope), or "Squealing" appears to be the going life-style of Mr. Hawkins, but in this case Mr. Hawkins turns Petitioner's hair white at the scene and has him "standing over" the victim following the shooting. It appears that his mind was friend with drugs because he wasthe only alleged eyewitness with such a view of the hair color. Further, this was unknown to the jury because the State suppressed this valuable information from the defense in the police report.

There are good jurors and bad jurors in every coirtroom, but Petitioner no doubt selected the worse ones on jury duty in Jefferson Parish because they will find guilt upon a bare indictment due to the high crime area inwhich they live. No "reasonable trier of fact" would have believed the conflicting evidence and the inconsistencies of the four witnesses because they were so far apart in their descriptions.

It is respectfully submitted that no rational trier of fact could base a just conviction on the evidence as proof of guilt beyond a reasonable doubt which to base a conviction.

Accordingly, the judgment and sentence should be reversed in this case.

CLAIM #3:

THE TRIAL COURT'S CHARGE TO THE JURY WAS IMPROPER AND PREJUDICE TO PETITIONER.

Louisiana Code of Criminal Procedure Article 804 provides in pertinent part:

A. In all cases the court shall charge the jury that:

~~(1) A person accused of crime is presumed by law to be innocent until his guilt is proven beyond a reasonable doubt;~~

(2) It is the duty of the jury, in considering the evidence and in applying to that evidence the law as given by the court, to give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence in the case; and

(3) It is the duty of the jury if not convinced of the guilt of a defendant beyond a reasonable doubt, to find him not guilty.

The court may, but is not required to, define 'the presumption of innocence' or 'reasonable doubt', or give any other or further charge upon same than that contained in this article."

In State v. Mack, 403 So. 2d 8 (La. 1981), the Louisiana Supreme Court held that the exact reading of 804 would henceforth be mandatory, 403 So. 2d 11. The Court noted that misleading or confusing instructions to the jury would constitute reversible error. In the instant case, the Trial Judge gave a long detailed instruction believed by him to cover all legal issues, but erred by informing the jury that a Second Degree Murder conviction carried a life sentence without parole, probation, or suspension of sentence, and then failed to advise the jury of the penalty

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for manslaughter (21 years).

The Trial Judge should not have said anything to the jury about possible penalties in this case because their job is to determine guilt or innocence and cannot set penalty or even recommend any penalty. 53 Am. Jur. 807, P. 596, provides:

"In criminal cases where the assessment of the punishment is by the court and not the jury, any instruction as to the punishment is unnecessary and should not be given, because it can be of no aid to the jury in determining the issues of guilt."

In State v. Doucet, 177 La. 637, 147 So. 500 (1933), the Louisiana Supreme Court pointed out the damages of mingling the considerations of sentence with the jury's guilt determination when it stated:

~~"Presumably they do their duty. But it is no reflection upon the personnel of any jury to say that they might be influenced in their findings, to some extent at least, by a consideration of the penalty or punishment which msy follow their verdict."~~

In State v. Harris, 258 La. 720, 247 So. 2d 847 (La. 1971), the Louisiana Supreme Court said:

"By the same token, sentence regulations form no part of the applicable law to argue by counsel before the jury. To allow argument of these matters would inject irrelevant considerations into the jury's deliberations as to guilt."

Surely, if counsel cannot argue or raise the penalties of any possible verdict, then the Trial Judge's authority rest under the same rule because C. Cr. P. Art 802 does not provide for the trial judge to inform the jury of the penalty as it states:

"Art. 802. General Charge; Scope.

The court shall charge the jury:

(1) As to the law applicable to the case;

(2) That the jury is the judge of the law and the facts on

the question of guilt or innocence, but that it has the duty to accept and apply the law as given by the court; and

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(3) That the jury alone shall determine the weight and credibility of the evidence."

Further, if the trial court was legally permitted to instruct the jury of possible penalties, then we must review the damage done to this Petitioner when the trial judge failed to inform the jury as to the penalty of manslaughter (21 years). Petitioner contends that the jury was under the belief that manslaughter convictions would bring about five (5) years in Louisiana and would be too light in this case. However, if the jury had known that the manslaughter sentence could had been as much as 21 years, then they would have found Petitioner guilty of the manslaughter charge, instead of Second Degree Murder. Petitioner was prejudiced by said instruction.

Petitioner submits that in this case at bar the Trial Judge erred in failing to read the "exact" lanaguage of Article 804 and nothing more. The "tangible basis" definition chosen by the court was incorrect and likely to have mislead the jury to Petitioner's detriment. The charges as given was an error.

The "exact" reading of Article 804 has been mandatory law since September 15, 1981, and requires a reversal for the above reasons.

CLAIM #4:

INEFFECTIVE ASSISTANCE OF COUNSRL DURING TRIAL

Petitioner's retained Counsel, Mr. Frederick King, was ineffective during the trial judge's instructions to the jury when he failed to object to the contents therein as being prejudicial, unfair, and contrary to C. Cr. P. Art 804 and 802, and State v. Mack, 403 So. 2d 8 (1981).

The Sixth and Fourteenth Amendments guarantee the defendants in state criminal trials the fundamental right to effective assistance of counsel, as well as the Louisiana Constitution, Article 1, Section 13 (1974). The applicable standard in the Fifth Circuit on constitutional effective assistance of counsel is not "errorless counsel". but counsel


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reasonable likely to render and rendering reasonably effective assistance. Vola v. Estelle, 708 F. 2d 954 (5th Cir. 1983), cert. denied 104 S. Ct. 736 (1983); Washington v. Strickland, 693 F. 2d 1243, 1251 (5th Cir. 1984) (en banc), cert. granted ___ U.S. ___, 103 S. Ct. 2451, 77 L. Ed. 2d 1332. The two-pronged test in determining the effectiveness of counsel claims, Petitioner must show: (1) that it must be shown counsel was ineffective; and (2) that the ineffectiveness operated to an actual and substantial disadvantage. United States v. Frady, 456 U.S. 152, 107 S. Ct. 1584 (1982).

Because Mr. King failed to object to the trial judge's illegal and improper charge to the jury to protect Petitioner's right to a fair and constitutional trial and review on direct appeal, then it must be concluded, from the facts within the record, that Mr. King was ineffective and operated to an actual and substantial disadvantage to a fair trial.

For these reasons, this Court should reverse judgment and sentence herein and order a new trial in a manner required by the Constitution of the United States.

Respectfully Submitted.


Miguel A. Rosales
Petitioner Pro Se
112762
Louisiana State Penitentiary
Angola, Louisiana 70712

5010147

OFFENSE R.S. # & TITLE R.S. 14:30 Murder	DATE, TIME & TIME/S OF OCCURRENCE Thur 7-4-85 1:00 PM	2ND CHG. IN NARR. PUT X <input type="checkbox"/>	UCR # PREP NM	1. DIST. 2	2. REP. AREA 2601	3. ITEM G-2591-85	CIRCLE AM PM PM	7 D.L.R.				
VIC. NAME (LAST, FIRST, M) IF BUSINESS LIST NAME & BUS. PHONE Mitchell, Kelvin Gregory		13. ADDRESS - STREET # - APT # & RES. PHONE ZIP CODE 1508 Theard St, Gretna 366-7303		14. VIC. RACE-SEX-AGE-D.O.B. N/M 1/26/64		VIC. EMP. OR SCHL. & PHONE # - IF VIC. IS BUS. - LIST RP NAME Unemployed		16. ADDRESS - STREET # - APT # & RES. PHONE ZIP CODE	17. RP. RACE-SEX-AGE-D.O.B.			
WHERE HOSPITALIZED V. Jefferson MacCausland	19 PHYSICIAN	20 DATE & TIME PRO DEAD 7/4/85 1:30pm	21 CORONER NOTIFIED 2:50pm	22 INJURIES Gunshot wound to head					VIC. VEH OR THEFT FROM - MAKE, MODEL, YR		24 LIC. YEAR - STATE - NUMBERS	26 COLOR TOP BOT

IS STOLEN PROPERTY TRACEABLE * IF YES DESCRIBE BELOW * CIRCLE TYPE AND GIVE \$ _____ S Stolen R - Recovered - IF NO PUT X IN BOX ON RT											
CURRENCY, NOTES, COIN COLLECT. MONEY ORD., STAMPS, BANK BK SECURITIES, CREDIT/CDS, CKS	<input checked="" type="checkbox"/> 20.00	F TV'S, RADIO, STEREO, TAPES, PLAYERS, RECORDERS, CAMERAS, RADIOS - CBS	S	J LIVESTOCK ANIMALS	S	OFFICER/S STRUCK OR INJURED GIVE NO	<input type="checkbox"/>	K TOOLS CAR PARTS	S	UCR RANGE	
JEWELRY, PRECIOUS METALS SILVERWARE, ART WORK	S	G FIREARMS RIFLES, PISTOLS	S	MISC	S	TOTAL \$ STOLEN	\$20.00	H HOUSEHOLD GOODS FURNISHINGS SPORTS & RECREATION EQUIP APPLIANCES	S	ARSON S	TOTAL \$ RECOV
CLOTHING, FURS WALLET	S	I CONSUMABLE GOODS, LIQUOR, FOOD CIGARETTES, NARCOTICS, GAS	S	IF PROP NOT MARKED WITH D L # OR S # PUT X IN BOX ON RT		DATE FOR ISSUED TO		<p>At least 20 dollars of currency was observed on the victim prior to death but none was found on him after injuries</p>			

ST & DESCRIBE STOLEN PROPERTY & VALUE - MAKE MODEL, COLOR, SIZE & SER # ARTICLES ATTACHED TO OR INSIDE VEH MUST BE LISTED LIST DAMAGED PROP AND GIVE \$ OR APPROX

At least 20 dollars of currency was observed on the victim prior to death but none was found on him after injuries

IS THERE "M O" PRESENT * FOR PREMISES - ENTRY - FORCE, PUT X TO RIGHT OF TYPE INV. * DETAILS IN BOX 34												IF NO PUT X IN BOX ON RIGHT				
PREMISES (TYPE)	UCR	APT OR ROOM 302	GARAGE OR SHED 312	RESID 301	BNK FIN 316	BAR 326	BUS MISC 355	GFDC 318	LIQ STR 318	MOTEL 327	OFFICE BUS 351	ST RO HY 341	OPN AREA 340	PRKG AREA 331	RR CAR 353	OTHER LIST 354
VEH DR	SER STA 321	AUTO 315	TRUCK 315	TRAILER 315	VANS MOB HOM 308	RR CAR 353	OTHER LIST 354									
ENTRY (WHERE)	UCR	DOOR 436	ROOF CEIL 438	WALL 440	WINDOW 441	RIGHT 507	LEFT 508	FRONT 432	REAR 434	CENTER 509	open area in street					
FORCE (WHEN)	UCR	HANDGUN 1141	SHOTGUN 1142	RIFLE 1143	KNIFE OR CUTTING TOOL 1146	PHY FORCE HNS FT 414	CLUB TYPE TOOL-WEAPON 1148	WEP IMP NOT SEEN 1145	COAT HG OR WIRE 506	TWIST FORCE PLIERS WRENCH 417	PHY TOOL OR SCREWDRIVER 421	GLASS CUT BROKE REMOVED 424				
PICK OR INTD TOOL 510	KICKED IN FORCED OPEN 427	CUT REMOVED BROKE LOCK 423	CUT BROKE HOLE 505	KNOCK RING DOORBELL 121	THREATS VERBAL 222	OTHER LIST IN BOX 33										

DESCRIBE - TOOL - WEAPON IF REC'D MAKR X **unknown model revolver**

34. "M O" FROM ABOVE PLUS DETAILS 64'S GIVE ACTIONS & VERBAL REMARKS - 62'S LIST INSIDE BLDG ACTION ETC

suspect approached victim from behind and fired one shot into victim's head then fled on foot

S THERE PHYSICAL EVIDENCE - PUT X TO RIGHT OF TYPE - DETAIL IN NARRA												IF NO PUT X IN BOX ON RIGHT							
TECHNICIAN	ARRIVED	AM	BLOOD	CASTS	CLOTHING	FIBERS	FIREARMS	HAIR	IF TECH NOT CALLED PLACE X	R. Ainsworth			1:52 pm	PRINTS	PHOTOS	PROJECTILES	SOIL	TOOL MKS	OTHER

WAS THERE A WITNESS TO THE CRIME? IF SO, LIST IN BLOCK 50

DID YOU CANVASS AREA? IF YES, LIST LAST NAME, INITIALS, ADDRESS & PHONE

See narrative

ARRESTEE LAST

FIRST

RACE SEX DOB

S THERE SIGNIFICANT REASON TO BELIEVE THE CRIME MAY BE SOLVED - DETAIL IN NARRA - IF NO MARK X ON RIGHT											
DET BU & TIME NOT AM	TELEP X	NAME	ARRIVAL TIME CIRCLE	41 SUPVR NOTIFIED-TIME AM YES/NO	SUPVR ON SCENE - NAME & ARR. TIME AM	42 R P SIGNATURE I WILL PROSECUTE					
1:30pm	RADIO	Det. Barry Wood	2:20pm	3:00pm	LT. F. Williams	<p>43 COMP YES/NO</p> <p>44 R P SIGNATURE I WILL PROSECUTE</p> <p>45A ACTIVE PATROL CONT</p> <p>45B REPORTING OFFICER 2ND IN NARRA</p> <p>Jefferson Parish Sheriff's Office</p>					

I certify this to be a true and correct copy of the original official document on file in the Record Room of the JEFFERSON PARISH SHERIFF'S OFFICE

LT. F. Williams

CONFIDENTIAL

(EXHIBIT "A")

MK

3010171

CRIME		2ND CHG IN	48. VICTIM	49. ITEM	
R.S. 14:30 Murder		<input type="checkbox"/>	Mitchell, K. Gregory	G-2591-85	
50. WITNESSES - NAME & ADDRESS (RACE, SEC, AGE, D.O.B.)	BADGE	PHONE	BRIEF SUMMARY OF INFO GIVEN - DETAIL IN NARR.		
Narrative					

1. SUSPECT ARRESTED? IF YES USE CODE "A" BELOW ON LEFT FOR S-1, S-2, S-3 - IF NO MARK X IN BOX ON RIGHT	ARRESTED
2. SUSPECT NAMED? IF YES USE CODE "N" BELOW ON LEFT FOR S-1, S-2, S-3 - IF NO MARK X IN BOX ON RIGHT	NAMED
3. SUSPECT DESCRIBED? IF YES USE CODE "D" BELOW ON LEFT FOR S-1, S-2, S-3 - IF NO MARK X IN BOX ON RIGHT	DESCRIBED
4. IS LOCATION OR ADDRESS OF SUSPECT KNOWN? IF "NO" PUT X IN BOX ON RIGHT - IF YES LIST BELOW IN "MAY BE LOCATED AT" SPACE	

