

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

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| TESHOME CAMPBELL, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | 08-2157 |
| |) | |
| VICTOR CALLOWAY, Acting |) | |
| Warden, Danville Corr. Center, |) | |
| |) | |
| Respondent.) |) | |

FINAL ORDER

This is a case seeking a writ of habeas corpus under the provisions of 28 U.S.C. § 2254. In 1998 the petitioner, Teshome Campbell, was found guilty of first degree murder¹ in a jury trial in the Circuit Court of Champaign County, Illinois, and was sentenced to fifty-five years in prison. Campbell seeks habeas corpus claiming that his court-appointed trial counsel rendered ineffective assistance contrary to the provisions of the Sixth Amendment to the United States Constitution.

This is the second time Campbell has been before this court on this petition. The first time the court denied the writ relying on the teachings of *Strickland v. Washington* 466 U.S. 668 (1984) concerning the deference to be paid the strategies of defense counsel. The Seventh Circuit Court of Appeals has reversed that denial and sent the case back to this court to determine the factual basis of defense counsel's strategy and further to determine if there were other facts that supported that strategy. *Campbell v. Reardon*, 780 F.3d 752, 772 (7th Cir. 2015).

Following the instructions of the court of review, this court held an evidentiary hearing on October 28, 2015, at which it heard the testimony of Campbell's trial counsel and the testimony of the eye witnesses to the crime that the lawyer chose not to interview or call in Campbell's defense.

¹ The murder arose from a mob-style beating that occurred during the early morning hours of Christmas Day, 1997. The victim died about a month later from injuries he sustained in the beating.

Ineffective assistance of counsel

Strickland imposes a two-part test: (1) that counsel's performance "fell below an objective standard of reasonableness," 466 U.S. at 687-88; and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 694.

Counsel's performance

Under *Strickland*, there is a distinction "between 'strategic choices made after thorough investigation of law and facts relevant to plausible options,'" and "'strategic choices made after less than complete investigation.'" *Campbell*, 780 F.3d at 763 (quoting *Strickland*, 466 U.S. at 690-91). As to the latter, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Campbell*, 780 F.3d at 763 (quoting *Strickland*, 466 U.S. at 690-91).

Campbell's counsel knew of the existence of potentially exculpatory witnesses through his review of police reports. *See* Tr., d/e 82, pp. 29-33. Counsel did not talk to any witnesses who might have corroborated Campbell's story that he was not involved in the beating.

The first witness to testify at the evidentiary hearing was Campbell's lawyer, Harvey Welch, Esq. *See* Tr., d/e 82, pp. 19-47. He told how, in preparation for trial, he went out to the location of the beating, at Bellafontaine and Clock Streets, Champaign, Illinois, at night. He decided that there was insufficient light present for any of the state's witnesses to give credible testimony that they could see Campbell well enough to identify him. Mr. Welch believed it was just too dark at the scene to identify Campbell as a participant in the beating.

Based on that one visit to assess the lighting at night, Mr. Welch decided on the "too dark to see" strategy. He did not interview potential witnesses identified in police reports to determine if they had any evidence supporting Campbell's story. Mr. Welch did not seek appointment of an investigator to carry out the interviews to see if other facts could be found. He didn't think it worthwhile. His declared strategy was to rely completely on the jurors having a reasonable doubt about the state's witnesses' ability to make a positive identification. He reached that conclusion without knowing what the witnesses might say if called to the stand, and without assessing their credibility. Instead, he made a "strategic choice . . . after less than complete investigation." *Campbell*, 780 F.3d at 763 (quoting *Strickland*, 466 U.S. at 690-91). The first prong of *Strickland* is met; Mr. Welch settled on a trial strategy after an investigation that was less than complete. His performance fell below an objective standard of reasonableness.

Prejudice

Three eye witnesses who were not called to testify at Campbell's trial did testify at the evidentiary hearing. Toni Leonard (Tr., d/e 82, pp. 47-90), Leroy Hunter (Tr., d/e 82, pp. 91-

113), and Ieca Hunter (Tr., d/e 82, pp.114- 152) each said that they witnessed the beating, and Campbell was not a participant.

Toni Leonard was walking home in the early morning hours of Christmas Day 1997. She heard noises as she approached the corner of Bellafontaine and Clock Streets and saw three men fighting in the street. One (probably the victim) was knocked down as she watched. The two people standing were men she recognized. One she knew by his street name of “Insane,” and the other she identified as “a Holt.”² She knew them because she had purchased crack from both of them in the past. Neither one was Campbell. Leonard admitted to having smoked crack about fifteen to twenty minutes before she encountered the men fighting, and had also consumed alcohol. She also had drugs on her person. Leonard stated that her consumption of drugs and alcohol did not affect her ability to see or hear what went on that night.

