Supreme Court of the United States

STATE OF LOUISIANA,

Petitioner,

vs.

RICKY JOSEPH LANGLEY,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Louisiana Supreme Court erred in ruling that the absence of the trial judge during critical stages of the trial proceedings does not amount to a fatal structural error, despite the fact that the defendant successfully argued on direct appeal that it was in fact such an error?

2. Whether the Louisiana Supreme Court erred in determining that federal principles of double jeopardy barred a retrial of the defendant for capital murder when the defendant successfully argued on direct appeal that the trial judge's absence essentially deprived him of a trial, rendering the resultant verdict an absolute nullity?

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PETITION FOR WRIT OF CERTIORARI

The petitioner, the State of Louisiana, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Louisiana Supreme Court. The Louisiana Supreme Court held that under federal constitutional law and United States Supreme Court jurisprudence, it was harmless error when the trial judge was absent from critical phases of the trial proceedings. The state high court further ruled that despite the defendant's successful argument to an intermediate state appellate court that this absence constituted structural error and meant that he had no trial, federal principles of double jeopardy still barred his retrial for first degree murder.

OPINION BELOW

On May 22, 2007, the Louisiana Supreme Court ruled that a trial judge is a dispensable part of a criminal trial. (App. 1-23). In so doing, the highest state court misinterpreted the United States Supreme Court's prior decisions regarding structural and harmless trial error. The state court also ignored the fact that the defendant had obtained a third murder trial by arguing that structural error occurred during the trial judge's absence at trial, then retracted that same position once he had obtained the desired result – a new trial – from the state intermediate appellate court. This case raises important questions about the definition of a criminal trial, what constitutes structural versus harmless trial error, the nature of double jeopardy, and the right of both the State and the defendant to a fair trial.

STATEMENT OF JURISDICTION

On May 22, 2007, the Louisiana Supreme Court issued a final judgment which conflicts with this Court's precedents regarding federal constitutional law as it relates to the issues of double jeopardy and trial and structural error. Pursuant to 28 U.S.C. §1257, the jurisdiction of this Honorable Court is invoked. This Court has the authority to review decisions of the highest state court when those rulings are based on the interpretation and application of federal constitutional law.

At the state court level, the respondent initially relied on both the federal constitution and United States Supreme Court case law to obtain a new trial, and then later he used them to repudiate the legal consequences of his successful appellate efforts. The Louisiana Supreme Court based its final decision on its misinterpretation of federal constitutional law and its misapplication of the United States Supreme Court's jurisprudence regarding structural error, harmless trial error, and double jeopardy. (App. 1-23). The state intermediate appellate court, the Louisiana Third Circuit Court of Appeal, had previously ruled consistently with this Court's decisions on those topics. (App. 24-51). The petitioner submits that this Honorable Court should grant its certiorari petition to remedy the Louisiana Supreme Court's lack of consideration for and adherence to this Court's prior, binding precedents on structural versus trial error and double jeopardy.

CONSTITUTIONAL AND/OR STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1257 provides in pertinent part as follows:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

The defendant was indicted by a grand jury located in Calcasieu Parish, Louisiana, for the first degree murder of six-year-old J.G.,[1] an offense committed in violation of LSA-R.S. 14:30. The defendant has been tried for first degree murder on two previous occasions. *State v. Langley*, 95-1489 (La. 4/14/98), 711 So.2d 651; *State v. Langley*, 95-1489 (La. 04/03/02), 813 So.2d 356; *State v. Langley*, 04-269 (La.App. 3 Cir. 12/29/04), 896 So.2d 200. The State has consistently sought the death penalty as the defendant's punishment. At the defendant's first trial, the jury recommended that he receive a death sentence. *Langley*, 711 So.2d at 656.

Before his second trial for first degree murder, the defendant pleaded not guilty and not guilty by reason of insanity. *State v. Langley*, 04-269 (La.App. 3 Cir. 12/29/04), 896 So.2d 200, 202. (App. 24). The trial judge was absent from critical portions of the defendant's second murder "trial." At its conclusion, the jury returned a verdict finding the defendant guilty of second degree murder.

