CHRISTOPHER DAVIS

VERSUS

DARREL VANNOY, WARDEN

NO. 25-KH-168

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

April 29, 2025

Morgan Naquin
Deputy Clerk

IN RE CHRISTOPHER DAVIS

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE NANCY A. MILLER, DIVISION "I", NUMBER 20-44

Panel composed of Judges Susan M. Chehardy,
Scott U. Schlegel, and Timothy S. Marcel

WRIT DENIED

Relator, Christopher Davis, seeks review of the district court's March 10, 2025 Order, which denied his First Application for Post-Conviction Relief ("APCR"). For the reasons explained more fully below, we deny relator's writ application.

On March 10, 2022, a jury found relator guilty of second degree murder. On March 14, 2022, the district court sentenced relator to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. This Court affirmed relator's conviction and sentence on March 8, 2023. *State v. Davis*, 22-281 (La. App. 5 Cir. 3/8/23), 360 So.3d 82. The Louisiana Supreme Court subsequently denied relator's writ application. *State v. Davis*, 23-507 (La. 1/10/24), 376 So.3d 133.

Relator filed his APCR with the district court on February 24, 2025. Relator argued his counsel was ineffective because he: 1) failed to object to the

State's alleged discriminatory use of peremptory strikes during jury selection; 2) failed to challenge jurors for cause who indicated they could not give defendant a fair trial; and 3) failed to object to the prosecution's alleged improper opening and closing arguments. Relator also argued that the evidence presented at trial was not sufficient to prove he had the requisite specific intent to kill or inflict great bodily harm to support his second degree murder conviction.

On March 10, 2025, the district court denied relief, first finding that "defense counsel performed to a high standard and [relator] did not suffer legal prejudice from that representation." The district court observed that the minute entries for the trial indicated that, while defense counsel exercised several peremptory strikes, the State used only one peremptory strike to excuse a juror.[1] Thus, the district court recognized that relator could not establish a *Batson*[2] violation or any other constitutional issues. In addition, the district court found that relator failed to identify any remarks the prosecution made during opening and closing statements which contributed to the guilty verdict. Finally, the district court found that relator's claim challenging the sufficiency of the State's evidence was "barred from further judicial review" because the claim was fully litigated on appeal, citing La. C.Cr.P. art. 930.4(A).

Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. Casimer*, 12-678 (La. App. 5 Cir. 3/13/13), 113 So.3d 1129, 1141. To prove ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Id*. Under the *Strickland* test, the defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below

[1] We further observe that the district court struck four potential jurors for cause.

[2] *Batson v. Kentucky*, 476 U.S. 79, 100 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Id*. An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or "a trial whose result is reliable." *Id*. To prove prejudice, the defendant must demonstrate that, but for counsel's unprofessional conduct, the outcome of the trial would have been different. *Id*. An attorney's actions during *voir dire* are considered to be a matter of trial strategy. *Teague v. Scott*, 60 F.3d 1167, 1172 (5th Cir. 1995).

According to relator, the State peremptorily struck Black female jurors, who were approximately the same age as relator, in violation of *Batson, supra*, which held that the Equal Protection Clause prohibits purposeful discrimination of jurors on the basis of race. Additionally, relator argues that counsel failed to object during jury selection when the State used its peremptory challenges to remove potential jurors "who claimed to have an understanding of how a couple's dispute could turn physical." Relator also argues that his counsel failed to challenge jurors for cause who could not set aside relator's past incidents of domestic violence and give relator a fair trial.

We agree with the district court that relator's claim that trial counsel rendered ineffective assistance during *voir dire* is meritless. As the district court pointed out in its ruling, the State only used one peremptory strike during jury selection. In contrast, defense counsel exercised five peremptory challenges, and the trial court excused four potential jurors for cause. Further, relator does not provide specific facts regarding any juror to explain how his counsel was ineffective during jury selection. As such, relator failed to meet his post-conviction burden of proof as to this claim. *See* La. C.Cr.P. art. 930.2.

Next, relator contends that the prosecutor's opening statement alluded to facts never elicited from the State's eyewitness, Kelon Mansion. Relator also

asserts that counsel failed to object when the prosecutor vouched for the credibility of Mr. Mansion during opening statement and closing argument. "[A]bsent bad faith on the part of the prosecutor or clear and substantial prejudice, the reference in the opening statement to evidence later ruled inadmissible or not produced is not [reversible error]." *State v. Horne*, 554 So.2d 820, 824 (La. App. 5 Cir. 1989). Here, relator makes no reference to the "facts," which he claims were ultimately not established during the testimony of Mr. Mansion. *See* La. C.Cr.P. art. 930.2.

Furthermore, comments on the credibility of a witness are proper and within the scope of closing argument when the facts bearing on the witness' credibility appear in the record. *See State v. Sayles*, 395 So.2d 695, 697 (La. 1981). Finally, "[t]he time and manner of making objections is part of the trial strategy decision-making of the trial attorney." *State v. Moore*, 16-644 (La. App. 5 Cir. 3/15/17), 215 So.3d 951, 968. Counsel could have determined that an objection would only serve to draw attention to any allegedly improper remarks. Thus, we find that relator has not "overcome the presumption that, under the circumstances [counsel's decisions] 'might be considered strong trial strategy.'" *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 164, 100 L.Ed.2d 83 (1955)). Against this backdrop, relator has not demonstrated that the claimed errors rendered his trial "fundamentally unfair." *Strickland*, 466 U.S. at 700, 104 S.Ct. at 2071.

Finally, relator maintains that the State failed to prove that he possessed the requisite specific intent to kill or inflict great bodily harm as required for a second degree murder conviction. As part of this claim, relator suggests that Mr. Mansion's testimony was coerced and resulted from a deal made with the prosecution. But Mr. Mansion clarified on re-direct examination that the State only promised to address his safety concerns. Moreover, on appeal, this Court found that "[t]he evidence presented by the State proves that the defendant had the

specific intent to kill Ms. Sands when he pointed the gun at her and fired." *Davis*, 360 So.3d at 91. In doing so, this Court stated, "[T]he jury clearly believed the State's witnesses and found that the evidence established that the defendant committed second degree murder, thereby rejecting the responsive verdicts of negligent homicide and manslaughter." *Id*. Consequently, because relator's insufficient evidence claim was fully litigated on appeal, and relator has not established that the interest of justice requires reconsideration, this claim is precluded from post-conviction review under La. C.Cr.P. art. 930.4(A).

Accordingly, relator's writ application is denied.

Gretna, Louisiana, this 29th day of April, 2025.

SUS
SMC
TSM

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/29/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-KH-168

E-NOTIFIED
24th Judicial District Court (Clerk)
Honorable Nancy A. Miller (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

MAILED
Christopher Davis #707339 (Relator)
Louisiana State Penitentiary
Angola, LA 70712