United States Court of Appeals
for the Fifth Circuit

No. 19-30340

A True Copy
Certified order issued Sep 16, 2020
Clerk, U.S. Court of Appeals, Fifth

ALLEN SNYDER,

Petitioner—Appellant,

versus

DARREL VANNOY, *Warden*, LOUISIANA STATE PENITENTIARY,

Respondent—Appellee.

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:17-CV-7071

ORDER:

Allen Snyder, Louisiana prisoner # 169143, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application in which he challenged his conviction for second-degree murder. Snyder also moves for leave to proceed in forma pauperis (IFP).

Snyder argues that his trial counsel rendered ineffective assistance for failing to challenge whether there was gender discrimination in the selection of the jury; allowing the State to offer the prior testimony of a witness, who was unavailable at the instant trial and whom his counsel did not cross-examine at the previous trial, in violation of his right to confrontation; and making oral requests to continue the trial. He also asserts that his appellate

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counsel was ineffective for not arguing on appeal that his trial counsel was ineffective for orally requesting continuances. Finally, he maintains that he improperly was denied a copy of the record. To the extent that Snyder raised other claims in the district court, he has abandoned them by failing to brief them or briefing them insufficiently. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). A petitioner satisfies this standard by showing that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues raised deserve encouragement to proceed further. *Miller-El*, 537 U.S. at 327. Where the district court denied relief on the merits, a petitioner must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Snyder has not made the required showing. Therefore, his motion for a COA is DENIED. His motion for leave to proceed IFP is also DENIED.

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
United States Circuit Judge

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALLEN SNYDER	**CIVIL ACTION**
VERSUS	**NO. 17-7071**
DARREL VANNOY, WARDEN	**SECTION: "B"(1)**

ORDER AND REASONS

Before the Court are the Magistrate Judge's Report and Recommendation to Dismiss Petitioner Allen Snyder's Request for Habeas Corpus Relief (Rec. Doc. 13) and Petitioner's Objections to the Report and Recommendation (Rec. Doc. 14). Accordingly,

IT IS ORDERED that Petitioner's Objections are **OVERRULED** and the Report and Recommendation are **ADOPTED** as the Court's Opinion, **dismissing** the captioned Section 2254 action for relief.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner Allen Snyder is a state prisoner incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. *See* Rec. Doc. 13 at 1. In 1996, petitioner was originally convicted by a twelve-member jury of first degree murder and subsequently sentenced to death. *See State v. Snyder*, 128 So. 3d 370, 372 (5th Cir. 2013). However, in 2008, the United States Supreme Court

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reversed the judgment and remanded the matter after finding a *Batson* violation.[1] *See Snyder v. Louisiana*, 552 U.S. 472 (2008).

On January 29, 2009, a grand jury indicted petitioner for second-degree murder. *See State v. Snyder*, 128 So. 3d 370, 372 (5th Cir. 2013). The State also filed notices of intent to use evidence of other crimes. *See id.* On May 4, 2010, a *Prieur* hearing[2] was held, and on May 27, 2010, the motion was granted. *See id.* Petitioner was denied review of that ruling and trial began in 2012. *See id.* At trial, the jury heard testimony from defendant and his ex-wife as well as saw medical records that were introduced into evidence. *See id.* at 373-75. Testimony and evidence showed that petitioner and his ex-wife had a troubled marriage in which petitioner was jealous and controlling. *See id.* at 373. According

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[1] On August 29, 1996, petitioner was convicted of first degree murder. On August 22, 1997, petitioner was sentenced to death. On April 14, 1999, the Louisiana Supreme Court conditionally affirmed the conviction and sentence but remanded the matter to the lower court for an inquiry into petitioner's competence at the time of trial. After determining that Petitioner was in fact competent at the time of trial, the state Supreme Court affirmed the conviction and sentence. In June 2005, the United States Supreme Court granted petitioner's petition for a writ of certiorari, vacated the judgment and remanded the case to the Louisiana State Supreme Court for consideration of petitioner's Batson claim. On remand, the state Supreme Court found no merit in petitioner's claims and again affirmed his conviction and sentence. Nevertheless, on March 19, 2008, the United States Supreme Court reversed the judgment and remanded the matter after finding that the trial court committed error in rejecting Petitioner's claim that the prosecution exercised peremptory challenge based on race in violation of *Batson*. On April 30, 2008, the Louisiana Supreme Court set aside the conviction and sentence and remanded the matter. *See* Rec. Doc. 13 at 1-2.