The defendant subsequently appealed his conviction to the Louisiana Third Circuit Court of Appeal. On appeal, he claimed that the trial judge's absence from portions of his trial constituted structural error which essentially nullified the proceedings and mandated his conviction's reversal. The defendant's argument was based on federal constitutional law and United States Supreme Court jurisprudence. The Third Circuit agreed with the defendant's assessment of

[1] The petitioner uses the victim's initials in this brief to comply with LSA-R.S. 46:1844(W), and out of deference for the federal equivalent to Louisiana's victims' rights law, 18 U.S.C. §3771(a)(8).

error, and it declared that the defendant's trial and conviction were absolutely null. *State v. Langley*, 04-269 (La.App. 3 Cir. 12/29/04), 896 So.2d 200, 207-212. (App. 24-51). The defendant's case was then remanded to the district court level for retrial. *Langley*, 896 So.2d at 212. (App. 43-47).

After the Third Circuit's decision, the State declared its intention to retry the defendant for first degree murder. The defendant subsequently filed a Motion to Quash the Charge of First Degree Murder. On October 31, 2005, a state trial court hearing was held on the defendant's motion to quash. At the conclusion of that hearing, the state trial court judge ruled in the defendant's favor. He held that the State could not retry the defendant for first degree murder, nor could it seek the death penalty against him.

The State subsequently filed an application for a supervisory writ of review with the Louisiana Third Circuit Court of Appeal. The State's writ application was granted by that court, and the defendant's subsequent rehearing application was denied by it. The defendant then filed a writ application with the Louisiana Supreme Court seeking the reversal of the Third Circuit's writ grant decision; the State timely responded to his pleading.

On September 15, 2006, the Louisiana Supreme Court granted the defendant's writ application for briefing purposes. Additional briefs were ordered by the state high court. On May 22, 2007, the Louisiana Supreme Court reversed the Third Circuit's decision based on its own flawed interpretation of federal constitutional law and the United States Supreme Court jurisprudence on structural error, harmless error, and double jeopardy. *State v. Langley*,

2006-1041 (La. 5/22/07), 958 So.2d 1160. (App. 1-23). The State now seeks the review and reversal of the Louisiana Supreme Court's decision by this Honorable Court.

STATEMENT OF THE FACTS

The testimony and record evidence, combined with the defendant's detailed confession, revealed the following information: On February 7, 1992, the defendant was staying with the Lawrence family in a rural area of Calcasieu Parish, Louisiana. He had been previously convicted and incarcerated for child molestation in the state of Georgia. He was on parole for that offense; in fact, he was a parole violator when he stayed with the Lawrences.

Six-year-old J.G., a neighboring child, went to the Lawrence home to play with the two Lawrence children. The children were not at home. The defendant, who was alone in the house, was.

The defendant invited the child inside the home to wait for the Lawrence children's return. As the young boy played in the children's bedroom, the defendant went into the room, molested him, and strangled him to death. He hid the child's body in a closet, and covered him with a dirty blanket.

Later that same day, when the victim's mother came to the Lawrence home looking for her son, the defendant pretended to assist in the search for him. After law enforcement officers discovered that the defendant was a convicted child molester who was in violation of his Georgia parole, they questioned him about the missing child. The defendant ultimately confessed to his crime. He gave

a detailed videotaped confession in which he led law enforcement officers on a tour of the Lawrence home, described the murder to them, and subsequently brought them to the child's lifeless body, which he had hidden away in a bedroom closet.

REASONS FOR GRANTING THE WRIT

I. The Louisiana Supreme Court erred in ruling that the absence of the trial judge during critical stages of the trial proceedings does not amount to a fatal structural error, despite the fact that the defendant successfully argued on direct appeal that it was in fact such an error.

On the defendant's direct appeal of his second murder conviction, he specifically argued that the absence of the trial judge from portions of *voir dire* and closing arguments constituted fatal structural error which rendered the trial itself a nullity. Quite simply, the defendant maintained that the trial judge's absence was such a fundamental defect that in essence *he had no trial*. *State v. Langley*, 2004-269 (La.App. 3 Cir. 12/29/04), 896 So.2d 200, 203-206. (App. 24, 26-37). The Louisiana Third Circuit Court of Appeal, relying on this Honorable Court's jurisprudence regarding structural versus harmless trial error, agreed with the defendant's characterization of the trial judge's absence. *Langley*, 896 So.2d at 207-210. (App. 37-47). The Third Circuit noted that the trial judge's actions in leaving the courtroom constituted structural error which "destroyed the framework of the trial itself." *Langley*, 896 So.2d at 210. (App. 42).