Leonard stated that she bought drugs from people on Bellefontaine and she knew most of the people on that street – maybe not by name, but she knew their faces. She did not know Campbell and did not see him there that night. When Leonard heard sirens approaching, she left the vicinity. Whether or not a jury would have found her credible, her testimony would have contradicted the testimony of the state’s witnesses. But Mr. Welch did not interview her to determine whether her testimony might make a difference in the outcome.

Leroy Hunter lived next door to his daughter, Ieca. He saw the fight in progress, called the police, and went outside. He said that he saw state’s witness Steven Peete strike the victim with a pipe or stick. (Peete was granted immunity for the murder in exchange for his testimony against Campbell.³) Peete lived across the street from the Hunters, so Leroy was familiar with Peete but didn’t want to testify about Peete because he feared retaliation. Leroy testified at the evidentiary hearing that he saw Campbell standing on the grass in front of Ieca’s front porch, and Ieca was talking to Campbell about what was going on in the street.

Leroy is now 84 years old. His memory is fading. His testimony is unclear and appears to contradict testimony he gave at the trial of some of Campbell’s codefendants, but he was never asked to testify about Campbell all those years ago. Leroy is not confused about Campbell. He is adamant that Campbell (whose name he later learned from Ieca) did not participate at all in the beating.

By far the most persuasive and credible witness at the evidentiary hearing was Ieca Hunter. Ieca was wrapping Christmas gifts in the early morning hours on Christmas Day and

² Both Damion Holt (referred to in the record as Damion Johnson) and Lynntez Holt were present at one point or another that night. Leonard may have been referring to Lynntez Holt and Jeff Dillon. *See* Tr., d/e 82, p.55. As the fight progressed, Leonard also saw Damion Holt a/k/a Johnson participate in the beating. Tr., d/e 82, p.60. Eventually there were more people at the scene; she saw at least ten people there. Tr., d/e 82, p.70.

³ Campbell’s argument that counsel was ineffective for failing to impeach Peete at trial was rejected by the court.

heard gunshots and a commotion in the street. She opened her front door, then opened the storm door to look past the Christmas lights and see what was happening. She saw a man being beaten, so she reached for her phone and called the police. After she made the phone call, she noticed a man standing on the grass in front of her porch. That man was Campbell. Ieca knew him from the neighborhood, they had chatted from time to time, and she had even given him a tour of her house. Having recognized Campbell standing there, Ieca felt brave enough to step out on her porch. She and Campbell talked about the fight in the street.

Ieca explained that the police asked her if she knew who participated in the beating. Ieca could not identify anyone because their heads were down and they were hunched over, swinging their arms. She could identify Campbell as having no involvement in the fight, but no one asked her if she knew who was *not* involved. Had she been contacted by Mr. Welch, Ieca would have been more than willing to testify that Campbell was on her grass, speaking to her, and he was not in any way involved in the beating.

In sum, had Mr. Welch interviewed the three witnesses, he would have found two witnesses whose testimony would have been of questionable value. However, their testimony would have been corroborated by a very strong, credible, virtually unimpeachable witness – Ieca Hunter. Her testimony would have elevated the credibility of the other two witnesses.

The court must determine under the second prong of *Strickland* whether Campbell was prejudiced by Mr. Welch's failure to interview the potentially exculpatory witnesses. Had the three witnesses been called to testify, the court finds, their testimony would have been in complete conflict with the state's case and at the very least could have raised reasonable doubts about Campbell's involvement in the victim's beating. Since the state had no physical evidence of Campbell's involvement in the crime, the prosecution rested on the questionable credibility of the state's witnesses who were granted immunity from prosecution. Consequently, there is a reasonable probability that, but for counsel's errors, the outcome of Campbell's trial would have been different. *See Strickland*, 466 U.S. at 694.

The evidence developed at the hearing on remand persuades the court that both prongs of *Strickland* have been met. Campbell did have ineffective assistance of his court-appointed attorney and a writ of habeas corpus should issue requiring Campbell a new trial or his release from custody. The conviction is hereby vacated. The state shall have 120 days from the issuance of this order to release or retry Campbell. On the court's own motion, extension of this order is stayed pending appeal.

It is so ordered.

ENTERED this 30th day of December, 2015.

/s/ Harold A. Baker

HAROLD A. BAKER
UNITED STATES DISTRICT COURT