[2] A *Prieur* hearing requires that before evidence of other crimes are introduced, the trial court must determine that the extraneous acts are probative of a real issue and that their probative value exceeds their prejudicial effect. The party seeking to introduce such evidence must show the requisite for it at a hearing outside the presence of the jury. *See State v. Taylor*, 217 So. 3d 283, 291 (La. 2016).

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to the evidence, the jealousy escalated to physical abuse[3] causing the ex-wife to eventually move out. *See id.* However, in 1995, Petitioner wanted to reconcile with his ex-wife. *See id.* Nevertheless, petitioner found his ex-wife with another man, the victim, and eventually engaged in an altercation in which petitioner stabbed the victim nine times and his ex-wife 19 times. *See id.* at 374-75.

On February 2, 2012, the jury found petitioner guilty as charged. Petitioner was sentenced to life imprisonment. *See id.* at 373. The Court of Appeals affirmed petitioner's conviction and sentence. The Louisiana Supreme Court denied his related writ application. *See id.* at 383; *State v. Snyder*, 138 So. 3d 643 (La. 2014). Petitioner unsuccessfully sought post-conviction relief in the state courts. *See* Rec. Doc. 13.

On July 24, 2017, petitioner filed the instant federal habeas corpus application alleging that he received ineffective assistance of counsel at both the trial and appellate levels. *See* Rec. Doc. Nos. 1, 3. On November 3, 2017, respondents filed a response in opposition to the habeas petition arguing that the petitioner's claims were procedurally barred. *See* Rec. Doc. 11. On November 13, 2017, Petitioner filed a reply. *See* Rec. Doc. 12. On

[3] According to the record, petitioner shoved his ex-wife's head into the car window, struck her with a baseball bat while she was sleeping, drove her to an isolated location, opened his trunk, and threatened her, slammed her head into the wall causing serious injuries, and stabbed her nine times in the neck, head, and arms. *See State v. Snyder*, 128 So. 3d 370 (5th Cir. 2013).

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September 7, 2018, the Magistrate Judge reviewed the petition and recommended it be dismissed with prejudice. *See* Rec. Doc. 13. On September 18, 2018, Petitioner filed his objections to the Report and Recommendation. *See* Rec. Doc. 14.

A. 28 U.S.C. § 2254- General Principals

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") controls review of this 28 U.S.C. § 2254 habeas corpus petition. *See Poree v. Collins*, 866 F.3d 235, 245 (5th Cir. 2017) ("Federal habeas proceedings are subject to the rules prescribed by the Antiterrorism and Effective Death Penalty Act . . ."). Under § 2254, an application for a writ of habeas corpus may be denied on the merits, even if an applicant has failed to exhaust state court remedies. *See* 28 U.S.C. § 2254(b)(2); *Jones v. Jones*, 163 F.3d 285, 299 (5th Cir. 1998). Enacted as part of the AEDPA, the amended subsections 2254(d)(1) and (2) provide the standards of review for questions of fact, questions of law, and mixed questions of both.

For pure questions of fact, factual findings are presumed to be correct. *See* 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus . . . a determination of a factual issue made by a State court shall be presumed to be correct."). The applicant has the burden of rebutting the presumption by clear and convincing evidence. *See id.* However, a writ of habeas corpus may be granted if the adjudication of the

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claim on the merits "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2); *Hankton v. Boutte,* 2018 U.S. Dist. LEXIS 126899 *1, *10 (E.D. La June 29, 2018).

For pure questions of law and mixed questions of law and fact, a state court's determination is reviewed under § 2254(d)(1). *See Hill v. Johnson,* 210 F.3d 481, 485 (5th Cir. 2000). For mixed questions, a state court's determination receives deference unless the decision was either contrary to federal law or involved an unreasonable application of federal law. *See* § 2254(d)(1); *Hill,* 210 F.3d at 485.