5. CAN SUSPECT BE IDENTIFIED? IF YES SHOW WIT CODE FOR		SUS-1	SUS-2	SUS-3	IF NO PUT X IN BOX ON RT.				
CODE	NAME. LAST	FIRST	MIDDLE	RACE-SEX-AGE	COMPLEXION	D.O.B.	W.CODE	B OF I CK'D?	YES
	A Rosales, Miguel A.			W/M 26	D.O.B. 4-20-59	Light complex		69606	<input checked="" type="checkbox"/>
SCRIP. HEIGHT & WEIGHT		BUILD	HAIR COLOR LENGTH	EYES	CLOTHING	JEWELRY	SCARS/TATTOO	GLASSES	FACIAL HAIR
5'6"		145lbs	Med	Blk short hair,	Brn eyes,	mustache			

MAY BE LOCATED AT		RES <input type="checkbox"/>	FRIEND <input type="checkbox"/>	WORK <input type="checkbox"/>	CHECKED?	NO	YES	WIT. CODE	
2831 Pritchard Rd, Marrero					flmy. RES <input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
CODE	NAME. LAST	FIRST	MIDDLE	RACE-SEX-AGE	COMPLEXION	D.O.B.	W.CODE	B OF I CK'D?	YES
									<input type="checkbox"/>
SCRIP. HEIGHT & WEIGHT		BUILD	HAIR COLOR LENGTH	EYES	CLOTHING	JEWELRY	SCARS/TATTOO	GLASSES	FACIAL HAIR

MAY BE LOCATED AT		RES <input type="checkbox"/>	FRIEND <input type="checkbox"/>	WORK <input type="checkbox"/>	CHECKED?	NO	YES	WIT. CODE	
CODE	NAME. LAST	FIRST	MIDDLE	RACE-SEX-AGE	COMPLEXION	D.O.B.	W.CODE	B OF I CK'D?	YES
									<input type="checkbox"/>
SCRIP. HEIGHT & WEIGHT		BUILD	HAIR COLOR LENGTH	EYES	CLOTHING	JEWELRY	SCARS/TATTOO	GLASSES	FACIAL HAIR

RELATIONSHIP TO VIC PUT X ON RT		SPOUSE	PARENT	CHILD	OTH.REL	COM.LAW	FRIEND.ACO	UNK	OTHER LIST	connection
CAN SUS. VEHICLE BE DESCRIBED?		MAKE	YR	COLOR	MODEL	IF NO PUT X ON RT		X		
STATE	#s & LTRS YR	IDEN MARK	OWNER		ADDRESS					

57 NARRATIVE - 1 CONTINUATIONS - 2 ADD'L VICTIMS, WITNESSES, SUSPECTS - 3 LIST EVIDENCE & DISPOSITION - 4 DETAILS OF OFFENSE - BE BRIEF, BE ACCURATE, DO NOT REPEAT DETAILS									
Incident: R.S. 14:30 Homicide									
Location: 1112/1116 Inca Drive, Harvey, La.									
Date & Time: 4/July/85 1:02 P.M. (Thursday)									
Victim: Mitchell, Kevin Gregory N/M 21									
D.O.B. 1-26-64									
1508 Theard St., Gretna, La.									
366-7303									
5'11", 210lbs									
Blk hair, brn eyes									
J.P. bureau of I.D. #107658									
(Deceased)									
Accused: Rosales, Miguel A. W/M 26									
D.O.B. 4/20/59									
(continued)									

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 ISSUED TO [Signature]
 JAN 28 11 15 PM '87
 J.P.S.O. RECORDS

DISCUSSED YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> BLOCK #s	SUPV. APPROVAL	PLAT. CMDR APP	REF TO CO <input type="checkbox"/>	CO APP.	58 PAGE 2 OF 12 PAGES
000093	[Signature]	[Signature]			MK

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SO CONTINUATION RM JPSO 4.79, REV. 8/83	SHOW TYPE: RPT. <input type="checkbox"/> SUPP. <input type="checkbox"/> STAT. <input type="checkbox"/> LIST VIC./WIT. NAME IN SPACE BELOW	DIST.	REP. AREA	ITEM #
	Mitchell, Kevin G.	2	2601	G-2591-85

Evidence obtained:

- 1) One pair of white "Pony" tennis shoes from victim by Tech Ainsworth at West Jefferson Hospital.
- 2) One pair of maroon shorts from victim by Tech Ainsworth at West Jefferson Hospital.
- 3) One blood sample from victim by Technician Frank Lopicolla at the New Orleans Coroner's Office.
- 4) One semi-jacketed projectile from victim by Dr. Samuels turned over to Tech Lopicolla.

Color photographs of the crime scene were obtained by Tech Ainsworth on 7/4/85.

Color photos of the autopsy were obtained by Tech Lopicolla on 7/5/85.

Synopsis:

The victim was engaged in holiday celebrations in the 1100 block of Inca Drive in Harvey on 4/July/85. At approximately 1:00 P.M. same date, the accused approached the victim from the car and fired one fatal gunshot wound to the victim's head. The victim dropped in the street between 1112 and 1116 Inca Drive, and the accused was seen leaving the area on foot to unknown locations.

Although there were several witnesses to the open air shooting, the initial investigation by Patrol Deputies provided no information as to the accused's identity. Subsequent investigation by the undersigned Detective provided eye witnesses to the shooting who identified the accused by name and photographic lineups. Both the victim and accused are known by the witnesses as being involved in narcotics in the West Bank of Jefferson areas, particularly the "Electric Avenue" area.

Narrative:

On 4/July/85 at approximately 1:30 P.M., Detective Barry Wood of the Jefferson Parish Sheriff's Office Homicide Unit was contacted via telephone and advised of a homicide. Detective Wood was on holiday standby duty for homicide and was advised by Lt. F. Williams that at about 1:00 P.M. same date, a black male was shot down in the street of the 1100 block of Inca drive in Harvey, La.. The victim was transported

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 FOR [Signature]
 DATE [Signature]
 JPSO RECORDS [Signature]

SG. OFF.	SUPER. APPL.	PAGE
<i>Det. Barry Wood #2415</i>	<i>[Signature]</i>	4 OF 12

MR

507 0149

CONTINUATION JPSO 4.79 REV. 8/83	SHOW TYPE: RPT. <input type="checkbox"/> SUPP. <input type="checkbox"/> STAT. <input type="checkbox"/> LIS. <input type="checkbox"/> C/WIT. NAME IN SPACE BELOW	DIST.	REP. AREA	ITEM #
	Mitchell, Kevin G.	2	2601	G-2591-85

to West Jefferson Hospital from the shooting scene when vital life signs were detected by the Emergency Medical Technicians. Lt. Williams advised Detective Wood to proceed to the hospital since the victim expired at the same time as the notification. Lt. Williams also advised that it had begun to rain and that there was not very much to see at the crime scene since it occurred in the street.

Det. Wood proceeded to the West Bank of Jefferson Parish from the East bank of Jefferson. The weather was noted to be cloudy and raining throughout the area. The temperature was muggy and in the 80 degree range. Det. Wood arrived at West Jefferson Hospital at approximately 2:20 P.M. same date and met with Deputy William Wright of the Second District Patrol Division. Deputy Wright advised that there were alot of people on the street at the time of the shooting, but no one came forward to describe what had actually happened. The victim was shot at least one time the rear of the head as advised by Deputy Wright. Det. Wood observed the victim to be a black male, early 20's, approximately 6' in height with short black hair and short beard. The victim was clad in only one pair of white tennis shoes and maroon shorts. Det. Wood checked the victim's pockets and found only one bic cigarette lighter. No other articles were found on the victim's person.

Det. Wood was advised by the hospital staff that the family of the victim was there in the hospital. The Sister of the victim was also admitted to West Jefferson Hospital for a cut foot. Det. Wood met with the victim's family and ascertained the victim's proper identification. Upon completing interviewing the family of the victim, Det. Wood interviewed the victim's Sister, [REDACTED] M/F 12/12/60. [REDACTED] resides at [REDACTED] in Harvey. [REDACTED] stated that her brother was at her residence prior to the shooting. She advised that they were to bar-b-que for the holiday and that he gave her money for purchasing beer and food at the store. The victim left her apartment and approximately 10 minutes later, a neighbor advised her that the victim was down in the street down the block. [REDACTED] stated that she ran down the block and saw that her brother was shot. Due to [REDACTED] drugged state and emotional trauma, Det. Wood suspended further questioning at that time.

Det. Wood proceeded to the Jefferson Parish Criminal Investigations Bureau in order to meet with Lt. Williams. Lt. Williams gave Det. Wood the following information pertaining to the crime scene: (continued next page)

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Lt. Williams advised that the crime scene was located in the street between the buildings marked 1112 and 1116 Inca in Harvey. The victim was observed to be laying on his back in the street with his head laying on the West curb. The victim was pointed in a West to East direction perpendicular to Inca Drive. The head of the victim was even with an unmarked light pole located on the sidewalk between 1112 and 1116 Inca Drive. Lt. Williams stated that no one admitted that they observed the shooting. As Lt. Williams arrived on the scene, the weather took a turn for the worst and the victim was transported to West Jefferson Hospital. The rain washed any bloodlike substance out of the street prior to the Crime Scene Technicians arrival. Lt. Williams stated that he searched the street for any ejected brass casings in the area if the weapon was to be an automatic. A proper identification of the victim was made on the scene by the victim's Father. The Father, [REDACTED] N/M 2-22-31, was on the crime scene prior to Lt. Williams arrival. Upon being briefed by Lt. Williams, Det. Wood proceeded to 1112 Inca Drive to observe the area of the shooting. The weather was still overcast and raining. The streets were abandoned due to the weather and further investigation would be conducted the following day.

On 5/July/85 at approximately 9:00 P.M., Det. Wood attended the autopsy of the victim. The autopsy was conducted at the New Orleans Coroner's Office morgue. Dr. Monroe Samuels was the attending Pathologist. Dr. Samuels advised that the victim showed no signs of previous trauma to the body. The entry wound was in the right rear of the skull. The projectile traveled right to left, bounced off of the left side of the interior skull, then came to rest in the forward right frontal section of the victims skull. A single bullet was extracted from the victim's head. The bullet appeared to be .38 caliber in size. The bullet was marked by Dr. Samuels and turned over to Crime Scene Technician Lopiccolo.

On 5/July/85 at approximately 12 noon, Det. Wood began a canvass of the Inca drive area in search of witnesses. Det. Wood interviewed [REDACTED] N/M 4-2-63 who at that time lived at [REDACTED] in Harvey. [REDACTED] advised that he was in the 1000 block of Inca at the time of the shooting. He observed the victim on the East sidewalk of Inca and then cross over to the West side. Just as he was walking across the street, [REDACTED] observed a black colored van drive up to the same area and stop. The victim was in front of the van when [REDACTED] believed that he heard a gunshot. He wasn't sure at the time because of the fireworks going off in the area. As the van drove away towards Ute street, he observed the victim down in the street. He crossed the street and advised [REDACTED] the victim's sister, that her brother was down in the street. [REDACTED] stated that there were alot of people outside where the victim was shot, but no one was saying anything. He advised that a woman he knew that lived in the area

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named [redacted] had seen the shooting and told him so. The woman [redacted] lives at [redacted] in the downstairs apartment.

On 5/July/85, Det. Wood interviewed [redacted] N/F 12/15/39 who resides at [redacted] [redacted] advised that she saw the victim when he left his sisters apartment. [redacted] lives with the Sister, [redacted] at [redacted] [redacted] stated that she observed the victim as he was leaving 1016 Inca and asked him for a dollar to buy cigarettes. The victim gave [redacted] a dollar and she observed that he had additional money in his hand. [redacted] stated that he had at least one twenty dollar bill in addition to the dollar that he gave her. [redacted] stated that the victim was in good cheer and walked towards the 1100 block of Inca on the West side of the street. About ten minutes later, she found out that the victim was shot and laying in the street. [redacted] was not outside at the time of the shooting and did not see when the victim might have crossed the street to the East side.

① On 5/July/85, Det. Wood interviewed witness [redacted] N/F 7/19/58 *Valerio* who resides at [redacted] was very frightened to speak with Det. Wood initially about what she had observed on July 4th, 1985. [redacted] stated that she did see the shooting of the victim known to her as Gregory Mitchell. She also knew the victim by nickname "Big Dut." The victim had been dating her sister and had stopped by her apartment during the festivities.

In [redacted] oral statement to Det. Wood, she advised that she observed the victim near the sidewalk between 1112 and 1116 Inca Drive when a light colored spanish male approached the victim from behind and fired one shot into the victim's head. A black van was parked in the street and she thought that the suspect spanish male might have gotten into the black van and drove away. [redacted] was frightened at the time of the oral interview and agreed to meet Det. Wood on July 8, 1985 and give a taped statement for the record. [redacted] described the shooter as a spanish male, 25-30 years old, black short hair combed back, 5'11" tall, with a slim build. She thought that he wore dark colored pants and shirt. She stated that the perpetrator had light skin. Other members of her family were also witnesses and were to meet Det. Wood on Monday (7-8-85) to give their accounts of the shooting.

On Monday, 8/July/85, witness [redacted] and her other family members did not show up for the prearranged interviews. Efforts to contact [redacted] for the interview were in vain at that time. Further efforts to contact [redacted] would be conducted during the investigation.

On Tuesday, 9/July/85, Det. Wood was contacted by Det. Curtis Snow of the Jefferson Parish Sheriff's Office Homicide Unit via telephone. Det. Snow advised that a subject named [redacted] requested to speak with Homicide Detectives in reference to Gregory

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Mitchell's homicide. [redacted] N/M 9-10-56 advised that he was a witness to the murder that occurred on 4/July/85 and that he wished to make a statement. Det. Snow advised the subject/witness that Det. Wood would contact him on the case. It should be noted that [redacted] was arrested by Det. Wood on 5/July/85 in the 1108 block of Inca drive during a canvass of the neighborhood. [redacted] was chased down after being observed inside of a vacant apartment with another unidentified black male. [redacted] was engaged in drug related activities and arrested accordingly.

On July 10, 1985, Det. Wood obtained a taped interview of witness [redacted] Je RR. [redacted] stated that he knew the victim for a long time and that he observed the complete shooting incident. [redacted] stated that the shooter's name was known only as Miguel. [redacted] has known Miguel for approximately six years in the area as being involved in drug traffic. He described the perpetrator Miguel as a light skin spanish male, 5'8" in height, slim build, short black hair combed back, and mustache. He stated that Miguel was dressed in black slacks and a white colored long sleeve shirt with the sleeves rolled up to his elbows. [redacted] first observed the suspect walking down Inca street from the area of Manhattan blvd and Apache drive. [redacted] was engaged in conversation with the driver of the black van known only as "Smitty." As Miguel approached [redacted] position, the suspect called out for the victim by his nickname "Big Dut." [redacted] stated that the victim did not pay any attention to Miguel and kept dancing to music being played on the street.