The Louisiana Supreme Court's opinion is quite the opposite of the state intermediate court's well-reasoned, legally sound decision. (App. 1-23). It blithely ignores this Court's obligatory guidelines as to what constitutes structural error and what is considered harmless trial error. (App. 8-17). It is further defective in its misinterpretation of this Court's double jeopardy decisions. (App. 17-21).

The Louisiana Supreme Court actually ruled that under the United States Supreme Court's jurisprudence regarding structural versus harmless trial error, the absence of the trial judge was a harmless trial error. (App. 8-17). The fundamental effect of the Louisiana Supreme Court's decision: a ruling from the highest state court misinterpreting both federal constitutional and jurisprudential law by holding that a trial judge *is a dispensable part of a criminal trial*. This ruling contradicts this Court's previous decisions regarding not only the categories of error in a criminal trial, but also the very nature of trial.

In *Gomez v. United States*, 490 U.S. 858, 109 S.Ct. 2237 (1989), the United States Supreme Court noted that *voir dire* was a critical stage in a criminal proceeding. *Gomez*, 490 U.S. at 873, 109 S.Ct. at 2246. In *Gomez*, this Court recognized the vital importance of a judge's presence at and actions in presiding over *voir dire* in a criminal trial. According to this Court, a trial judge's absence from *voir dire cannot* be considered harmless error. When the trial judge in this case left the courtroom during *voir dire* (*and* closing arguments), the ensuing error was of such magnitude *that it destroyed the trial itself.*

In *Gomez*, the United States Supreme Court also stated that the defendant's "'right to an impartial adjudicator, be it judge or jury'" is among the fair trial rights

which are not susceptible to harmless error review. *Gomez*, 490 U.S. at 876, 109 S.Ct. at 2248, quoting *Gray v. Mississippi*, 481 U.S. 648, 668, 107 S.Ct. 2045, 2057 (1987). The *Gomez* Court declared: "Equally basic is a defendant's right to have all critical stages of a criminal trial conducted by a person with jurisdiction to preside." *Gomez*, 490 U.S. at 876, 109 S.Ct. at 2248. In *Johnson v. United States*, 520 U.S. 461, 117 S.Ct. 1544 (1997), the United States Supreme Court noted that a structural error, or a defect impacting the trial's framework, has only been found in a limited number of cases, *including one in which an impartial trial judge was lacking*. *Johnson*, 520 U.S. at 468-469, 117 S.Ct. 1544, 1549-1550, citing *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437 (1927). In this case, for two critical phases of trial – *voir dire* and closing arguments – the impartiality of the judge officiating over the criminal proceeding was not at issue. Instead, his very *presence* at the proceeding *was*.

In *Neder v. United States*, 527 U.S. 1, 14, 119 S.Ct. 1827, 1836 (1999), the United States Supreme Court stated: "Under our cases, a constitutional error is either structural or it is not." The *Neder* Court also noted that trial before a biased judge had previously been found to be one of the limited cases of structural error, thus mandating automatic reversal of the conviction. *Neder*, 527 U.S. at 8, 119 S.Ct. at 1833. The United States Supreme Court earlier made the distinction between structural and harmless trial error unmistakably clear in *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710 (1993), when it stated:

> Trial error "occur[s] during the presentation of the case to the jury," and is amenable to harmless-error analysis because it "may. . . . be quantitatively assessed in the context of other

> evidence presented in order to determine [the effect it had on the trial]." *Arizona v. Fulminante*, 499 U.S. 279, 307-308, 111 S.Ct. 1246, 1264, 113 L.Ed.2d 302 (1991). At the other end of the spectrum of constitutional errors lie "structural defects in the constitution of the trial mechanism, which defy analysis by 'harmless-error' standards." *Id.* at 309, 111 S.Ct., at 1265. The existence of such defects – deprivation of the right to counsel, for example – requires automatic reversal of the conviction because they infect the entire trial process. See *id.*, at 309-310, 111 S.Ct., at 1265. Since our landmark decision in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), we have applied the harmless-beyond-a-reasonable-doubt standard in reviewing claims of constitutional error of the trial type.

Brecht, 507 U.S. at 629-630, 113 S.Ct. 1710, 1717.