A state court's decision is contrary to federal law if (1) the state court applies a rule different from the governing law set forth in the Supreme Court's cases or (2) the state court decides a case differently than the Supreme Court when there are "materially indistinguishable facts." *See Poree,* 866 F.3d at 246; *Wooten v. Thaler,* 598 F.3d 215, 218 (5th Cir. 2010). A state court's decision involves an unreasonable application of federal law when it applies a correct legal rule unreasonably to the facts of the case. *See White v. Woodall,* 134 S. Ct. 1697, 1706 (2014). An inquiry under the unreasonable context involves not whether the state court's determination was incorrect, but whether the

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determination was objectively unreasonable. *Boyer v. Vannoy*, 863 F.3d 428, 454 (5th Cir. 2017).

The court in *Boyer* stated that the determination must not be "merely wrong," and that "clear error" will not be enough to overturn a state court's determination. *Id; see also Puckett v. Epps*, 641 F.3d 657, 663 (5th Cir. 2011) (finding that unreasonable is not the same as incorrect, and thus an incorrect application of the law will be affirmed if it is not also unreasonable). Even if a state court incorrectly applies Supreme Court precedent, that mistake alone, does not mean that a petitioner is entitled to habeas relief. *See Puckett*, 641 F.3d at 663.

B. Ineffective Assistance of Counsel

A petitioner seeking relief for ineffective counsel must show that counsel's performance was deficient and the deficient performance prejudiced his defense. *See Strickland v. Washington*, 466 U.S. 668, 697 (1984). Petitioner bears the burden of proof and must prove by a preponderance of evidence that his counsel was ineffective. *See Rector v. Johnson*, 120 F.3d 551, 563 (5th Cir. 1997); *Clark v. Johnson*, 227 F.3d 273, 284 (5th Cir. 2000). A court is not required to address both prongs of the test if the court finds that the petitioner has not sufficiently proven one of the two prongs. *See Strickland*, 466 U.S. at 697. In other words, a court may dispose of the claim without addressing the other prong.

To prove deficient performance, the petitioner must show that defense counsel's representation "fell below an objective standard of reasonableness." *See United States v. Bolton*, 908 F.3d 75, 99 (5th Cir. 2018) (quoting *Strickland*, 466 U.S. at 688). The Fifth Circuit has repeatedly held that courts apply a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Halprin v. Davis*, 911 F.3d 247, 258 (5th Cir. 2018); *Lucio v. Davis*, 2018 U.S. App. LEXIS 29213 *12 (5th Cir. Oct. 17, 2018); *Crockett v. McCotter*, 796 F.2d 787, 791 (5th Cir. 1986). The petitioner must overcome this presumption as the courts take into account the reasonableness of counsel's conduct under all of the circumstances. *See Strickland*, 466 U.S. at 689; *Lucio*, 2018 U.S. App. LEXIS 29213 at *12-13.

To show prejudice, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *United States v. Avila-Gonzales*, 2018 U.S. App. LEXIS 35950 *3-4 (5th Cir. Dec. 20, 2018) (citing *Strickland*, 466 U.S. at 694). Therefore, the petitioner must be able to demonstrate that the outcome would have been different. *See id.* "The likelihood of a different result must be substantial, not just conceivable." *Mejia v. Davis*, 906 F.3d 307, 320 (5th Cir. 2018) (quoting *Harrington v. Richter*, 562 U.S. 86, 112 (2011)).

Petitioner alleges five claims regarding alleged ineffective assistance of counsel at both the trial and appellate levels. For the reasons discussed below, petitioner's claims are without merit.

First, petitioner claims his counsel was ineffective for not making a *Batson* challenge due to gender bias at the trial. Specifically, petitioner argues that the "trial was infected with a severe case of gender bias" because the jury consisted of nine females and three males, "thus rendering his trial fundamentally unfair." Rec. Doc. 14 at 4. However, as the Magistrate Judge found, this argument lacks merit.

A *Batson* violation occurs when there is the use of peremptory strikes of prospective jurors to purposefully discriminate against one due to race or gender. *See Batson v. Kentucky*, 476 U.S. 79 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (extending *Batson* to include gender discrimination). Among the different steps required of a petitioner to make, the petitioner must show a prima facie showing that a peremptory challenge has been exercised on the basis of gender. *See Sparkman v. Vannoy*, 2017 U.S. Dist. LEXIS 222324 *50 (E.D. La. Dec. 1, 2017) (citing *Stevens v. Epps*, 618 F.3d 489, 492 (5th Cir. 2010)).