The perpetrator was observed by [redacted] to enter 1112 Inca [redacted] after he passed [redacted] position. [redacted] was still on the West side of the street near the open passenger door of Smitty's van. [redacted] advised that the victim walked across the street near 1112 Inca still dancing to the music playing in the area. [redacted] had his head turned but heard a shot over his right shoulder. As he turned, he observed the victim shake and fall backwards to the street. The shooter, Miguel, was standing over the victim with a silver colored snub nose revolver in his hand. Only one shot was fired and the shooter walked away from the victim while putting the gun under his shirt. [redacted] Miguel walked right past the witness [redacted] and the black van. The driver of the van tried to drive away but [redacted] stopped him in order to keep the victim from being run over. The driver stopped, backed up, and then proceeded forward towards Ute Street in Harvey. [redacted] did not see where the shooter ran to or any vehicles that he might have driven off in. [redacted] concluded by saying there were other witnesses in the area, but that they may not talk of the murder. He also stated that the black van was not involved in the murder as some people were rumoring. The driver, Smitty, was just there to make a "score" of narcotics. His passenger named [redacted] was not able to re-enter the van before the driver left.

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For complete details, refer to the transcribed taped statement of [redacted] which will be attached to and considered a part of this report.

On 15/July/85, Det. Wood interviewed witness [redacted] N/M 1-12-61 who resides at [redacted] [redacted] was a spanish speaking black male from the Dominican Republic and had been living on Inca drive at the time of the shooting. [redacted] advised Det. Wood that he did not see the shooting but did see the shooter running North on Manhattan blvd shortly afterwards. [redacted] stated that he was in his second floor apartment on 4/July/85 when a subject shouted to him that "Big Dut" was shot. [redacted] simultaneous looked out of his window which faced West and observed the spanish looking male known only to him as Miguel. He stated that Miguel was running North on Manhattan Blvd towards the West Bank Expressway and was carrying a small silver/chrome colored gun in his hand. The subject also had something white colored wrapped around his wrist and hand that carried the gun. [redacted] did not think of the connection until he arrived at the shooting scene and other spanish speaking males told him that Miguel had shot the victim. At that time, [redacted] stated that he knew that the subject he saw running had shot the victim.

[redacted] stated that the suspect, Miguel, was dressed all in black and carried something white near the gun. [redacted] did not see any vehicles that the suspect might have used in his getaway. [redacted] stated that the suspect's last name was not known to him. He knew that the suspect had at one time lived on Tensas Street with his family in 1979, and that he was recently arrested for another murder. [redacted] was able to describe the suspect as a light skinned spanish male from Cuba, 5'9", slim build, black short hair combed back, and mustache. His description of the suspect was similar to witness [redacted]

On 7/15/85, Det. Wood utilized the local motion computer and checked addresses on Tensas street for any subjects with the name of Miguel. Det. Wood located the name Miguel A. Rosales, W/M 4-20-59. The subject Miguel Rosales had been recently arrested for murder in New Orleans in October 1984, but was released due to insufficient evidence. At about 5:00 p.m. on the same date, Det. Wood was contacted by witness [redacted] by telephone. Witness [redacted] advised that he found out the name of the shooter from one of the suspects old girlfriends in the area. [redacted] advised the name Miguel Rosales as the person he saw running with the gun on Manhattan Blvd. [redacted] identification confirmed Det. Wood's computer results.

On 7-16-85, Det. Wood met with witness [redacted] and showed a six picture photo lineup. The lineup consisted of Jefferson Parish Sheriff's Office Bureau of Identification picture numbers 91925;114975;69606;91571;77457;64893. Det. Wood showed the lineup to the witness to verify his name identification of the suspect. [redacted] choose picture

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Number 69606 which was that of Miguel Rosales as the person running with the gun on Manhattan Blvd in Harvey. A taped statement was obtained from [redacted] on 7-17-85 by Det. Wood and should be considered a part of this report.

On 7/18/85, Det. Wood and Det. Trapani located witnesses [redacted]. Both black females were previously interviewed in reference to the murder but failed to appear for statements. Both witnesses advised that they were afraid and that rumors of bodily harm would come to them if they testified to what they observed that July fourth. Both witnesses were shown five picture photo lineups in order to ascertain if they could identify the murderer. [redacted] choose Miguel Rosales as the shooter of Gregory Mitchell. Upon the positive identification of the perpetrator, the witnesses gave taped interviews as to what they witnessed on 4/July/85. For complete details of the witnesses statements, refer to the transcription which is attached to and considered a part of this report.

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Based on the positive identification of the perpetrator by witnesses Det. Wood prepared an arrest warrant for Miguel A. Rosales W/M 4-20-59. The warrant was signed and issued by 24th Judicial Judge Tieman on 19/July/85. Det. Wood entered the warrant in N.C.I.C. on the same date for nationwide notification since the whereabouts of the suspect was not known.

On 24/July/85, Det. Wood made contact with witness [redacted] in order to show a photo lineup of the suspect for identification. [redacted] viewed a six picture lineup and positively choose Miguel Rosales as the shooter of Gregory Mitchell. The pictures shown were numbers J.P. B.of. I.#'s 114975;69690;91571;64893;112446;91925. [redacted] also submitted a supplement taped statement to his identification and included the fact that he heard rumors that the suspect Rosales was going to shoot him.

On 7-22-85, Det. Wood was notified via telephone that another witness was wanting to give information pertaining to the victim's murder. The subject wished his name to be held in confidence until the trial and for purposes of this report, the subject will be considered an informant.

The Informant advised that he knew the shooter as [redacted] and witnessed the shooting on July 4, 1985. The Informant stated that Miguel walked up to him in the 1000 block of Inca and asked if the black male subject in the street was "Big Dut?" Miguel asked the question in spanish and then again in English. The Informant confirmed the identity of Gregory Mitchel, then Miguel stated "I ought to shoot him!" The Informant asked him not to shoot him in front of his house. The Informant advised that Miguel walked away towards Manhattan Blvd and was not seen again for about 45 minutes. The Informant was across the street from 1112 Inca when he spotted [redacted] walk from the North area of Inca towards 1112 Inca drive. The Informant advised that Miguel called out to the

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victim from across the street twice then walked into the breezeway of 1112 and 1116 Inca. The victim was dancing in the street and began to cross but stopped as he reached the corner and turned around. The suspect, Miquel, then turned around and said "What the Fuck!" and pulled the gun out and shot the victim in the back of the head. After the shot, the Informant heard the suspect state "I got one more!" and hold the gun in the air. The suspect casually walked away from the victim, crossed the street and left towards Manhattan blvd between the buildings.

The Informant stated that he recalled the suspect as wearing all black and had white highlight in his hair in an attempt to disguise himself. The Informant stated that the gun used was a nickel plated 5 shot .38 special. A five picture photo lineup was shown to the Informant at that time. The Informant choose Miguel Rosales's picture as the person he knew as [REDACTED]. Det. Wood advised the witness that a warrant was already issued for the suspect. The Informant seemed surprised since he heard rumors that other witnesses would be killed by the suspect. The Informant stated that he would testify at the Grand Jury and Trial but needed his identity confidential until then. The Informant is presently working with the Jefferson Parish Intelligence and Narcotics sections. A taped statement was refused by the Informant at that time due to the seriousness of his additional information on narcotics and weapons in the Parish. Contact with the informant is maintained through the Special Investigation Division of the Jefferson Parish Sheriff's Office.

On 23/July/85, Det. Wood identified the driver of the black van as [REDACTED] N/M 7-22-44, otherwise known as "Smitty." [REDACTED] lives at [REDACTED] Ia. [REDACTED] stated that it was his black van parked at 1112 Inca when the shooting occurred. [REDACTED] stated that he dropped off a person named [REDACTED] in order for [REDACTED] to purchase drugs. [REDACTED] advised that he heard the shot and saw the victim but denied seeing the suspect with a gun. [REDACTED] stated that he was looking at his radio antenna at the time of the shooting and could not see the shooter. He stated that there was alot of people around the area at the time and did not know which one shot the victim. [REDACTED] verified that he was speaking to [REDACTED] at the time of the shooting but that he did not see the suspect. It should be noted that witness [REDACTED] advised that [REDACTED] was a witness and was only about 8 to 10 feet away from the suspect at the time of the shooting.

On 26/July/85 at approximately 2:30 P.M., Det. Wood arrested the suspect Miguel A. Rosales at 200 Huey P. Long Avenue in Gretna. The suspect was lead into the office by other agencies who were in contact with the suspect on other investigations. The suspect did not know that he was wanted for the murder of Gregory Mitchell. Det. Wood did not

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release the wanted information out except to the local law enforcement agencies to avoid the suspect from fleeing the area.

The suspect was advised of his arrest and informed of his Constitutional rights as per Miranda form which is attached to and considered a part of this report. The suspect/arrestee understood and spoke English with a spanish accent. The suspect denied the fact that he was involved in the shooting and did not know the victim Gregory Mitchell otherwise known as "Big Dut!" The arrestee advised that he was in Chalmette all day with relatives for the holidays. He was Bar-b-Queing with his Brother and family at the time of the shooting. The Suspect would not give Det. Wood a taped statement as pertaining to his whereabouts or involvement in the murder. The suspect was transported to J.P.C.C. and booked with murder.

On 26/July/85, Det. Wood served a search warrant on the residence of 2831 Pritchard road in Marrero. That address was where the arrestee was located and which belonged to his Father, Rafael Rosales. The search warrant was served at about 4:30 P.M. same date where only articles of black and white clothing were taken. Refer to the copies of the attached search warrant for itemized lists of clothing. It appeared to Det. Wood during the search that the arrestee did not reside at 2831 Pritchard road on a full time basis. The arrestee's permanent address was unknown and undisclosed during the interview with the arrestee or family.

On 29/July/85, the return of the search warrant was submitted to 24th Judicial Judge Cannella's office by Det. Wood.

Further investigation into the homicide of Gregory Mitchell to be conducted for additional witnesses and evidence by Det. Wood.

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AUTOPSY PROTOCOL - CASE OF GREGORY MITCHELL, 20, BLACK MALE, AUTOPSY PERFORMED ON JULY 5, 1985, BY DR. MONROE S. SAMUELS, AT THE REQUEST OF DR. CHARLES B. ODOM, CORONER, JEFFERSON PARISH. **JUL 12 1985**

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EXTERNAL EXAMINATION: The body is that of a well developed, well nourished, young, black male, appearing older than the stated age of 20 years. It measures 5'11" in height and weighs 210 lbs. Examination of the body shows postmortem rigidity to be present. Lividity is not notable due to pigmentation of the skin. Examination of the head shows the scalp to be covered by short black crinkly hair. There is a full beard and mustache present on the face. Examination of the eyes shows moderate congestion of the sclerae and conjunctivae. The pupils are round and regular. A small trickle of blood is present coming from the right nostril. Examination of the oral cavity shows a small chip on the medial aspect of the upper left medial incisor. Needle puncture marks are present on the lateral aspect of the left side of the neck and in the right and left antecubital regions. There is an 11 cm. diagonal scar over the lower left chest. Old well healed scars are present over the anterior aspects of both knees. Examination of the posterior aspect of the head shows an entrance gunshot wound to be present in the upper, lateral, occipital region on the right side. The entrance wound measures .5 cm. in diameter and shows a symmetrical rim of abrasion around the periphery which measures 1 mm. to 2 mm. in width. No evidence of tattooing, staining, or singeing of hair is noted. No wound of exit is seen. Further examination of the body shows no other significant identifying marks or scars. The body is opened with the usual autopsy incision.

BODY CAVITIES: On removing the sternal plate, examination of the viscera in situ shows a small remnant of a thymus gland in the anterior superior mediastinum. The pericardial, pleural, and peritoneal cavities are normal, showing no adhesions nor any fluid accumulations.

HEART: Examination of the heart in situ shows the epicardial surface to be smooth and glistening. The pulmonary artery is free of emboli. The heart weighs 430 grams. Examination of the coronary arteries show them to be patent. The myocardium is firm, brown, and on multiple cut sections shows no lesions. The endocardium is smooth and glistening and the cardiac valves are normal.

RESPIRATORY TRACT: The laryngeal airway is patent. The larynx and trachea contain a profuse amount of bloody mucoid material. The right lung weighs 580 grams, the left lung weighs 560 grams. They are similar in appearance. The pleural surfaces are smooth and are a dark bluish-purple in color, except for a small small light pink areas noted anteriorly. Both lungs are subcrepitant

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to palpation. The major bronchi contain a profuse amount of blood and bloody mucoïd material. The major pulmonary arteries are normal. On cut section, the cut surface of the lung, except for these small areas of pink discoloration noted anteriorly, is dark red-purple in color and exudes a profuse amount of bloody fluid on pressure. No definit focal consolidating lesions are noted in either lung.

LIVER: The liver weighs 2280 grams. The capsule is smooth and brown. On cut section, normal hepatic markings are noted. The gall bladder and extra-hepatic biliary passages are normal.

PANCREAS: The pancreas is normal.

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ADRENALS: Both adrenal glands are normal.

~~SPLEEN: The spleen weighs 220 grams. The capsule is smooth and blue-gray. On cut section, normal splenic markings are seen. No focal lesions are noted.~~

KIDNEYS: The right kidney weighs 180 grams, the left kidney weighs 210 grams. They are similar in appearance. The capsules strip with ease. The cortical surface is smooth and red-brown. On cut section, there is clear cortical medullary demarcation. The cortex, medulla, papillae, and pelves are normal.

GASTROINTESTINAL TRACT: The esophagus, stomach, small intestine, and large bowel show no gross lesions.

