

SUPREME COURT OF LOUISIANA

No. 98-KH-0916

STATE EX REL. MICHAEL WALKER

v.

STATE OF LOUISIANA

On Writ of Certiorari to the  
First Circuit Court of Appeal

PER CURIAM:\*

Writ granted in part; otherwise denied; case remanded to the district court. The district court is ordered to appoint counsel for relator and hold a hearing at which it will determine whether the state's use of his silence at a preliminary hearing to impeach the testimony he subsequently offered at trial violated the rule of Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) and had a substantial and injurious effect on the jury's verdict. See Brecht v. Abrahamson, 507 U.S. 619, 634-38, 113 S.Ct. 1710, 1720-22, 123 L.Ed.2d 353 (1993). Trial counsel's objection on relevancy grounds adequately preserved the issue for review. See Doyle, 426 U.S. at 632, 96 S.Ct. 2251 (Stevens, J., dissenting) (defendant's silence at preliminary examination "probably attributable to [advice of] counsel" and so wholly irrelevant to defendant's credibility); see also State v. Duke, 362 So.2d 559, 561 (La. 1978); State v. Rosette, 94-1075, p. 3 (La. App. 3rd Cir. 3/22/95), 653 So.2d 80, 81. In all other respects the application is denied.

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\*Victory, J., not on panel. See La. S.Ct. Rule IV, Part II, § 3.