Petitioner has not made out a prima facie case of gender discrimination. The State used only three peremptory challenges, one striking a male and two striking females. *See* Rec. Doc. 13 at

14. While petitioner urges the number of peremptory challenges used by the State is "irrelevant," (*See* Rec. Doc. 14 at 4), the fact that the State only used one to strike a male is not inherently suspect. Petitioner's claim is conclusory and nothing in the record supports a finding that a juror was improperly struck under *Batson*.

Second, petitioner argues that counsel's cross-examination of Mary Beth Snyder was deficient. However, courts have stated that "[t]he decision whether to cross-examine a witness, and if so, how vigorously to challenge the witness' testimony, requires a quintessential exercise of professional judgment." *Lyons v. Vannoy*, 2018 U.S. Dist. LEXIS 99137 *66 (E.D. La. May 11, 2018) (quoting *Ford v. Cockrell*, 315 F. Supp. 2d 831, 859 (W.D. Tex. 2004), *aff'd*, 135 F. App'x 769 (5th Cir. 2005)). In addition, the Supreme Court has warned courts in second-guessing the decisions of counsel. *See Strickland*, 466 U.S. at 689. Specifically, the Supreme Court has stated that courts should not second-guess counsel's decisions through hindsight, but instead look at counsel's perspective at the time. *Id.* Thus, courts are to give a strong presumption that counsel's performance was reasonable and might be "sound trial strategy." *Id.*

In *Lyons*, the court found that the petitioner's claims were meritless as the petitioner failed to show what necessary questions went unasked and how he was prejudiced by such. *Lyons*, 2018 U.S. Dist. LEXIS 99137 *67. On the contrary, the court found that the

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petitioner's defense counsel "vigorously and exhaustively cross examined" the witnesses. *Lyons*, 2018 U.S. Dist. LEXIS 99137 *67-68.

Here, petitioner fails to establish that counsel's performance was deficient in the cross examination of the witness. He asserts that defense counsel cross-examined Mary Beth Snyder, but that the "cross examination . . . was simply about her trial testimony that contradicted information that she had provided to Snyder and others." Rec. Doc. 1 at 6. While Petitioner attempts to assert that counsel did not vigorously cross examine Mary Beth Snyder, he fails to show or identify any relevant questions that counsel failed to ask on cross-examination. In addition, petitioner discusses how Mary Beth Snyder should have been impeached due to inconsistencies in her testimonies, and that counsel had a "duty to impeach" her. *Id.* However, not only does petitioner concedes that defense counsel did in fact cross examine the witness on her inconsistencies, but the record also shows that defense counsel attempted to use transcripts in order to challenge the witness's credibility. *See id.*; Rec. Doc. 13 at 16. Furthermore, as the court found in *Lyon*, this Court finds that defense counsel vigorously cross-examined the witness. We also recognize the Supreme Court's warning against second-guessing counsel's tactical decisions unless petitioner can overcome the strong presumption. Therefore,

Petitioner has not shown how such attempts to cross-examine Mary Beth Snyder were deficient nor how Petitioner was prejudiced.

Third, petitioner argues that counsel was ineffective for failing to object to Gwendolyn Williams's testimony from the first trial being read into the record at his second trial. In objections to the report and recommendation, he argues that the testimony should have been barred. However, petitioner fails to show or establish how his trial counsel neglected to object to the admission of Gwendolyn Williams's testimony from the first trial. On the contrary, the record shows that counsel objected vigorously to the use of the evidence at the hearing and renewed those objections at trial. As the Magistrate Judge discussed, "the mere fact that the challenge to the testimony was unsuccessful is not evidence that counsel performed deficiently." Rec. Doc. 13 at 18.

Fourth, petitioner contends that trial counsel was ineffective for requesting unnecessary and oral continuances. According to petitioner, the "case was not benefited from the granting of any continuances." Rec. Doc. 14 at 6. However, the court in *Farrier v. Vannoy* stated that the decision to either seek a continuance or not is one of trial strategy that should be given great deference, 2018 U.S. Dist. LEXIS 214803 *20 (E.D. La. May 25, 2018).

In the instant case, petitioner's indictment was amended to charge him with second degree murder. Petitioner's counsel from the Louisiana Capital Assistance project withdrew counsel when Petitioner no longer became charged with a capital offense. On the same day that trial was scheduled, new counsel enrolled for petitioner and requested a continuance. Thus, as the Magistrate Judge assumes, a continuance was requested to prepare for trial as counsel had just enrolled. A second continuance was requested when Petitioner was not transferred to the Jefferson Parish Correctional Center as ordered by the court.