HEAD: On reflecting the scalp, a small area of hemorrhage is noted on the undersurface of the scalp in the right frontal region. A large area of hemorrhage is noted on the undersurface of the scalp surrounding the entrance wound in the upper lateral right occipital area. The entrance wound on the outer aspect of the skull, involving the outer table of bone, measures approximately 1 cm. in diameter and is almost circular in shape. There is seen to be a thin linear fracture running through the mid-portion of the right frontal bone in a vertical fashion. On removing the calvarium, examination of the brain in situ shows the bullet to have traveled from the wound of entrance in the right occipital region, diagonally across the skull, impacting just above the petrous ridge on the left side, then being deflected anteriorly through the anterior, parietal, and frontal

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regions on the left and crossing the midline, impacting against the frontal bone on the right side. A copper jacketed bullet is found embedded in the superficial tissues of the right frontal lobe. The bullet is removed and marked with the initial S on the base. The brain is removed and it weighs 1240 grams. The bullet is seen to have passed through the superior portions of both the right and the left cerebellar hemispheres and through the parietal and frontal lobes on the left side with an additional laceration noted in the most anterior portion of the frontal lobe on the right side. The hemorrhagic track noted through the left cerebral hemisphere measures approximately 1 cm. in diameter and shows small areas of hemorrhage into the surrounding white matter. Examination of the base of the skull, after removal of the dural, shows a frontal fracture on the right to extend into the anterior part of the orbital plate of the frontal bone on the right. There is seen to be a horizontal fracture running through the lower portion of the parietal bone on the left side, just above the petrous ridge, and there is a small fracture radiating from the wound of entrance into the posterior portion of the occipital bone on the right side. Moderate fragmentation of the inner table of bone is noted around the wound of entrance. No evidence of any grayish staining or powder deposition is noted on the dura or on the inner table of bone. A few tiny fragments of lead are seen in the lower parietal region on the left side adjacent to the previously mentioned horizontal fracture at the impact site on the left side of the skull. There has been complete disruption of the bones of the cribriform plate with exposure of the underlying sinus.

PROVISIONAL ANATOMIC DIAGNOSIS:

1. Gunshot wound of head with laceration of brain and skull fracture.
2. Aspiration of blood.

NOTE: One bullet recovered.

Monroe S. Samuels

Date Signed: 7/6/51

Monroe S. Samuels, M.D., Pathologist
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Item G-2591-85

JEFFERSON PARISH SHERIFF'S OFFICE
GRETNA, LOUISIANA

RIGHTS OF ARRESTEE OR SUSPECTS

DAY Friday DATE 7-26-85 TIME 2:52 pm LOCATION 200 Huey P. Long
NAME Miguel Angel Rosales DATE OF BIRTH 4/20/59 AGE 26
RACE white ADDRESS 2831 Pritchard Rd., Marrero
EDUCATION 10th Grade

YOU ARE UNDER ARREST FOR AND WILL BE CHARGED WITH VIOLATION OF:

YOU ARE UNDER INVESTIGATION RELATIVE TO:

RS 14:30 RELATIVE TO Homicide

~~M BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.~~

M YOU HAVE THE RIGHT TO REMAIN SILENT.

M ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN COURT.

M YOU HAVE THE RIGHT TO TALK WITH A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.

M IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.

M IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER.

CONFIDENTIAL
ISSUED TO Miguel Rosales
FOR _____
DATE JAN 28 4 11 PM '87
JPSO RECORDS

5070149

I have read this statement of my rights Miguel A. Rosales

This statement of my rights has been read to me by the undersigned Officer

Det. Barry Wood

WAIVER OF RIGHTS

I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

SIGNED _____
(ACCUSED)

WITNESS: _____

WITNESS: _____

000107
JPSO 2.02

MK

3010144 G-2591-85

JPSO SUPPLEMENT RPT. #1.9	8/83	UCR-CLEAR	UCR	UCR-VIC	UCR-PERP	1. DIST.	2. R. AREA	3. ITEM
		3		NM	UNK	2	2601	G-2591-85
4. OFFENSE R.S. & TITLE	14:30 MURDER			2ND CHG. IN NARR. PUT "X" <input checked="" type="checkbox"/>	5. ARREST NA ID SUMMONS <input type="checkbox"/>	6. REPORTED - MO-DAY-YR-TIME	7. DLR	
	7-4-85					7-4-85 13:02	AM <input checked="" type="checkbox"/> PM	
8. ORIGINAL DATE OF OCCURRENCE - MO-DAY-YR	7-4-85			9. LOCATION OF OFFENSE - STREET-APT.				
				1116 INIA, HARVEY, LA. 70058				
10. VICTIM'S NAME (LAST, FIRST, M) IF BUSINESS LIST NAME & BUS. PHONE	MITCHELL, GREGORY			11. ADDRESS - STREET-APT. & RES. PHONE				12. VIC. RACE-SEX-AGE-D.O.B
				1508 THERAPY ST., GREENW, LA.				Blm-21 1-26-84
13. CODE	NAME, LAST	FIRST	MIDDLE	RACE-SEX-AGE	D.O.B.	DESC. LIST IN S 2 IN NARR. #29	BOI CK'D? YES <input type="checkbox"/>	
S 1								

28. STOLEN PROPERTY - CIRCLE TYPE AND GIVE \$ - S = STOLEN, R = RECOVERED. LIST INDIVIDUAL ITEMS IN REMARK SECTION

A CURRENCY, NOTES, COIN COLLECT. S		E TV'S, RADIO, STEREO, TAPES, PLAYERS, RECORDERS, CAMERAS RADIO-CB'S	S	I LIVESTOCK ANIMALS	S	OFFICER(S) STRUCK OR INJURED GIVE NO.
R MONEY ORD., STAMPS, BANK BK. SECURITIES, CREDIT/CDS. CKS.		R		R		C
B JEWELRY, PRECIOUS METALS SILVERWARE, ARTWORK	S	F FIREARMS RIFLES, PISTOLS	S	J TOOLS CAR PARTS	S	UCR RANGE
R		R		R		
C CLOTHING, FURS WALLET	S	G HOUSEHOLD GOODS, FURNISHINGS SPORTS & RECREATION EQUIP. APPLIANCES	S	K MISC. S R		TOTAL \$ STOLEN
R		R				
D OFFICE EQUIP., SAFE BEEPERS, TELEPHONE EQUIP.	S	H CONSUMABLE GOODS, LIQUOR, FOOD, CIGARETTES, NARCOTICS, GAS	S	ARSON \$		TOTAL \$ RECOV.
R		R				

29. NARRATIVE - CONTINUATIONS - ADD'L. VICTIM/WITNESS/SUSPECT/ - LIST EVIDENCE AND DISPOSITION

ON 7-4-85, AT APPROX. 15:02 PM, UNDERSIGNED OFFICER WAS ADVISED OF A SIG. 345 (AGG. BATTERY BY SHOOTING) AT ABOVE LOCATION. UPCR OFFICER'S ARRIVAL AT APPROX. 13:04 PM, OFFICER FOUND ABOVE VICTIM LYING IN STREET, FROM WEST TO EAST, WITH HIS HEAD RESTING ON SIDE OF CURB. OFFICER FELT VICTIM'S NECK AND FELT A FRAINT PULSE. VICTIM WAS TRANSPORTED TO WEST TEEFFERSON HOSPITAL BY W.T. & (CLIVER + PROBATION).

UNDER SIGN. OFFICER SECURED SCENE UNTIL (DET. WILLIAMS) ARRIVED ON SCENE, AND ASSUMED THE INVESTIGATION.

DATE: AUG 28 1 17 PM 1987
 JPSO RECORDS
 ISSUED TO: [Signature]
 CONFIDENTIAL

REPORTING OFFICER: H.A. TUCKER	SUPVR APPROVAL: [Signature]	PLAT. CMDR. APP.	REF'D TO C.O. <input type="checkbox"/>	CASE ACTIVE <input checked="" type="checkbox"/> INACTIVE <input type="checkbox"/> COMPLETE <input type="checkbox"/>	PAGE 1	OF 1 PAGES
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MK

HARRY LEE SHERIFF

SHERIFF AND TAX COLLECTOR
PARISH OF JEFFERSON
POST OFFICE BOX 485
GRETNA, LOUISIANA 70054-485



12
TECHNICAL SERVICES DIVISION
BUREAU OF IDENTIFICATION
(504) 363-5500

February 4, 1987

Miguel Rosales
DOC # 112762
Gator # A-4-R # 13 Camp J
Angola, Louisiana 70712

In Reply, Please Refer to
File No: 86-470

Dear Sir,

Attached you will find copies of the statement of
Jeanette Williams. A check of the report fails to indicate
any statement for Helen Williams. Please feel free to call
on us if you have any additional questions.

Sincerely yours,


Kenneth G. Bourg
Identification Division


John A. Day
Deputy Chief, Technical Services

Encl/ 1

000109

(EXHIBIT "B")

TRAPANI: The following statement is being taken by Detective James Trapani, Jefferson Parish Sheriff's Office Homicide Division. Is being taken on the 18th of July 1985, 4:30 PM, at the Detective Bureau, 200 Huey P. Long Ave., Gretna. Is being obtained from Jeanette Williams. Jeanette, what is your date of birth?

WILLIAMS: November 8, 1966.

TRAPANI: And where do you live?

WILLIAMS: [REDACTED]

5070149

TRAPANI: What apartment?

WILLIAMS: A

TRAPANI: Were you staying at that apartment on the 4th of July?

WILLIAMS: Yes.

TRAPANI: During that time did you happen to be outside in front of your apartment?

WILLIAMS: yes.

TRAPANI: About what time of day was this?

WILLIAMS: About something to 1:00.

TRAPANI: Would you relate to me what occurred while you were standing in front of your apartment?

WILLIAMS: I was outside watching my little nieces and nephews pop firecrackers. And all a sudden the guy had walked up out of nowhere and stood there for awhile while the guy named Dut was clowning in the street. And so Dut was like coming to the back like backing up. And the dude just went into his pocket and pulled out a gun and like shot him.

TRAPANI: Do you know the subject you're calling Dut? Do you know Dut?

WILLIAMS: Yeah.

TRAPANI: How do you know him?

WILLIAMS: By my sister.

TRAPANI: Can you explain a little bit further?

WILLIAMS: My sister and Dut talk. He like, they was talking, going together.

TRAPANI: Can you describe the man that walked up behind Dut?

WILLIAMS: He had black colored hair. He was I call him spanish, spanish, and he was about, he had on a black and white shirt and burgundy or brown pants.

TRAPANI: About how tall was he?

WILLIAMS: About between 5'5" or 5'8" or 9".

000110

TRAPANI: Did you, can you describe the gun that he pulled from his pocket?

WILLIAMS: Perish Sheriff's Office Homicide Division. Is being taken on the 18th of
It was a big silver gun with a black ring around it.

TRAPANI: Where, did he point this gun at Dut?

WILLIAMS: Yes, in the back of the head

TRAPANI: From your observations did Dut ever see this subject standing behind him?

WILLIAMS: No.

TRAPANI: After the shooting what did this subject do?

WILLIAMS: He stood there for three to four minutes, maybe five, with the gun in his hand holding it up in the air. And after that he walked off.

TRAPANI: Which direction did he go?

WILLIAMS: Left.

TRAPANI: Towards what street? He went left from the front of your apartment in the 1100 block of Inca?

WILLIAMS: yeah.

TRAPANI: Towards the Expressway?

WILLIAMS: Uh-huh (DENOTES POSITIVE RESPONSE)

TRAPANI: Subsequent to your description were you shown a photographic line-up of five pictures?

WILLIAMS: Yeah.

TRAPANI: And from these five photographs were you able to identify any one of them as being the subject you saw shoot Dut?

WILLIAMS: Yes.

TRAPANI: Let it reflect that the witness picked the photograph of Miguel Rosales. Are you absolutely positive that this was the subject that shot Dut?

WILLIAMS: Yes I am.

TRAPANI: Have you ever seen him prior to the shooting before? Have you seen the subject that shot Dut in the neighborhood before this happened?

WILLIAMS: No.

TRAPANI: Have you ever seen him before?

WILLIAMS: He had black colored hair. He was I call him Spanish, Spanish and he was
WILLIAMS: No.

TRAPANI: At the apartment 1112 Inca who-do you reside with? Who do you live with?

000111

WILLIAMS: My sister.

TRAPANI: What is her name?

WILLIAMS: Valerie (INAUDIBLE)

TRAPANI: Was she present when this incident took place?

WILLIAMS: yes she was.

TRAPANI: Was any other relatives present?

WILLIAMS: Yeah, my sister Helen Williams and Marvena Jackson and Linda Jackson.

TRAPANI: What did you do after the shooting took place?

WILLIAMS: Stood there.

TRAPANI: About how long did it take the police to arrive on the scene?

WILLIAMS: About 15 or 20 minutes.

TRAPANI: Did an ambulance arrive on the scene?

WILLIAMS: Yes.

TRAPANI: About how long was it before they arrived?

WILLIAMS: About five minutes after the police came.

TRAPANI: Was there anyone else that you know by name present during the shooting?

WILLIAMS: Raymond.

TRAPANI: Prior to this incident was there anyone with Big Dut by your residence?
Was anyone with Big Dut?

WILLIAMS: No.

TRAPANI: Did you see a subject by the name of Earl James?

WILLIAMS: yeah.

TRAPANI: Was he with Big Dut?

WILLIAMS: I couldn't quite tell cause Dut was in the street and he was like sitting in the hallway. But they was together before that occurred.

TRAPANI: He was present during this incident then?

WILLIAMS: Yes he was.

TRAPANI: You said he was in the hallway. Was he able to see what had happened?

WILLIAMS: Yeah, it was like, he wasn't sitting in the hallway. It was like he was standing in the doorway so he saw what went down.

000112

TRAPANI; Exactly what position were you in relation to your apartment?

WILLIAMS: I was right right by the window sitting down looking at everything.

TRAPANI: And about how far from you did this incident take place? How far away was Dut when he was shot from you?

WILLIAMS: Say about 7 to 10 feet.

TRAPANI: After the subject shot Dut did he speak to anyone?

WILLIAMS: No.

TRAPANI: Did anyone speak to him?

WILLIAMS: No.

TRAPANI: From what you saw took place was the subject provoked in any way to shoot Dut? Was there any type of argument or anything that had taken place to cause this to occur?

WILLIAMS: No.

TRAPANI: Is there anything else you wish to add to this statement?

WILLIAMS: No.

TRAPANI: This statement's concluded at 4:40 PM.

TRAPANI: Prior to this incident was there anyone with Big Dut by your residence?

[Handwritten signature]

May 16, 1990

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

MAY 22 8 39 AM '90

LORETTA G. WHYTE
CLERK

Miguel A. Rosales
#112762
R-2-R-13 (D)
La. State Penitentiary
Angola, Louisiana
70712

Inmate Banking Office
Louisiana State Penitentiary
Angola, Louisiana
70712

In re: Rosales v Whitley
U.S. District Court
Eastern Dist. of Louisiana
~~CA-90-1634 Sect. 1 Mag. 4~~
500 Camp Street
New Orleans, Louisiana
70130

Please withdraw the amount of five dollars (\$5.00) from my savings account for filing fee costs in the above case and make check payable to the Clerk of the above court.

I enclose a pre-addressed envelope for mailing of check. I also am enclosing an ORDER from the above court, dated May 7, 1990, for verification of this request.

