IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3322

Summary Calendar

JOSEPH WIGGINS,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,
La. State Penitentiary, and
RICHARD P. IEYOUB, Attorney
General, State of Louisiana,

Respondent-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-4080-H)

(July 18, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Appellant Joseph Wiggins and his brother Ron were convicted of the second-degree murder of Jesus Gonzales and Miguel Snyder. The Wigginses received life sentences without parole. On direct appeal, their challenges to the sufficiency of the evidence were rejected and their convictions affirmed. State v. Wiggins, 518 So.

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[*]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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

2d 543, 550-53 (La. Ct. App. 1987), writ denied, 530 So. 2d 562 (La. 1988), writ denied, 569 So. 2d 979 (1990). The state court held that the evidence "exclude[d] every reasonable hypothesis of innocence." Id. at 551. The district court denied habeas relief on the basis of the state records.

Wiggins contends that the evidence established that Ron committed the crime and that Wiggins did not aid him. Wiggins also asserts that a rational fact finder could have reasonably inferred that someone else committed the crime after he and his brother left the scene. "Insufficiency of the evidence can support habeas corpus relief only where the evidence, viewed in the light most favorable to the prosecution, is such that no rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." Marler v. Blackburn, 777 F.2d 1007, 1011 (5th Cir. 1985) (citing Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)). "The evidence need not exclude every reasonable hypothesis of innocence, however, and a jury may choose any reasonable construction of the evidence." Story v. Collins, 920 F.2d 1247, 1255 (5th Cir. 1991). In a habeas case, "[a] federal court may not substitute its own judgment regarding the credibility of witnesses for that of the state courts." Marler, 777 F.2d at 1012. Furthermore, a "state [appellate] court's determination [that the evidence was sufficient] is entitled to great weight in a federal habeas review." Porretto v. Stalder, 834 F.2d 461, 467 (5th Cir. 1987).

The state's evidence established that Wiggins and his brother Ron were together throughout the evening, that he, Ron, and the victims left in a car driven by Ron to conclude a drug transaction, and that the murders were discovered only a few minutes after they left. See Wiggins, 518 So. 2d at 552. A witness testified that she saw a black man, whom she could not identify, get out of a car and fire shots into the car at the location where the bodies were found. The investigating officer found the car at a body shop where Wiggins had left it to be repainted a different color. Laboratory tests revealed blood stains which matched the general groupings of the victims and possible bullet holes and bullet fragments in the car. A fingerprint identified as Ron Wiggins' was found on one side of the bullets in a speed loader found in the car. An expert testified "that the bullets in the speed loader were consistent with the type used to kill the two victims and also that the two victims were killed by the same gun." See id. at 546.

The state court found that, based on the "evidence presented, the jury could reasonably conclude that the Wiggins brothers were together and both had the specific intent to kill the two victims. During this entire 'drug deal' the Wiggins brothers acted in concert and . . . it is reasonable to conclude as the jury did here, that they were together and acted together in killing the victims." Id. Based on our review of the evidence it cited, we agree with the state court.

AFFIRMED.