While petitioner asserts that these continuances did not benefit his case, he does not show how the requests for continuance were unreasonable. *See United States v. Webb*, 796 F.2d 60, 63 (5th Cir. 1986) (finding that a continuance to gain time to complete necessary trial preparation does not equal an unreasonable act by counsel). Petitioner fails to show how the results of his proceeding would have been different if counsel had not requested the continuances. There is no showing that counsel was prepared to try the case on the same day that counsel was appointed for petitioner. *See* Rec. Doc. 13 at 20. Thus, the additional time gave counsel the necessary time to adequately prepare petitioner's defense.

Lastly, petitioner claims that appellate counsel was ineffective for failing to argue certain issues on appeal.

According to petitioner, appellate counsel should have asserted a claim that trial counsel was ineffective for requesting continuance of the trial. However, the courts have previously held that appellate counsel is not required to bring forth every non-frivolous claim that might be raised. *See Matthews v. Cain*, 337 F. Supp. 3d 687, 712 (E.D. La. 2018); *West v. Johnson*, 92 F.3d 1385, 1396 (5th Cir. 1996)

The court in *Matthews* reiterated the viewpoint that it is important for experienced lawyers to not focus so much on the weaker arguments on appeal but instead focus on either one central issue or a few important ones. The court held that such strategy could be beneficial in that focusing on every issue, especially those that lack merit, could potentially undermine or bury good arguments. *Matthews*, 337 F. Supp. at 712. "Rather, the applicable test to be applied in assessing such a claim is instead whether the issue ignored by appellate counsel was 'clearly stronger' than the issues actually presented on appeal." *Id.* (citing *Diaz v. Quarterman*, 228 Fed. App'x 417, 427 (5th Cir. 2007)).

Petitioner's appellate counsel raised three arguments on appeal concerning the trial court's denial of the motion for mistrial, the allowance of petitioner's other crimes, and the allowance of the State to view personal letters that were never offered at trial. While appellate counsel was unsuccessful in his arguments, the petitioner fails to establish how the claim that

trial counsel was ineffective for requesting continuances is stronger than those actually presented on appeal. As seen earlier, the continuances had reasonable grounds.

For the reasons stated above, petitioner has not shown that either trial or appellate counsel was deficient in performance nor that he was prejudiced by either counsel's performances.

New Orleans, Louisiana this 18th day of April, 2019.

SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALLEN SNYDER	**CIVIL ACTION**
VERSUS	**NO. 17-7071**
DARREL VANNOY, WARDEN	**SECTION: "B"(1)**

JUDGMENT

The Court, having considered the petition, the record, the applicable law and for the written reasons assigned;

IT IS ORDERED, ADJUDGED, AND DECREED that the federal application for habeas corpus relief filed by Allen Snyder is **DISMISSED WITH PREJUDICE.**

New Orleans, Louisiana, this 18th day of April, 2019.

SENIOR UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALLEN SNYDER #169143	**CIVIL ACTION**
VERSUS	**NUMBER: 17-7071**
DARREL VANNOY, WARDEN	**SECTION: "B" (1)**

ORDER

Considering the application and affidavit to proceed in forma pauperis,

IT IS ORDERED that:

☐ the motion is GRANTED; the party is entitled to proceed in forma pauperis.

☐ the motion is MOOT; the party was previously granted pauper status.

☐ the motion is DENIED; the party has sufficient funds to pay the filing fee.

☐ the motion is DENIED as MOOT; the filing fee has already been paid.

☐ the motion is DENIED due to the party's failure to provide this court with the requisite financial information.

☒ the motion is DENIED; the party is not entitled to proceed in forma pauperis for the listed reasons: The instant appeal was not taken in good faith, see Rec. Docs. 14, 15 & 20, and movant misrepresented his resources as none when in fact the prison account statement shows monthly deposits into movant's prison account, with balance on certification on May 29, 2019 as $401.85. See Rec. Doc. 19. [initials]

New Orleans, Louisiana, this 4th day of June, 2019.