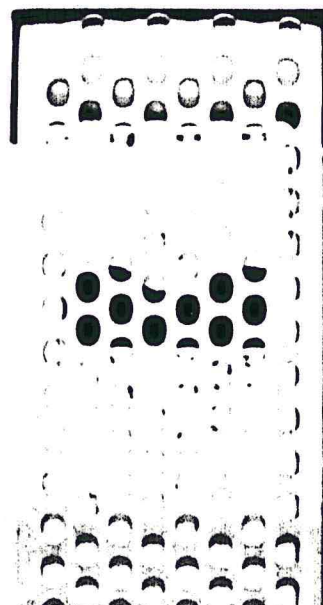
Thank You,

[Handwritten signature: Miguel Rosales]
Miguel Rosales

C/C: Office of the Clerk
U.S. District Court
Eastern District of Louisiana
500 Camp Street
New Orleans, Louisiana
70130

FEE _____
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X CHARGE _____
INDEX _____
ORDER _____
HEARING _____
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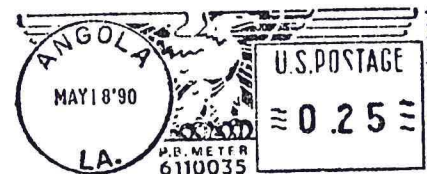
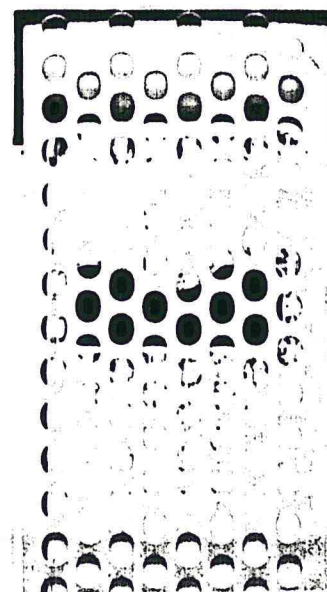


Miguel A. Rosales
DOC # 112762
Camp-D, Raven 2-R-9
La. State Penitentiary
Angola, La.

70712

INDIGENT

ANGOLA PRISON
RODEO
EVERY SUNDAY
IN OCTOBER



Office of the Clerk
U.S. District Court
Eastern District of Louisiana
500 Camp Street
New Orleans, Louisiana

70130

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

JUN 5 11 14 AM '90

LORETTA G. WHYTE
CLERK
90-1634
NUMBER:

MIGUEL A. ROSALES

VERSUS

JOHN WHITLEY, WARDEN, ET AL

O R D E R

SECTION: | MAG. 4

Miguel A. Rosales has applied to this Court for a writ of habeas corpus. In order for the Court to determine the action, if any, that shall be taken on this application,

IT IS ORDERED that the Clerk of Court serve, by certified mail, a copy of this application and this Order on the Attorney General for the State of Louisiana and the District Attorney and the Clerk of Court for Jefferson Parish, Louisiana.

IT IS ORDERED that the Attorney General and District Attorney file an answer to the application, together with a legal memorandum of authorities in support of the answer within thirty (30) days of the date of service. The answer shall state whether petitioner has exhausted state remedies, including any post-conviction remedies available to petitioner under Louisiana law and petitioner's right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceedings. In the event the state contends that it has been prejudiced in its ability to respond by petitioner's delay in filing or that the petition is a second or successive petition [Rule 9(a) and (b), Rules Governing Section 2254 Cases in United States District Courts], the answer shall set forth such contention with particularity.

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DATE OF ENTRY JUN 06 1990

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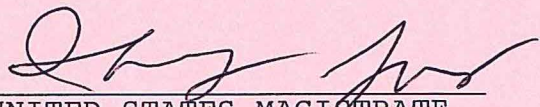
IT IS FURTHER ORDERED that the District Attorney for Jefferson Parish, Louisiana shall file with the Court within thirty (30) days of the date of service a certified copy of the entire state court record, including transcripts of all proceedings held in the state courts, all documents filed in connection with any appeal or application for post-conviction relief presented to any and all state district or appellate courts, and copies of all state court dispositions. In the event the District Attorney is unable to produce any of the above documents, he shall advise this Court in writing why he is unable to produce the record.

IT IS FURTHER ORDERED that the District Attorney shall file with the Court within thirty (30) days copies of all briefs and memoranda filed in connection with any appeal or application for post-conviction relief presented to any and all state district and appellate courts.

IT IS FURTHER ORDERED that the Clerk of Court shall take necessary precautions to insure that the state court record is not damaged or destroyed and shall, within thirty (30) days of the finality of these proceedings, including any appellate proceedings, return the state court record to the Clerk of Court for Jefferson Parish, Louisiana.

All state court documents which are to be filed pursuant to this Order should be addressed to the Office of the Clerk, Pro-Se Law Clerk, United States District Court, Eastern District of Louisiana, 500 Camp Street, Room C-151, New Orleans, Louisiana 70130.

New Orleans, Louisiana, this 4th day of June,
19 90.


UNITED STATES MAGISTRATE
Ronald A. Fonseca

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4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
JUL 6 4 00 PM '90
MORITTA G. WHYTE
CLERK
CIVIL ACTION

MIGUEL A. ROSALES

VERSUS

JOHN WHITLEY, WARDEN

NO. 90-1634

SECTION "I" (4)

STATE'S RESPONSE IN OPPOSITION TO
GRANTING WRIT OF HABEAS CORPUS

Statement Of The Case

Petitioner, Miguel Rosales, is a state court prisoner currently incarcerated in the Louisiana State Penitentiary at Angola. This incarceration stems from a life sentence imposed pursuant to his conviction, by jury, of second degree murder. This conviction and sentence were obtained in case No. 85-1964 on the docket of the Twenty-Fourth Judicial District Court for the Parish of Jefferson. Respondent provides this Court with a copy of the state court record. Petitioner has exhausted the available state remedies. State ex rel Miguel A. Rosales v. Hilton Butler, Warden, NO. 88-KH-2178, February 2, 1990. Respondent submits that this matter does not require an evidentiary hearing.

ISSUES

Petitioner seeks relief on the following grounds:

1. The prosecution suppressed evidence favorable to Petitioner;
2. Insufficient evidence to support conviction;
3. Improper jury instructions;
4. Ineffective assistance of trial counsel.

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ARGUMENT

Petitioner's first two claims are related. He complains that witnesses gave pretrial statements inconsistent with their testimony at trial and that the State suppressed this. He also complains that because of the inconsistent statements the evidence is insufficient to support his conviction. The alleged suppressed inconsistent statements pertain to descriptions of the gunman and the insufficient evidence claim is that Petitioner was not the gunman; otherwise, the sufficiency of the evidence is not challenged.

Petitioner's claim that the State suppressed evidence favorable to the defense has no merit and is refuted by the record.

Detective Barry Wood was called by the State and on cross-examination admitted that Valerie Williams had given conflicting statements. Defense counsel, it is submitted, would not have been able to develop this information had it been suppressed. Detective Wood testified that Valerie Williams said the perpetrator's shirt and pants were dark, then that they were plaid and finally that the shirt was white with a zipper and the pants were dark. (Vol II, January 22, 1986, pp. 6-14). This information was obviously known to the defense, therefore, the claim that it was suppressed has no merit. Valerie Williams testified that she did not give Detective Wood different descriptions. (Vol. III, January 23,

1986, pp. 47).¹ This is inconsistent testimony presented by the State's witnesses of which the jury was aware.

As to Jeanette Williams, Detective Wood admitted that it was Detective Trapani who took her statement. (Vol. II, January 22, 1986, p. 14). Thus, Petitioner's contention that "The prosecutor lead the jury to believe that Detective Wood obtained the statement from Jeanette. .." is incorrect. (Petition, p. 9). Furthermore, Jeanette Williams testified that she probably gave a clothing description, but that she could not remember, at trial, what it was. Petitioner's claim as to Jeanette Williams has no merit. The alleged discrepancy in her testimony is nonexistent.

As to Helen Williams there is no allegation that exculpatory evidence was suppressed. Petitioner merely points out that Helen Williams gave a taped interview. There are no allegations made that this statement contained any exculpatory evidence. This claim has no merit.

Petitioner also makes allegations about Jerry Hawkins. He complains that the State suppressed evidence favorable to him in that Hawkins did not testify at trial, as he had said in a statement, that Petitioner had a white highlight in his hair. Respondent submits that this borders on the frivolous and does not constitute a violation nor does it constitute a violation which warrants habeas relief.

¹She also testified that she may have said the perpetrator had brown pants. (Id. p. 63).

Petitioner's third and fourth claims are related and will be discussed together. He complains that the trial court informed the jury of the mandatory penalty of life imprisonment without benefit of parole, probation or suspension of sentence for a conviction of second degree murder, La.R.S. 14:30.1, but that the trial court did not inform the jury of the 0-21 year sentencing range for a manslaughter conviction, La.R.S. 14:31, a responsive verdict. He also contends that his attorney was ineffective in not objecting to this charge.

Under state law it was proper, if not mandatory, that the court charge the jury as it did. Because of this the ineffectiveness claim must fail. However, it must first be noted, as pointed out by Petitioner, that there was no objection to the alleged improper jury instruction. Louisiana's contemporaneous objection rule is found in La.C.Cr.P. Art. 841: An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. Therefore, before Petitioner can bring this claim to this Court he must demonstrate cause for and prejudice from the procedural default. Wainwright v. Sykes, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977); Engle v. Isaac, 456 U.S. 107, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982). Ineffective assistance of counsel, if proven, can be cause for a procedural default. Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986). Petitioner cannot, however, make a showing of ineffective assistance of counsel. Nor can he show that the jury charge was erroneous.

A review of the state law at issue will show that the lack of an objection was not ineffective assistance, but was the right choice by counsel. One basis to obtain a relatively favorable verdict (manslaughter) is that the penalty for second degree murder is life imprisonment. Any sympathy on the part of the jury for the accused can be manifested in a verdict which will bring any sentence less than life. Accordingly, it is to an accused's benefit for the jury to know that a guilty as charged verdict carries a mandatory life sentence. It, perhaps, would have been ineffective assistance had counsel objected to the jury being told of the penalty. This contention is supported by trial counsel's argument where he reminds the jury of the life penalty. (Vol. IV, p. 68). The applicable law also supports this contention: "When the penalty imposed by the statute is a mandatory one the trial judge must inform the jury of the penalty on request of the defendant, and must permit the defense to argue the penalty to the jury." State v. Washington, 367 So.2d 4 (La. 1978). In accord, see State v. Newman, 491 So.2d 174 (La.App. 3rd Cir. 1986) and State v. Durocher, 514 So.2d 581 (La.App. 4th Cir. 1987).

In addition, Respondent also submits that Petitioner is not entitled to any relief on these claims under the applicable burden of proof and because of that he cannot show prejudice under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

As stated in Williams v. Lockhart, 736 F.2d 1264 (8th Cir. 1984):

Habeas relief is available when a petitioner establishes that improper instructions resulted in a "fundamental defect which inherently results in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedure." (citations omitted). The burden of demonstrating that errors in jury instructions were sufficiently prejudicial to "support a collateral attack on the constitutional validity of a state court's judgment is even greater than the showing required to establish plain error on direct appeal." Henderson v. Kibbe, 431 U.S. 145, 154 97 S.Ct. 1730, 1736, 52 L.Ed.2d 203 (1977). Williams must show that the alleged error so infected the entire trial that he was deprived of his right to due process. Cupp v. Naughton, 414 U.S. 141, 147, 94 S.Ct. 396, 400, 38 L.Ed.2d 368 (1973).

Petitioner is entitled to no relief on these grounds.

CONCLUSION

Respondent submits that Petitioner is entitled to no habeas corpus relief and that his application should, therefore, be denied.

Respectfully Submitted,

Terry M. Boudreaux
TERRY M. BOUDREAUX
ASSISTANT DISTRICT ATTORNEY
BAR ROLL NO.: 3306
COURTHOUSE ANNEX
GRETNA, LOUISIANA 70053
(504) 368-1020

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been served on Miguel Rosales, 112762, Camp A, Louisiana State Penitentiary, Angola, LA 70712, by placing same in the United States mail, postage prepaid, this 6th day of July, 1990.

Terry M. Boudreaux
TERRY M. BOUDREAUX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIGUEL A. ROSALES

VERSUS

JOHN WHITLEY, WARDEN

CIVIL ACTION

NO. 90-1634

SECTION "I" (4)

U.S. COURT OF APPEALS
RECEIVED
JUL 30 1990
NEW ORLEANS LA
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
JUG 1 16 PM
LORETTA G. WHYTE
CLERK

PETITIONER'S RESPONSE TO
STATE'S RESPONSE IN OPPOSITION TO
GRANTING WRIT OF HABEAS CORPUS

Comes now the Petitioner, MIGUEL A. ROSALES, pro se, and respectfully makes response to the State's Opposition To Granting of Habeas Corpus upon the following showing:

1.

The Petitioner has covered the issues in his Petition For Habeas Corpus and to repeat his prior views would be simply repetitive, therefore, Petitioner will not burden the Court with repetitiveness and will rely on his habeas application and legal brief.

2.

The State's Brief admits that Detective Berry Wood testified that Valerie Williams had given conflicting statements, but yet the State Prosecutor failed to give the written Police Report statements to the jury and is suppression of favorable evidence. The Police Report in this case, obtained after conviction and sentence, clearly shows that the Police Report contains evidence of suppression of favorable evidence regarding the time, places, and reasons for the statements of Jeanette Williams and Helen Williams. Further, the Police Report statement of Jerry Hawkins showed "white highlight" in his hair and ~~was~~ valuable

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~~ORDER~~
~~HEARING~~
DOCUMENT No. 5

information as no other witness saw this and it would have made a difference in the jury's verdict.


3.

This Court should appoint counsel to assist Petitioner and to Order an evidentiary hearing so that the Police Report, and taped interview with Helen Williams, can be fully explored with all witnesses under oath.

CONCLUSION

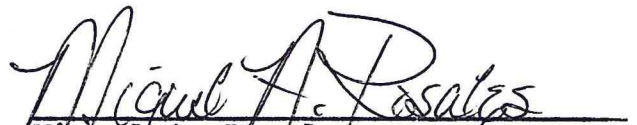
Petitioner submits that he is entitled to habeas corpus release and that, after due process proceedings, that this Court should grant same.

Respectfully Submitted.


Miguel A. Rosales
Petitioner Pro Se
112762 Camp D Raven 2-R-9
Louisiana State Penitentiary
Angola, Louisiana 70712

CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleadings has been mailed this date below to Mr. Terry M. Boudreaux, Assistant District Attorney, 24th Judicial District, Parish of Jefferson, Courthouse Annex, Gretna, Louisiana 70053, this 26th day of July, 1990.