Under this Court's precedents, the lack of an impartial trial judge is a *fatal structural error*. *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437 (1927); *Johnson v. United States*, 520 U.S. 461, 117 S.Ct. 1544 (1997). *A fortiori*, the *complete lack* of a trial judge must also be fatal structural error. When the Louisiana Supreme Court held otherwise, it not only improperly interpreted and applied federal constitutional law and this Court's jurisprudence, but it further offended the integrity of the judiciary by essentially ruling that a judge – without whom there is no "trial" in the commonly understood sense of the word – is a superfluous part of a criminal trial.[2]

[2] Trial is defined as "A formal judicial examination of evidence and determination of legal claims in an adversary proceeding." BLACK'S LAW DICTIONARY 1543 (8th ed. 2004). In this case, there was no

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II. The Louisiana Supreme Court erred in determining that federal principles of double jeopardy barred a retrial of the defendant for capital murder when the defendant successfully argued on direct appeal that the trial judge's absence essentially deprived him of a trial, rendering the resultant verdict an absolute nullity.

This Court has issued numerous decisions on the topic of double jeopardy. However, none of those opinions is either legally or factually identical to this one. Despite this fact, the State notes the following decisions of interest.

In *Gomez v. United States*, 490 U.S. 858, 109 S.Ct. 2237 (1989), this Court notably stated that in a criminal trial, double jeopardy is at issue when the jury is "empaneled and sworn." *Gomez*, 490 U.S. at 872, 109 S.Ct. at 2246. In this case, the trial judge first left the courtroom during *voir dire*, *before* a jury was finally selected. *State v. Langley*, 2004-269 (La.App. 3 Cir. 12/29/04), 896 So.2d 200, 203-206. (App. 27-30). The trial framework was destroyed by his initial absence. As this Court noted in *Gomez*, *voir dire* is so vitally important to the trial framework that a trial judge must preside over it, since "no transcript can recapture the atmosphere of the *voir dire*, which may persist throughout the trial." *Gomez*, 490 U.S. at 875, 109 S.Ct. at 2247.

The petitioner submits that once the trial judge left the courtroom during *voir dire*, the trial ceased to exist. It became an absolutely nullity, as the framework of the trial

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"judicial examination" for substantial parts of the trial because of the trial judge's absence from the proceedings.

was so structurally deficient by the *complete absence of a presiding official* that it could not fairly be considered a trial. The defendant argued as much on direct appeal. (App. 24-37). His assertion was correct. *The consequence*: no double jeopardy bar prevents the defendant's retrial for first degree murder.

In *Green v. United States*, 355 U.S. 184, 78 S.Ct. 221 (1957), the United States Supreme Court held that when a defendant was charged with first degree murder and the jury found him guilty of second degree murder, double jeopardy barred his retrial for first degree murder. In *Green*, the United States Supreme Court noted that the defendant had been placed "in direct peril of being convicted and punished for first degree murder at his first trial." *Green*, 355 U.S. at 190, 78 S.Ct. at 225. In this case, as the Louisiana Third Circuit Court of Appeal so aptly noted in its direct appeal decision, this defendant was never in jeopardy at his second "trial." *State v. Langley*, 04-269 (La.App. 3 Cir. 12/29/04), 896 So.2d 200, 210-211. (App. 43-47).

In *Bullington v. Missouri*, 451 U.S. 430, 101 S.Ct. 1852 (1981), the United States Supreme Court held that when a capital sentencing jury recommended a sentence of life imprisonment, upon retrial a defendant may not be sentenced to death without violating double jeopardy. The *Bullington* Court stated that when a particular sentence is imposed, it does not operate as an "acquittal" of a more severe sentence. The Court reiterated that there is no absolute double jeopardy prohibition against a harsher sentence being imposed at a retrial after a successful defense appeal. *Bullington*, 451 U.S. at 437-438, 101 S.Ct. at 1857-1858. The *Bullington* Court noted that the real distinction in the case was based on the special nature of a

capital sentencing hearing, which specifically required the jury to choose between two possible sentences. *Bullington*, 451 U.S. at 438, 101 S.Ct. at 1858. A similar result was reached by the United States Supreme Court in *Arizona v. Rumsey*, 467 U.S. 203, 104 S.Ct. 2305 (1984). Of course, in this case there was no capital sentencing proceeding, so the jury never made such a sentencing choice.[3]

In *Arizona v. Poland*, 476 U.S. 147, 106 S.Ct. 1749 (1986), the United States Supreme Court held that there is no double jeopardy bar to a new capital sentencing proceeding when an appellate court finds the evidence insufficient to support one aggravating factor, but not for the death penalty. The Court noted that for double jeopardy purposes, the proper inquiry is whether or not the sentencer or appellate court found that the prosecution had not proved its case that the death penalty was appropriate. *Poland*, 476 U.S. at 155-156, 106 S.Ct. at 1755. This defendant has *never* received a final ruling after a full and complete capital trial that the death penalty is not a suitable punishment for him.

