

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

EDDIE DOMINGUEZ

CIVIL ACTION

VERSUS

NO. 15-2847

JAMES LEBLANC

SECTION: "S"(1)

ORDER

The Court, having considered the petition, the record, the applicable law and the Report and Recommendation of the United States Magistrate Judge, and the petitioner's objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its own opinion. The petitioner objects to the entirety of the Report and Recommendation. Any unspecified objections to the Report and Recommendation in general are overruled for lack of specific argument. However, petitioner makes two specific objections to the Report and Recommendation, which will be considered in turn.

First, petitioner argues that the jury could not have relied upon Shelby Lukes' testimony because she was an admitted drug user, or the testimony of co-defendant Bryan Rosales. The Report and Recommendation properly addressed the issue of witness credibility, and correctly found according to applicable jurisprudence that a federal habeas court generally will not grant relief when a petitioner's insufficient evidence claim is based on arguments concerning witness credibility. See Rec. Doc. 24 (citations omitted). Therefore, petitioner's objection regarding Lukes' and Rosales' testimony is overruled.

Second, petitioner argues that the United States Magistrate Judge and all other courts that have reviewed his post-conviction petitions for relief failed to consider DNA evidence that excludes him as the assailant. The DNA evidence to which petitioner refers was offered in the trial court as a stipulation to the testimony of Sarah Serou, an Expert in the Field of Forensic DNA Analysis. The stipulation stated that the petitioner was not the source of testable DNA samples found on the gun used to commit the crime or under the victim's fingernails. Simply because the petitioner's DNA did not match the testable samples found on the gun and under the victim's fingernails does not establish that petitioner could not have been the assailant. As noted by the United States Magistrate Judge, the testimony of Bryan Rosales, Opal Lukes and Shelby Lukes establishing that petitioner was known to have a gun, was engaged in a drug transaction with the victim at the time of the shooting, the two engaged in a physical altercation, shots were then heard, and the petitioner returned from the transaction with blood on his face and clothes was sufficient for the jury to rationally reach the guilty verdict. Therefore, the petitioner's objection regarding the DNA evidence is overruled.

Accordingly,

IT IS ORDERED that the federal application for habeas corpus relief filed by Eddie Dominguez is **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, this ^{4th} day of May, 2017.


UNITED STATES DISTRICT JUDGE