Miguel A. Rosales
Petitioner Pro Se
112762 Camp D Raven 2-R-9
Louisiana State Penitentiary
Angola, Louisiana 70712

000045

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

JAN 4 8 20 AM '91

LORETTA G. WHYTE
CIVIL ACTION

MIGUEL A. ROSALES

versus

NUMBER 90-1634

JOHN WHITLEY, WARDEN

SECTION "I" (4)

ORDER AND REASONS

This matter was referred to the United States Magistrate for the purpose of conducting a hearing, including an evidentiary hearing, if necessary, and submission of proposed findings and recommendations for disposition pursuant to 28 U.S.C. §636(b)(1)(B) and (C) and, as applicable, Rule 8(b) of the Rules Governing Section 2254 Cases.

Upon review of the entire record, the Court has determined that a federal evidentiary hearing is not necessary and the petition should be dismissed for the following reasons. Accordingly, the order of reference is hereby REVOKED.

Miguel A. Rosales is a state prisoner presently incarcerated in the Louisiana State Penitentiary, Angola, Louisiana. He was convicted on January 27, 1986, by a jury in the Twenty-Fourth Judicial District Court, Parish of Jefferson, Louisiana, of second degree murder. He was sentenced to life imprisonment. His conviction and sentence were affirmed on appeal. State v. Rosales, 498 So.2d 66 (La. App. 5th Cir. 1986).

In his pro se application for habeas corpus relief under 28 U.S.C. §2254, petitioner alleges as follows:

Ground one: The prosecution suppressed evidence favorable to petitioner's defense.

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DATE OF ENTRY JAN 04 1991

Ground two: Insufficient evidence presented at trial to base a lawful and just conviction.

Ground three: The trial court's charge to the jury was improper and prejudice (sic) to petitioner.

Ground four: Ineffective assistance of counsel during trial.

These grounds were unsuccessfully presented in post-conviction applications to the Louisiana courts. Respondent concedes that petitioner has exhausted available state court remedies.

The duplicate record of the Louisiana Court, including the transcript of petitioner's trial, is before this Court. The state record is sufficient for the purpose of adjudication of petitioner's claim and a federal evidentiary hearing is not necessary. 28 U.S.C. §2254(b); Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963).

We adopt the following factual findings of the Louisiana Court of Appeals summarizing the events which led to petitioner's prosecution and conviction:

On July 4, 1985, at approximately 1:00 p.m., as the victim was dancing in the middle of the 1100 block of Inca Drive in Harvey, Louisiana, the defendant approached the victim and called his name. The victim did not answer but continued dancing. Defendant walked up to the victim and shot him once in the back of the head. The defendant then walked rapidly away from the scene. Three sisters, who were near the scene of the crime, gave statements to the investigator attesting that they observed the defendant walk up to the victim and shoot him. All three later identified the defendant in a photographic line-up.

Another witness, Jerry Hawkins, testified that, at 1:00 p.m. on July 4, 1985, he was standing by a van approximately fifty feet

from the victim, talking to the driver of the van. He saw the defendant walk toward the victim, talking to the driver of the van. He saw the defendant walk toward the victim and yell something to him. A couple of minutes later, he heard a shot. He looked up and saw the victim fall. He also saw the defendant put a gun inside his shirt and walk away.

An additional witness, who had known the defendant for several years, stated that, on July 4, 1985, he lived in a home located on the street where the shooting took place. He testified that while looking out of the window, although he did not witness the shooting, he saw the defendant passing on the other side of the street.

The defendant's mother, father and sister testified that the defendant arrived at their house at 2831 Pritchard Road in Marrero, La., at approximately 11:30 a.m. and spent the remainder of the day in their company. They further testified that at 1:00 p.m. the defendant was with them in a car on the Belle Chasse ferry, en route to the defendant's brother's house in Violet, Louisiana. State v. Rosales, supra, at 67.

Suppression of Favorable Evidence

Petitioner claims that the prosecution suppressed favorable evidence contained in the investigative officer's initial report. Detective Barry Wood, assigned primary responsibility for investigation of Kevin Mitchell's murder, had prepared a report detailing the steps of his investigation which included summaries of statements made by eyewitnesses to the crime. Petitioner obtained a copy of this report subsequent to his conviction. The physical description of the perpetrator, as given by several eyewitnesses, although essentially similar in large part, differs in a few material aspects. It is this difference in descriptions which petitioner contends constitutes favorable evidence which he

should have been provided before trial.¹ A review of the discrepancies petitioner alludes to in his application convinces us that the information was favorable to petitioner's defense. However, since a substantial portion of this information was made available to petitioner during the pre-trial suppression of identification hearing, or was made known to the jury during the testimony of witnesses, he has failed to establish that he is entitled to relief on this issue. We now turn to the specific information petitioner suggests was suppressed.

Petitioner complains that during trial Valerie Williams described the assailant as having three inch sideburns and wearing dark colored pants and shirt. No reference to sideburns appears in the description attributed to her in the police report. Detective Wood testified during trial that Valerie Williams never mentioned sideburns to him during his investigation. (R., Vol.II, Trial Tr., pp. 9-10). Detective Wood also told the jury that the witness had given two or three different descriptions of the clothing worn by petitioner. (R., Vol.II, Trial Tr., pp. 12-14).

Another witness, Jeanette Williams, described the assailant to Detective Wood as having long hair, apparently the only witness to have given such a description. This description appears in Wood's police report. The witness, however, repeated this description to the jury in her testimony during trial. (R., Vol.III, Trial Tr., p. 98). Petitioner suggests, in support of his claim herein, that

¹Petitioner's attorney filed a pre-trial "Brady" motion seeking any exculpatory of favorable evidence.

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Detective Wood "manufactured" or created Jeanette Williams' testimony. Petitioner offers no factual basis to substantiate this allegation.²

Petitioner next complains that another witness, Helen Williams, gave a written or taped statement to the police officers which contradicts the testimony she gave at trial. Detective Wood testified that no statement was taken from Helen Williams. Petitioner claims that a "confidential informant [of his] within the Jefferson Parish Sheriff's Office" provided him this information. Petitioner fails to identify this "informant" or how he comes to possess this information. Petitioner also alleges that on page 10 of the police report, there is a reference to a taped statement having been given by the witness. The police report contains no such reference.³ We cannot credit petitioner's unsupported allegations. See *Vail v. Procunier*, 747 F.2d 277 (5th Cir. 1984).

The next claim of suppressed information involves the testimony of Jerry Hawkins. Hawkins was arrested the day after the killing, on unrelated drug charges in Jefferson Parish. He had

²Petitioner also alleges that Detective Wood testified falsely when he stated that he had taken a statement from Jeannette Williams, when in truth a fellow officer, Detective Trapani, took the statement. Petitioner is factually incorrect. Detective Wood testified that Detective Trapani had taken the witness' statement. (R., Vol.II, Trial Tr., pp. 14-15).

³The names of individuals referenced in the police report have been blacked out. However, comparing the information contained in the report and the testimony of the witnesses at trial, it is not difficult to determine to what witness the information in the report applies.

sent word to Detective Wood while in prison that he had information about Mitchell's murder. He was interviewed by Wood and identified petitioner, whom he had known for a number of years, as the perpetrator. During trial, Hawkins testified that no promises were made to him in connection with the charges pending against him in exchange for his testimony.⁴ In fact, he testified that he was not aware of any pending open charges remaining in Jefferson Parish at the time of trial. The prosecutor, however, stipulated at the time of Hawkins' testimony that there were open charges still pending against the witness. Petitioner again proffers his unidentified "confidential informant within the sheriff's office" as the source of information that Hawkins was in fact rewarded for his testimony. Again, we are unable to credit petitioner's unsupported conclusory allegations.

On a different ground, petitioner claims Hawkins' testimony was materially different from information provided police in his statement. Petitioner contends that the police report reflects Hawkins telling Detective Wood that he (petitioner) had "white highlight" in his hair on the day of the killing in an unsuccessful attempt to disguise himself. Petitioner is in error in attributing this statement to Hawkins. As reflected on pages ten and eleven of the report, the statement is attributed to an unidentified informant contacted by Detective Wood on July 22, 1985. Hawkins' statement was taken on July 10th, and appears on page eight of the

⁴In addition to a charge in Jefferson Parish, Hawkins had pending charges against him in Orleans Parish.

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report. It is apparent from a comparison of the facts related in the two statements appearing in the report, that they did not come from the same witness, i.e., Hawkins.

Petitioner alleges that his "confidential informant" has also advised him that the police took statements from other eyewitnesses to the crime who stated that petitioner was not the perpetrator. He also claims that a next door neighbor of one of the Williams' sisters provided information contradicting certain aspects of the sister's testimony. These allegations are likewise unsupported.

Finally, petitioner avers that the driver of a van who was within eight to ten feet from the shooting told the police that petitioner was not at the scene of the crime. The police report reflects that the witness told the police that he did see the individual who shot the victim, and, therefore, was unable to state who that individual might be. The witness did state that he did not see petitioner. While this information taken by itself would be favorable to petitioner's defense, it would not preclude petitioner's presence on the scene at the time of the crime. The witness claimed that there "was a lot of people around the area at the time."

Essentially, the only material information not provided petitioner or made known to the jury which would arguably have proven helpful in his defense is the statement of the last mentioned witness that he did not see petitioner at the scene of the crime, and information from another uncalled witness that

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petitioner used white highlight in his hair as an attempted disguise.

We are instructed in *Jones v. Butler*, 864 F.2d 348 (5th Cir. 1988), cert. denied, _____ U.S. _____, 109 S.Ct. 2090, 104 L.Ed.2d 653 (1989), that:

The suppression of evidence favorable to the accused, material to either guilt or punishment, violates due process whether or not the prosecution acted in good faith. Evidence is material only if there is a reasonable probability that the verdict would have been different had the evidence been disclosed to the defendant, or, stated in another fashion, if the reviewing court's confidence in the outcome is undermined. Jones, supra, at 354.

Considering the overwhelming evidence against petitioner, there is no reasonable probability that the limited evidence withheld from him or the jury would have altered the jury's verdict. Three witnesses observed the shooting as it took place and positively identified petitioner as the perpetrator. Another witness, who had known petitioner for ten years, saw him immediately after the shooting place a gun under his shirt. A final witness, who also had known petitioner for a number of years, observed him running from the scene of the crime. In light of this evidence, our confidence in the outcome of petitioner's trial is not undermined. Petitioner's claim of suppression of favorable evidence is without merit.

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Insufficiency of Evidence

Petitioner claims that the evidence was insufficient to support a conviction for second degree murder.

Second degree murder is defined, in relevant part, as the killing of a human being "...when the offender has the specific intent to kill or inflict great bodily harm." La.Rev.Stat. §14:30.1.

An attack on the sufficiency of the evidence requires the court to determine whether, considering the evidence in the light most favorable to the prosecution, a rational trier of fact reasonably could have found that petitioner committed the crime. Jackson v. Virginia, 443 U.S 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

As pointed out above, the evidence against petitioner was overwhelming. The eyewitnesses observed petitioner approach the victim from the rear, and, without provocation, shoot him in the back of the head. We are convinced beyond any doubt that the evidence was sufficient for a rational trier of fact reasonably to have concluded that petitioner committed the crime.

Petitioner presented an alibi defense, through the testimony of several family members, which of course was at odds with the testimony of the State's witnesses. Obviously, based on the verdict returned, the jury did not credit the testimony of the defense witnesses. This credibility determination was for the jury alone to make.

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A federal court may not substitute its own judgment as to the credibility of witnesses for that of the state courts. See *Maggio v. Fulford*, 462 U.S. 111, 103 S.Ct. 2261, 76 L.Ed.2d 794 (1983); *Dunn v. Maggio*, 712 F.2d 998 (5th Cir. 1983).

Improper Jury Charge

Petitioner next complains that the court's instructions to the jury were improper due to the failure to include the penalty provisions for the lesser and included offense of manslaughter. The court did, however, in its charge advise the jury that second degree murder, the offence with which petitioner was charged, carried a penalty of life imprisonment.

Habeas corpus is not available to set aside a conviction on the basis of improper jury instructions, unless the impropriety is a clear denial of due process so as to render the trial fundamentally unfair. *Cupp v. Naughten*, 414 U.S. 141, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973); *Tyler v. Phelps*, 643 F.2d 1095 (5th Cir. 1981), cert. denied, 456 U.S. 935, 102 S.Ct. 1992, 72 L.Ed.2d 455 (1982); *Bradley v. Wainwright*, 561 F.2d 1200 (5th Cir. 1977); *Pleas v. Wainwright*, 441 F.2d 56 (5th Cir. 1971); *Higgins v. Wainwright*, 424 F.2d 177 (5th Cir. 1970), cert. denied, 400 U.S. 905, 91 S.Ct. 145, 27 L.Ed.2d 142 (1970); *Sullivan v. Blackburn*, 804 F.2d 885 (5th Cir. 1986), cert. denied, 481 U.S. 1019, 107 S.Ct. 1901, 95 L.Ed.2d 507 (1987).

Petitioner alleges that the jury was under the impression that the maximum sentence for manslaughter was five years imprisonment and had the jurors known that he could have received up to twenty-

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one years for that offense, they would have convicted him of manslaughter. Petitioner does not reveal how he knew that the jury believed the maximum sentence was only five years. However, even if he could prove this allegation, the argument that the jury would have returned a verdict of manslaughter had they known the correct penalty is rank speculation. There is absolutely no evidence to suggest a correlation between the jury's verdict and the respective sentences available upon conviction on the original or responsive charge.

State law only requires the court to inform the jury of mandatory sentences, and, only upon request of the defendant. The jury may be advised of the penalty for crimes for which there is no mandatory sentence, such as manslaughter, only at the discretion of the trial court. State v. Jackson, 450 So.2d 621 (La. 1984). The failure of the court to advise the jury of the penalty for manslaughter did not render petitioner's trial fundamentally unfair.

Ineffective Assistance of Counsel

Petitioner's final claim is an allegation that his attorney was ineffective for failing to object to the court's failure to instruct the jury on the penalty for manslaughter.

In order to prevail on a claim of ineffective assistance of counsel, petitioner must show: 1) that his counsel's performance was deficient; and, 2) that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Murray v. Maggio, 736 F.2d 279 (5th

Cir. 1984).

Under the Supreme Court's formulation of the required showing of prejudice,

[t]he defendant must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland v. Washington, supra, 104 S.Ct. at 2068.

If the court finds that petitioner has made an insufficient showing as to either one of the two stages of inquiry, i.e., deficient performance or actual prejudice, the court may dispose of the claim without addressing the other stage. Strickland v. Washington, supra, 104 S.Ct. at 2069-70.

In determining whether counsel's performance falls below the objective standard of reasonableness, our scrutiny should be "highly deferential," recognizing a "...strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland v. Washington, supra, 104 S.Ct. at 2066; Marler v. Blackburn, 777 F.2d 1007 (5th Cir. 1985).

The appropriate test to establish that defendant was prejudiced by his attorney's deficient conduct is articulated in Strickland.

The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, supra, 104 S.Ct. at 2068.