In *Caspari v. Bohlen*, 510 U.S. 383, 114 S.Ct. 948 (1994), the United States Supreme Court stated that its previous decisions had generally held that a sentence does not afford the same double jeopardy protection as an acquittal. *Caspari*, 510 U.S. at 391-392, 114 S.Ct. at 954-955. The Court reiterated that its decisions in *Bullington* and *Rumsey*, which might seem to indicate otherwise, were based on the "unique circumstances of a capital

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[3] The State refers to the case which existed *after* the defendant was re-indicted for first degree murder pursuant to the Louisiana Supreme Court's order. *State v. Langley*, 95-1489 (La. 04/03/02), 813 So.2d 356.

sentencing proceeding." *Caspari*, 510 U.S. at 392, 114 S.Ct. at 954. In this case, there was no such hearing.

In a more recent case, *Sattazhan v. Pennsylvania*, 537 U.S. 101, 123 S.Ct. 732 (2003),[4] the United States Supreme Court addressed the issue of whether or not the death penalty could be sought on retrial when a capital murder defendant was sentenced to life imprisonment. The life sentence was imposed because the jury could not agree on a sentence. The United States Supreme Court held that double jeopardy was no bar to the State seeking the death penalty at a retrial. The *Sattazhan* Court notably stated:

> Where, as here, a defendant is convicted of murder and sentenced to life imprisonment, but appeals the conviction and succeeds in having it set aside, we have held that jeopardy has not terminated, so that the life sentence imposed in connection with the initial conviction raises no double-jeopardy bar to a death sentence on retrial.

Sattazhan, 537 U.S. at 106, 123 S.Ct. at 737.

The United States Supreme Court further elaborated that its previous decisions "made clear that an 'acquittal' at a trial-like sentencing phase, rather than the mere imposition of a life sentence, is required to give rise to double-jeopardy protections." *Sattazhan,* 537 U.S. at 107, 123 S.Ct. at 737. In this case, no sentencing hearing was ever held at this defendant's second "trial." There has been *no effective trial* at which the defendant was acquitted of

[4] The Louisiana Third Circuit Court of Appeal specifically cited this case with approval in its decision. *Langley*, 896 So.2d at 211. (App. 44-45).

either first degree murder or a death sentence, either in fact or by implication.

Despite this fact, the Louisiana Supreme Court relied on this Court's jurisprudence and the Fifth Amendment of the U.S. Constitution to conclude that double jeopardy barred the defendant's retrial for first degree murder. (App. 17-21). The state high court's decision was also based on its misinterpretation of this Court's case law regarding structural and harmless trial errors. (App. 3-17). The highest state court in Louisiana has incorrectly interpreted and applied this Court's jurisprudence regarding two topics of fundamental importance in criminal law: the nature of appellate error and double jeopardy. That incurably flawed decision is now published law. *State v. Langley*, 2006-1041 (La. 5/22/07), 958 So.2d 1160. As such, it will be binding precedent on Louisiana state courts unless this Honorable Court remedies it. The petitioner respectfully requests that this Court do so, since the decision made in this case by the Louisiana Supreme Court will adversely impact many others throughout the state of Louisiana.

CONCLUSION

The Louisiana Supreme Court erred in its reversal of the state intermediate appellate court. That court correctly interpreted and applied both federal constitutional law and the United States Supreme Court's precedents on error and double jeopardy. This case raises important questions about issues such as error and double jeopardy. At its core, it calls into question the very nature of a trial, and it raises the issue of whether or not a trial judge is an

expendable part of that proceeding. The petitioner respectfully requests that this Honorable Court grant its certiorari request and remedy the serious legal errors made by the Louisiana Supreme Court in rendering a published, binding state court decision which so clearly contradicts many of those issued by this Court.

Respectfully submitted,

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