

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-30299  
Summary Calendar

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DANIEL LOCKETT,

Petitioner-Appellant,

VERSUS

ED C. DAY,  
Warden, Washington Correctional Institute and  
RICHARD P. IEYOUB, Attorney General, State of Louisiana,

Respondents-Appellees.

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

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(90-CV-4458-M)

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(December 6, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

This Court has previously affirmed in part and vacated and remanded in part the district court's dismissal of Daniel Lockett's petition for the writ of habeas of corpus. See Lockett v. Day, No.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

91-3909 (5th Cir. June 3, 1993) (unpublished). This Court "remanded for an evidentiary hearing to allow the [S]tate to attempt to present a factual basis of Lockett's guilt." Id. Lockett pleaded guilty while maintaining his innocence to manslaughter. See North Carolina v. Alford, 400 U.S. 25, 37-38, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (no constitutional error by trial court accepting a guilty plea, despite the defendant's expression of innocence, when the judge has a basis to evaluate the knowingness and voluntariness of the plea and there is a strong factual basis for the guilty plea).

The State filed copies of the state-court Alford-plea transcript, the investigative reports by the Jefferson Parish Sheriff's Office, transcripts of the taped interviews conducted by the sheriff's office with Lockett and Lockett's brother, Herman Patton, Jr., a/k/a June, and an affidavit by the state trial judge stating that he had reviewed the police reports and evidence in Lockett's case during pretrial conferences before taking Lockett's Alford plea.

At the evidentiary hearing conducted by the magistrate judge<sup>1</sup>, the sheriff's office investigator, Bill Lunsford, testified concerning the development of the case against Lockett for the murder of Willie Campbell which led to Lockett's arrest, subsequent admission, and indictment. Campbell was discovered January 26, 1986, in the densely wooded area near East Claiborne Avenue in Westwego, Louisiana. Campbell's throat had been slashed, and his

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<sup>1</sup>Counsel was appointed for Lockett.

body severely beaten. A clear plastic bag was found over his head, and packing cord or twine was wrapped several times around his neck. The autopsy indicated the cause of death to be from strangulation and loss of blood and the estimated time of death to be around midnight on January 24, 1986. The clothes found on the body were not the clothes identified as the clothes Campbell was wearing when last seen alive. That clothing was never recovered through investigation.

Campbell's mother and girlfriend had observed Campbell and Lockett together installing a windshield the day before the last day Campbell was seen alive. In a taped interview with law enforcement, Lockett admitted that he and Campbell burglarized an Algiers residence in New Orleans, Louisiana. He told law enforcement officers that Campbell became scared after learning two men were looking for him concerning the burglary and that Campbell wanted to return the stolen property. A confidential informant told law enforcement officers that Lockett had made statements indicating that he killed Campbell because Campbell wanted to turn themselves into the police and Lockett, on probation, did not want to return to jail. The two men looking for Campbell were eliminated as suspects by law enforcement.

One month after Campbell's death, Lunsford interviewed Lockett's brother, Patton,<sup>2</sup> who stated that in the early morning hours of January 25, 1986, shortly after midnight, Lockett appeared

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<sup>2</sup>"Patton" is spelled "Patent" in the evidentiary hearing transcript.

at the Westwego residence of Patton and their mother. Lockett was wearing white gloves which appeared to be covered in blood. Lockett told Patton that he had cut himself, but Patton did not see any wound. Lockett requested and received from Patton a Tupperware container and lid, bleach, twine-type rope, and a clear plastic bag. Lockett placed the bleach and gloves into the container and left on foot in the direction of the location where Campbell's body was found, two to three blocks away from the residence.

Law enforcement officers seized a bundle of clear plastic bags from the residence, and the individual bags matched the dimensions of the bag found over Campbell's head. Upon inspection, Lockett's mother could not locate her packing twine in the closet from which Patton stated he took the twine that he gave to Lockett. Law enforcement encountered difficulty in apprehending Lockett after the issuance of the arrest warrant. After Lockett was arrested for second-degree murder and after he was informed of his rights, Lockett told Lunsford that he had killed Campbell, but another person also was involved and that Lunsford would never learn who that person was. The statement was neither reduced to writing nor made in the presence of other officers.

The magistrate judge summarized the evidence presented by the State as the recommended findings of the court and concluded that there was a factual basis for Lockett's Alford plea for manslaughter. Lockett filed objections to the magistrate judge's recommendation and bench ruling. The district court concluded that

there was a factual basis for Lockett's plea, affirmed the magistrate judge's recommendation, and dismissed Lockett's habeas petition. After timely notice of appeal, the court granted CPC.

#### OPINION

Lockett argues that the evidence was insufficient to support a factual basis for his Alford plea. Lockett contends that the standard of review is de novo, and the State contends that the review is for clear error.

We need not decide in this case which standard of review would be required because in light of the evidence presented by the State at the evidentiary hearing, the evidence would be sufficient to support a factual basis for the Alford plea even under the more stringent standard of review. Lockett's argument, generalized in scope, does not refer to the statutory elements of manslaughter. "Manslaughter is the killing of a human being under certain mitigating circumstances (heat of blood or sudden passion) which prevents the crime from being second-degree murder." State v. Jack, 596 So. 2d 323, 327 (La. Ct. App.), writ denied, 600 So. 2d 611 (La. 1992); see also LA. REV. STAT. ANN. 14:31 (Supp. 1994) (manslaughter statute).<sup>3</sup> Lockett's spin on the evidence focuses attention on the lack of physical evidence linking Lockett to Campbell's death and on the investigating officer's questions about the case, thus only leaving a questionable confession to support the factual basis of the plea. However, the evidence, as detailed

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<sup>3</sup>Subsequent revisions of the manslaughter statute affected punishment and did not change the substantive elements of the offense. See LA. REV. STAT. ANN. 14:31 (West 1986 & Supp. 1994).

in the background portion of this opinion, includes Lockett's admission of killing Campbell, a motive for the killing, and Lockett, at the estimated time of death near the location where the body was found, with blood on his gloves, requesting items similar to the items found on the body. Even under de novo review, the evidence presented by the State is sufficient for a factual basis to support Lockett's Alford plea. See Gregory v. Solem, 774 F.2d 309, 313 (8th Cir. 1985), cert. denied, 475 U.S. 1088 (1986).

AFFIRMED.