A "reasonable probability" is defined as "a probability sufficient to undermine confidence in the outcome." Strickland, supra, 104 S.Ct. at 2068.

The question presented for determination is "whether there is a reasonable probability that, absent the error, the fact finder would have had a reasonable doubt respecting guilt." Strickland, supra, 104 S.Ct. at 2069. See also Nealy v. Cabana, 764 F.2d 1173 (5th Cir. 1985).

Petitioner has failed to establish either deficient conduct or prejudice. There was no mandatory requirement under state law that the court advise the jury of the penalty for manslaughter, even if requested by the defense, and we comprehend no strategic reason counsel would have wanted the information presented to the jury. Petitioner's defense was one of alibi, that he was not the one who killed Mitchell. It would have weakened that defense to have argued to the jury that it should focus on returning a verdict of guilty of manslaughter if it did not believe the petitioner's witnesses. Likewise, petitioner has failed to establish a reasonable probability that, but for his counsel's failure to object to the court's charge to the jury, the result of the trial would have been different.

Having concluded that an evidentiary hearing is not necessary and that the grounds raised in support of petitioner's application are not meritorious,

It is ordered that the petition for writ of habeas corpus
filed by Miguel A. Rosales be DENIED.

New Orleans, Louisiana, this 3d day of JAN-1991,
~~1990.~~

Henry A. Mentz v.
UNITED STATES DISTRICT JUDGE

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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
JAN 8 8 18 AM '91
LORETTA G. WHITNEY
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIGUEL A. ROSALES

CIVIL ACTION

VERSUS

NO. 90-1634

JOHN WHITLEY, ET AL

SECTION: I

J U D G M E N T

Considering the Court's Order and Reasons entered herein on
January 4, 1991,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in
favor of defendants, John Whitley, and the Attorney General of
Louisiana, and against plaintiff, Miguel A. Rosales, dismissing
said plaintiff's complaint.

New Orleans, Louisiana, this 7th day of January, 1991.

Henry A. Merty, Jr.
UNITED STATES DISTRICT JUDGE

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DATE OF ENTRY: JAN 08 1991

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January 21, 1991

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

JAN 31 1 37 PM '91

LORETTA G. WHITE
CLERK

Clerk of Court
United States District Court
Eastern District of Louisiana
New Orleans, La. 70130

RE: Miguel A. Rosales v. John Whitley, Warden, No. 90-1634 I (4)

Dear Clerk,

Please find enclosed a Notice of Appeal, Motion for Certificate of Probable Cause, Motion for Leave to Appeal in Forma Pauperis with attached declaration in support of, and a Statement of the Issue for filing. I have included an original and one copy.

However, before filing any of these petitions, I would like to request that I be allowed to amend my petition, claims number one (1) and number four (4), before submitting them to the Fifth Circuit Court of Appeals.

In claim number one, I would like to submit to the Court that in addition to the differences in the description, of the perpetrator, given by the witnesses, there was other information in the police report that was favorable to the petitioner's defense.

In claim number four, I would like to argue an additional deficiency in the performance of defense counsel. That being that defense counsel failed to call a witness material to petitioner's defense.

In the event that I cannot amend these claims without first submitting the amendments to the State Courts and the United States District Court then I would request that my appeal be stayed until the other courts have had an opportunity to rule on the merits of the amended claims.

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If the amendments will be allowed, then please file the enclosed petitions and return the copies marked "Petitioner's File Copy" to me.

Thank you very much for your time and assistance in this matter.

Sincerely:

Miguel Rosales

Miguel A. Rosales
DOC # 112762
Camp D Raven 2 R 9
Louisiana State Penitentiary
Angola, Louisiana 70712

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LS

000
Mr. Miguel A. Rosales #112762
Camp "D" R-2-R-9
State Prison
NOLA, La. 70712

INDIGENT

Clerk's Office
U.S. Eastern District Court
C-151 N.S. Ctse.
500 Camp St.
N.O.La. 70130

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
JAN 31 4 04 PM '91
LORETTA G. WHYTE
CLERK

MIGUEL A. ROSALES

CIVIL ACTION

versus

NUMBER 90-1634

JOHN WHITLEY, WARDEN

SECTION "I" (4)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above petitioner appeals to the United States Court of Appeals for the Fifth Circuit from the order entered January 4, 1991, dismissing petitioner's petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254.

Miguel Rosales #112762
Miguel A. Rosales
DOC # 112762
Camp D Raven 2 R 9
Louisiana State Penitentiary
Angola, Louisiana 70712

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Mr. Miguel A. Morales #112762
Camp "D" R-2-109
La. State Prison
Angola, La. 70012

INDIGENT

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Clerk's Office
U.S. Eastern District Court
C-151 U.S. Ctse.
500 Camp St.
N.O. La. 70130

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JAN 31 4 03 PM '91

(Handwritten scribble)

MIGUEL A. ROSALES

LORETTA G. WHITE
CLERK

CIVIL ACTION NO. 90-1634

v.

JOHN WHITLEY, (WARDEN)

:* SECTION "I" (4)

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

Petitioner Miguel A. Rosales, pursuant to Rule 24, FRAP, move this Court for an order permitting him to proceed without prepayment of fees and costs or security. Petitioner has attached a declaration in support of this motion.

Respectfully submitted:

Miguel Rosales #112762
Mr. Miguel A. Rosales
D.O.C. #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

Executed this 24 day of JANUARY, 1991

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIGUEL A. ROSALES : CIVIL ACTION NO. 90-1634
V.
JOHN P. WHITLEY, (WARDEN) : SECTION "I" (4)

STATEMENT OF THE ISSUE

Petitioner Miguel A. Rosales, pursuant to Rule 24, FRAP, intends to present the following issue on appeal:

1. Petitioner's substantial issue concerning the legality of his conviction.

Sincerely:

Miguel Rosales #112762
Mr. Miguel A. Rosales
D.O.C. #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

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UNITED STATES DISTRICT COURT

Eastern ~~WESTERN~~ DISTRICT OF LOUISIANA

Miguel Basales

112762
Inmate (DOC) Number

(Petitioner)

VERSUS

JOHN WHITLEY, WARDEN

(Respondent(s))

AFFIDAVIT IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERIS

I, *Miguel Basales*, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty that I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

I further declare that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? YES () NO (X)
 - a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____
 - b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession, or form of self-employment (hobbycraft sales included)? YES () NO (X)
 - b. Rent payments, interest or dividends? YES () NO (X)
 - c. Pensions, annuities or life insurance payments? YES () NO (X)
 - d. Gifts or inheritances? YES () NO (X)

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e. Any other sources? YES () NO (X)

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past 12 months. _____

3. Do you own any cash, or do you have money and/or bonds in a checking or savings account? (Include any funds in prison accounts.) YES (X) NO (). If the answer is YES, state the total value of the items owned.

Prison Drawing Account \$ _____

Prison Savings Account:

A. Cash _____

B. Bonds _____

Other (specify) _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? YES () NO (X)

If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

I declare under penalty of perjury that the foregoing is true and correct.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

1-16-91
Date

Miguel Rosales #112762
(Petitioner's Signature)

I hereby authorize the Louisiana Department of Public Safety and Corrections to withdraw from my savings or drawing account such funds which may be necessary to pay Court costs. I further authorize the Louisiana Department of Public Safety and Corrections to redeem any savings bonds I may have to pay said Court costs in accordance with the provisions of LA. R.S. 15:874(4).

Miguel Rosales #112762
Signature of Petitioner

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miguel Rosales
112762

I hereby certify that the petitioner herein has the following sums of money on account to his credit at the LSP institution where he is confined:

Prison Drawing Account: \$ 8.16

Prison Savings Account:

A. Cash 100.94

B. Bonds _____

I further certify that petitioner likewise has the following securities to his credit according to the records of said institution: DRAWING 8.16
SAVINGS 100.94

DATE

JAN 22 1991

**DATE
CERTIFIED**

Vivian Worsham

Authorized Officer of Institution
(signature)

Vivian Worsham

Authorized Officer of Institution
(printed)

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Mr. Miguel A. Rossles #112762
Cell "D" R-2-R-9
La. State Prison
Angola, La. 70712

INDIGENT

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Clerk's Office
U.S. Eastern District Court
C-151 U.S. Ct. Hse.
500 Camp St.
N.O. La. 70130

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

JAN 31 4 04 PM '91
LORETTA G. WHITE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIGUEL A. ROSALES

CIVIL ACTION

versus

NUMBER 90-1634

JOHN WHITLEY, WARDEN

SECTION "I" (4)

MOTION FOR CERTIFICATE OF PROBABLE CAUSE

Miguel A. Rosales request this Court to issue a certificate of probable cause in the above-entitled matter so that he may appeal his denial of his writ of habeas corpus, dated January 4, 1991. In support of his motion, he states

1. Petitioner has raised a substantial issue concerning the legality of his conviction. See discussion in the District Court's opinion.

2. Petitioner should be allowed to have the denial of the Writ of Habeas Corpus reviewed by the Fifth Circuit Court of Appeals.

Miguel Rosales # 112762
Miguel A. Rosales
DOC # 112762
Camp D Raven 2 R 9
Louisiana State Penitentiary
Angola, Louisiana 70712

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0000046
Mr. Miguel A. Roseles #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

INDIGENT

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Clerk's Office
U.S. Eastern District Court
C-151 U.S. Ctse.
500 Camp St.
N.O., La. 70130

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED FEB - 7 1991

LORETTA G. WHYTE
CLERK

JK

MINUTE ENTRY
FEBRUARY 6, 1991
MENTZ, J.

MIGUEL ROSALES

CIVIL ACTION

VERSUS

NO. 90-1634

JOHN WHITLEY, ET AL.

SECTION "I" (4)

The petitioner, Miguel Rosales, has moved the court to amend his claims before his notice of appeal is filed. The court denies the petitioner's request. The petitioner had ample opportunity to raise these claims in his petition and failed to do so. Furthermore, the claims are not materially different from those denied by this court.

Accordingly,

IT IS ORDERED that the petitioner's motion to amend his claims be DENIED.

Jm.

Clerk to serve all counsel.

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DATE OF ENTRY FEB 07 1991

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DOCUMENT No. 12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FEB 7 10 49 AM '91
LORETTA G. WHYTE
CLERK

MIGUEL A. ROSALES

CIVIL ACTION NO: 90-1634

VERSUS

SECTION: I (4)

JOHN WHITLEY ET AL

CERTIFICATE AS TO PROBABLE CAUSE

A notice of appeal having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court, the court, considering the record in the case and the requirement of FRAP 22(b), hereby finds that:

there is probable cause for an appeal.

a certificate of probable cause should not issue. (reasons below)

REASONS FOR DENIAL:

Date: Feb 6-1991

Jerry A. Mentz v.
United States District Court

0000 1

DATE OF ENTRY FEB 08 1991

(W)

FEE _____
PROCESS _____
X CHARGE Ⓟ
INDEX _____
ORDER Ⓟ
HEARING _____
DOCUMENT No 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RECEIVED
DISTRICT COURT
EASTERN DISTRICT OF LA.
FEB 7 10 49 AM '91
LORETTA G. WHYTE
CLERK

MIGUEL A. ROSALES

CIVIL ACTION NO: 90-1634

VERSUS

SECTION: I (4)

JPHN WHITLEY, ET AL

MEMORANDUM

RE: Certificate of Probable Cause
TO: The Honorable HENRY A. MENTZ JR.
Judge, U. S. District Court
FROM: Loretta G. Whyte
Clerk, U. S. District Court

A notice of appeal has been filed in the captioned habeas corpus case in which the detention complained of arises out of process issued by a state court.

Pursuant to FRAP Rule 22(b), the District Court's certificate of probable cause or statement why such certificate should not issue must be forwarded to the Court of Appeals with the notice of appeal and the record of the proceedings in the District Court.

A form of certification is attached for your use if you find it convenient.

Date: 2/5/91

By: PHILIP CAPRITTO

0000 2

Judge

RECEIVED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Jan 31 4 06 PM '91

ORETTA G. WHYTE
CLERK

MIGUEL A. ROSALES

CIVIL ACTION

versus

NUMBER 90-1634

JOHN WHITLEY, WARDEN

SECTION "I" (4)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above petitioner appeals to the United States Court of Appeals for the Fifth Circuit from the order entered January 4, 1991, dismissing petitioner's petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254.

Miguel Rosales #112762

Miguel A. Rosales
DOC # 112762
Camp D Raven 2 R 9
Louisiana State Penitentiary
Angola, Louisiana 70712

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Mr. Miguel A. Roseles #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

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NO POST

Clerk's Office
U.S. Eastern District Court
C-151 U.S. Ct. Bldg.
500 Camp St.
N.O. La. 70130

Whyte

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RECEIVED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
JAN 31 4 06 PM '91
LORETTA C. WHYTE
CLERK

MIGUEL A. ROSALES

CIVIL ACTION

versus

NUMBER 90-1634

JOHN WHITLEY, WARDEN

SECTION "I" (4)

MOTION FOR CERTIFICATE OF PROBABLE CAUSE

Miguel A. Rosales request this Court to issue a certificate of probable cause in the above-entitled matter so that he may appeal his denial of his writ of habeas corpus, dated January 4, 1991. In support of his motion, he states

1. Petitioner has raised a substantial issue concerning the legality of his conviction. See discussion in the District Court's opinion.

2. Petitioner should be allowed to have the denial of the Writ of Habeas Corpus reviewed by the Fifth Circuit Court of Appeals.

Miguel Rosales #112762

Miguel A. Rosales
DOC # 112762
Camp D Raven 2 R 9
Louisiana State Penitentiary
Angola, Louisiana 70712

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JAN 31 1991

00000
Mr. Miguel A. Rosales #112762
Camp "D" R-2 R-9
La. State Prison
Angola, La. 70712

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INCIDENT

Clerk's Office
U.S. Eastern District Court
C-151 U.S. Ct. Bldg.
500 Camp St.
N.O. La. 70130

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED FEB - 7 1991
LORETTA G. WHYTE
CLERK

MIGUEL A. ROSALES

CIVIL ACTION 90-1634

VERSUS

NO. 90-1634

JOHN WHITLEY, ET AL

SECTION "I" (4)

O R D E R

Considering the foregoing application and affidavit

IT IS ORDERED that:

the party appealing is entitled to proceed in forma pauperis

the party appealing is not entitled to proceed in forma pauperis for the below listed reasons.

New Orleans, Louisiana, this 6th day of FEB, 1991

Herry A. Newby, Jr.
UNITED STATES DISTRICT JUDGE

FEE _____
PROCESS _____
X CHARGE _____
INDEX _____
ORDER _____
HEARING _____
DOCUMENT No. 14

0000

DATE OF ENTRY FEB 08 1991

(H)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RECEIVED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
JAN 31 4 05 PM '91
LORETTA G. WHITE
CLERK

~~XXXXXXXXXX~~

MIGUEL A. ROSALES

v.

JOHN WHITLEY, (WARDEN)

SECTION "I" (4)

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

Petitioner Miguel A. Rosales, pursuant to Rule 24, FRAP, move this Court for an order permitting him to proceed without prepayment of fees and costs or security. Petitioner has attached a declaration in support of this motion.

Respectfully submitted:

Miguel Rosales #112762
Mr. Miguel A. Rosales
D.O.C. #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

Executed this 24 day of JANUARY, 1991.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIGUEL A. ROSALES

: CIVIL ACTION NO. 90-1634

V.

JOHN P. WHITLEY, (WARDEN)

: SECTION "I" (4)

STATEMENT OF THE ISSUE

Petitioner Miguel A. Rosales, pursuant to Rule 24, FRAP, intends to present the following issue on appeal:

1. Petitioner's substantial issue concerning the legality of his conviction.

Sincerely:

Miguel Rosales #112762
Mr. Miguel A. Rosales
D.O.C. #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

UNITED STATES DISTRICT COURT

Eastern ~~WESTERN~~ DISTRICT OF LOUISIANA

Miguel Basales

112762
Inmate (DOC) Number

(Petitioner)

VERSUS

JOHN WHITLEY, WARDEN

(Respondent(s))

AFFIDAVIT IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERIS

I, *Miguel Basales*, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty that I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

I further declare that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? YES () NO (X)
 - a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____
 - b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession, or form of self-employment (hobbycraft sales included)? YES () NO (X)
 - b. Rent payments, interest or dividends? YES () NO (X)
 - c. Pensions, annuities or life insurance payments? YES () NO (X)
 - d. Gifts or inheritances? YES () NO (X)

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e. Any other sources? YES () NO (X)

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past 12 months. _____

3. Do you own any cash, or do you have money and/or bonds in a checking or savings account? (Include any funds in prison accounts.) YES (X) NO (). If the answer is YES, state the total value of the items owned.

Prison Drawing Account \$ _____

Prison Savings Account:

A. Cash _____

B. Bonds _____

Other (specify) _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? YES () NO (X)

If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

I declare under penalty of perjury that the foregoing is true and correct.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

1-16-91
Date

Miguel Basales #112762
(Petitioner's Signature)

I hereby authorize the Louisiana Department of Public Safety and Corrections to withdraw from my savings or drawing account such funds which may be necessary to pay Court costs. I further authorize the Louisiana Department of Public Safety and Corrections to redeem any savings bonds I may have to pay said Court costs in accordance with the provisions of L.A. R.S. 15:874(4).

Miguel Basales #112762
Signature of Petitioner

000011

Miguel Rosales
112762

I hereby certify that the petitioner herein has the following sums of money on account to his credit at the LSP institution where he is confined:

Prison Drawing Account: \$ 8.16

Prison Savings Account:

A. Cash 100.94

B. Bonds _____

I further certify that petitioner likewise has the following securities to his credit according to the records of said institution: DRAWING 8.16
SAVINGS 100.94

DATE

JAN 22 1991

DATE
CERTIFIED

Vivian Worsham

Authorized Officer of Institution
(signature)

Vivian Worsham

Authorized Officer of Institution
(printed)

000012

Mr. Miguel A. Rosales #112762
Camp "D" R-2-R-9
La. State Prison
Angola, La. 70712

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Clerk's Office
U.S. Eastern District Court
C-151 U.S. Ct. Bldg.
500 Camp St.
N.O. La. 70130

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
JUN - 7 1991
LORETTA G. WHITE
CLERK

U.S. COURT OF APPEALS
FILED

MAY 15 1991

No. 91-3124
Summary Calendar

D.C. Docket No. CA90-1634 "I"(4) ~~RECEIVED~~ ~~CLERK~~

MIGUEL A. ROSALES,

Petitioner-Appellant,

versus

JOHN WHITLEY, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before JOHNSON, SMITH and WIENER, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal
and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and
adjudged by this Court that the judgment of the District Court in
this cause is affirmed.

May 15, 1991

ISSUED AS MANDATE: JUN 06 1991

___ FEE
___ PROCESS
 CHARGE
___ INDEX
___ ORDER
___ HEARING
___ DOCUMENT No. 12

A true copy:
Test:
Clerk, U.S. Court of Appeals, Fifth Circuit

By Alison Francis
Deputy

New Orleans, Louisiana JUN 06 1991

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-3124
(Summary Calendar)

MIGUEL A. ROSALES,

Petitioner-Appellant,

versus

JOHN WHITLEY, ET AL.,

Respondents-Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA90-1634 "I"(4))

(May 15 , 1991)

Before JOHNSON, SMITH and WIENER, Circuit Judges.

Per Curiam:*

Following exhaustion of his direct appeals and state habeas corpus remedies, petitioner-appellant Miguel A. Rosales petitioned the federal district court for habeas corpus relief under 28 U.S.C. § 2254. The district court denied the relief sought by

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Rosales who now appeals that denial to this court. Finding no reversible error, we affirm.

I.

BACKGROUND

The following description of the events surrounding the crime for which Rosales was convicted appears in State v. Rosales, 498 So. 2d 66 (La. Ct. App. 1986) and was adopted by the district court in this case:

On July 4, 1985, at approximately 1:00 p.m. as the victim was dancing in the middle of the 1100 block of Inca Drive in Harvey, Louisiana, the defendant approached the victim and called his name. The victim did not answer but continued dancing. Defendant walked up to the victim and shot him once in the back of the head. The defendant then walked rapidly away from the scene. Three sisters, who were near the scene of the crime, gave statements to the investigator attesting that they observed the defendant walk up to the victim and shoot him. All three later identified the defendant in a photographic lineup.

Another witness, Jerry Hawkins, testified that, at 1:00 p.m. on July 4, 1985, he was standing by a van approximately fifty feet from the victim, talking to the driver of the van. He saw the defendant walk toward the victim and yell something to him. A couple of minutes later, he heard a shot. He looked up and saw the victim fall. He also saw the defendant put a gun inside his shirt and walk away.

An additional witness, who had known the defendant for several years, stated that, on July 4, 1985, he lived in a home located on the street where the shooting took place. He testified that while looking out of the window, although he did not witness the shooting, he saw the defendant passing on the other side of the street.

The defendant's mother, father and sister testified that the defendant arrived at their house at 2831 Pritchard Road in Marrero, La., at approximately 11:30 a.m. and spent the remainder of the day in their company. They further testified that at 1:00 p.m. the defendant was with them in a car on the Belle Chasse ferry, en route to the defendant's brother's house in Violet, Louisiana.

498 So. 2d at 67.

An indictment was returned against Rosales for the second degree murder of the victim, Kelvin Gregory Mitchell. Rosales filed a motion for discovery, bill of particulars and motion for production. The state answered these motions. Rosales then moved to suppress the photographic identifications made of him. Following a hearing, the trial court denied the motion to suppress identification.¹

The state trial of this case ran from January 20, 1986, through January 28, 1986. The jury found Rosales guilty of the second degree murder of Mitchell. Rosales was sentenced to life without benefit of probation, parole, or suspension of sentence.

This conviction was affirmed on direct appeal. Rosales, 498 So. 2d at 66. Rosales filed a petition for habeas corpus relief in the state court alleging suppression by the state of evidence favorable to the defense, insufficient evidence to justify the conviction, improper jury instructions, and ineffective assistance of counsel. That petition was denied. Rosales sought review of that denial in the state court of appeal. That court found that the trial court did not err in denying habeas relief.

¹ The hearing was conducted on December 5, 1985, but the motion was not denied until a final witness was heard from (out of the hearing of the jury) during the trial.

Subsequently, the Louisiana Supreme Court denied Rosales's application for supervisory remedial writs.

Rosales filed a petition for habeas corpus relief in federal court pursuant to 28 U.S.C. § 2254 alleging the same four issues raised in state court. The district court denied the petition. Rosales filed a timely notice of appeal and the district court granted a certificate of probable cause.

II.

DISCUSSION

A. The Brady Claim

Rosales contends that the initial report of the police detective investigating the murder of Kelvin Mitchell contained information that was favorable to his defense. Rosales argues that the prosecution's failure to supply this material to him was violative of his due process rights. See Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Such a violation occurs if material exculpatory evidence is denied to the defense, but "[e]vidence is material only if there is a reasonable probability that the verdict would have been different had the evidence been disclosed to the defendant, or, stated in another fashion, if the reviewing court's confidence in the outcome is undermined." Jones v. Butler, 864 F.2d 348, 354 (5th Cir. 1988), cert. denied, 490 U.S. 1075 (1989). The district court found that no material exculpatory evidence was withheld because the evidence against Rosales was so overwhelming that there was "no reasonable probability that the limited evidence withheld . . . would have altered the jury's verdict."

On appeal, Rosales takes issue with the district court's conclusions. First, Rosales contends that the inconsistent descriptions given by eyewitnesses mentioned in the police report were subject to disclosure under Brady. Second, Rosales asserts that the prosecution should have disclosed that witness Jerry Hawkins was arrested by Detective Wood (the police officer investigating Mitchell's murder) on drug charges the day following the murder. Third, Rosales argues that the prosecution should have disclosed that the eyewitnesses were initially frightened about giving testimony in the case. Fourth, Rosales contends that the police report contained the name of a potential witness which should have been disclosed. To succeed on these Brady claims, Rosales must show that each item of evidence was suppressed, that this evidence was favorable to his defense and that the evidence was material. Smith v. Black, 904 F.2d 950, 963 (5th Cir. 1990), petition for cert. filed, (U.S. Jan. 22, 1991) (No. 90-1164).

With respect to the first two claims, Rosales has not shown any suppression of evidence. During trial, defense counsel questioned all of the witnesses about their respective descriptions of Rosales's clothing and hair style on the day of the murder. Similarly, defense counsel was thorough in questioning Hawkins about the outstanding charge pending against him related to his arrest for drugs by Detective Wood on the day following the murder. In addition to the questions posed to Hawkins, the record contains lengthy discussions between counsel for Rosales and the state and the court concerning the Hawkins arrest. The record

leaves no doubt that the defense was fully apprised of the circumstances surrounding this arrest.

Rosales has demonstrated no suppression of evidence with respect to these two claims because the evidence came out at trial and because the defense was able to put it to effective use. See United States v. McKinney, 758 F.2d 1036, 1049-50 (5th Cir. 1985).

With respect to the third claim that witnesses Valerie and Jeanette Williams were afraid to testify, Rosales has not shown that this evidence was favorable to his defense. Rosales reasons that this fear would have motivated them to testify against an innocent defendant, with features similar to those of the perpetrator. This theory is implausible. Evidence that witnesses were reluctant to cooperate with the police investigation of the murder because they had been threatened with bodily harm is not favorable to the defense. Additionally, the certainty with which both Valerie and Jeanette Williams testified that Rosales was the murderer eliminates the possibility that the jury would have discredited their testimony even if Rosales had shown that the witnesses were frightened, and thus reluctant to testify, when originally approached by Detective Woods. Therefore, this evidence is neither exculpatory nor material and does not show a Brady violation.

Rosales's final contention is that the police report contained the name of a potential witness to the murder, which name was not disclosed to the defense. However, Rosales has not alleged that the police took a statement from this witness.

Rosales only alleges that this witness may have provided testimony favorable to him. This is mere speculation. "A defendant may not simply allege the presence of favorable material evidence and win reversal of his conviction." United States v. Balliviero, 708 F.2d 934, 943 (5th Cir.), cert. denied, 464 U.S. 939 (1983). Rosales has not shown with specificity that this witness would have produced any favorable testimony or raised a reasonable probability that the result of the trial would have been different. The principal evidence showing that Rosales murdered Mitchell was the eyewitness testimony of the three Williams sisters and Jerry Hawkins. Each of the Williamses--Valerie, Jeanette and Helen--specifically identified Rosales as the person who approached Mitchell, pointed a gun to his head and pulled the trigger. Additionally, Jerry Hawkins specifically identified Rosales as leaving the scene of the crime and putting a pistol in his waistband. Given this very strong eyewitness testimony, Rosales has identified no evidence to indicate with any degree of probability that the jury's verdict would not have been one of guilty as charged. Jones, 864 F.2d at 354. Therefore, the claims of suppression of favorable evidence have no merit.

B. Sufficiency of the Evidence

Rosales also contends that there is insufficient evidence to support his conviction for the murder of Mitchell. The appropriate standard of review for such a claim presented in a habeas proceeding is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact

could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). As stated above, the evidence against Rosales consisted of three eyewitnesses to the actual murder of Mitchell and one eyewitness who saw Rosales leaving the scene of the crime while tucking a gun into his waistband. This evidence is without doubt sufficient to support the conviction. As such, this claim has no merit.

C. Jury Instructions

Rosales further contends that the district court erred by "informing the jury that a second degree murder conviction carried a life sentence without benefit of parole, probation, or suspension of sentence, and then failed to advise the jury of the penalty for manslaughter," a lesser included offense. Rosales contends that this failure was a violation of article 804 of the Louisiana Code of Criminal Procedure. Such claims of violation of state law are not cognizable in a federal habeas proceeding unless the alleged error denied a defendant of a fundamentally fair trial. O'Bryan v. Estelle, 714 F.2d 365, 389 (5th Cir. 1983), cert. denied, 465 U.S. 1013 (1984). Rosales has shown no fundamental flaw in the fairness of his trial, but has merely alleged that the jury could have been misled to his detriment. Moreover, he has not made this allegation with any specificity. As a result, Rosales has not shown a violation of his constitutional rights.

D. Ineffective Assistance of Counsel

Rosales's final contention is that he received ineffective assistance of counsel because no objection was made to the instruction which we have found to be constitutionally acceptable above. The failure of Rosales's counsel to object to the constitutionally sound instruction cannot be deficient performance which prejudices the defense as is required to sustain a claim for ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1985).

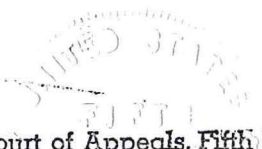
On appeal, Rosales raises an additional issue to support his claim of ineffective assistance of counsel. Rosales contends that his counsel did not call a favorable witness. However, this issue was not raised in the district court, nor was it raised in state proceedings, and, as such, it will not be addressed for the first time on appeal. Rosales urges this Court to stay his appeal while he presents this issue to the district court. He cites no authority for this procedure, nor is any apparent, so this request is denied.

III.

CONCLUSION

We find no reversible error by the district court in its denial of habeas corpus relief to Rosales.

AFFIRMED.


~~Test~~
Test
Clerk, U. S. Court of Appeals, Fifth Circuit
By Allison Gravel
Deputy
New Orleans, Louisiana JUN 06 1991