[signature]

SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALLEN SNYDER	**CIVIL ACTION**
VERSUS	**NO. 17-7071**
DARREL VANNOY, WARDEN	**SECTION: "B"(1)**

REPORT AND RECOMMENDATION

This matter was referred to this United States Magistrate Judge for the purpose of conducting a hearing, including an evidentiary hearing, if necessary, and submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) and, as applicable, Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts. Upon review of the record, the Court has determined that this matter can be disposed of without an evidentiary hearing. See 28 U.S.C. § 2254(e)(2). Therefore, for all of the following reasons, **IT IS RECOMMENDED** that the petition be **DISMISSED WITH PREJUDICE.**

Petitioner, Allen Snyder, is a state prisoner incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. Although he was originally convicted of first degree murder and sentenced to death, that conviction and sentence were overturned after the United States Supreme Court determined that the prosecution exercised a peremptory challenge based on race in violation of Batson v. Kentucky, 476 U.S. 79 (1986).[1] After the charge against petitioner was reduced to

[1] On August 29, 1996, petitioner was convicted of first degree murder. State Rec., Vol. 11 of 20, transcript of August 29, 1996, p. 166. On August 22, 1997, he was sentenced to death based on the jury's recommendation. State Rec., Vol. 12 of 20, transcript of August 22, 1997, p. 26. On April 14, 1999, the Louisiana Supreme Court conditionally affirmed that conviction and sentence but remanded the matter to the district court for a determination of whether a meaningful inquiry into petitioner's competence at the time of trial was possible and, if so, for an evidentiary hearing and determination on that issue. State v. Snyder, 750 So. 2d 832 (La. 1999); State Rec., Vol. 2 of 20. On remand, the district court found that a retrospective determination of petitioner's competence at trial was possible and that he was

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second degree murder, he was convicted of that lesser crime[2] and sentenced to a term of life imprisonment without benefit of probation, parole, or suspension of sentence.[3]

In its opinion on direct appeal, the Louisiana Fifth Circuit Court of Appeal summarized the facts of this case as follows:

> In 1995, Allen Snyder and his then-wife, Mary Beth, had a troubled marriage.[FN 11] According to Mary Beth, however, after the birth of their third child, Allen became very controlling and jealous. He would not allow her to speak to other men and prohibited her from leaving the house alone.
>
> [FN 11] It is undisputed that both parties had engaged in extramarital relationships in 1994 or 1995.
>
> Eventually, Allen's jealousy escalated to physical abuse. Mary Beth testified that, on March 18, 1995, Allen, using his hand, violently shoved her head against the passenger side window of his car, which caused injuries to her face. Mary Beth did not seek medical treatment that night.
>
> About three months later, in May of 1995, Allen struck Mary Beth in the leg with a baseball bat as she lay sleeping. She had a large bruise and limped for about a week. Not long after that incident, Allen drove Mary Beth to an isolated road, opened the trunk of his car, and threatened her that he could do "whatever he wanted to" her and "nobody would ever find" her.
>
> That summer the violence escalated. On the morning of June 11, 1995, Allen "slammed" Mary Beth's head into the wall of their children's bedroom, which caused injuries requiring hospitalization.[FN 12] After this instance, which their children witnessed, Mary Beth took their children and went to stay at her parents' house on Wilker Neal Street in River Ridge.
>
> [FN 12] Daniel Kilian, former patrol officer for the Kenner Police Department, testified that, on June 11, 1995, he responded to a call at the Snyder's home at 508 Hanson Street in Kenner. When he arrived, he observed Mary Beth Snyder, who was bleeding from her head and had a scratch on her face. She reported that Allen had pushed her head into a wall in their children's bedroom. Defendant was arrested in connection with this incident. Further, the parties stipulated that the

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in fact competent during trial. State Rec., Vol. 3 of 20, Judgment dated October 26, 2000. On April 14, 2004, the Louisiana Supreme Court then unconditionally affirmed petitioner's conviction and sentence. State v. Snyder, 874 So. 2d 739 (La. 2004); State Rec., Vol. 3 of 20. However, on June 27, 2005, the United States Supreme Court vacated that judgment and remanded the matter for further consideration of petitioner's Batson claim. Snyder v. Louisiana, 545 U.S. 1137 (2005); State Rec., Vol. 19 of 20. On September 6, 2006, the Louisiana Supreme Court again unconditionally affirmed petitioner's conviction and sentence. State v. Snyder, 942 So. 2d 484 (La. 2006); State Rec., Vol. Vol. 13 of 20. On March 19, 2008, the United States Supreme Court, finding a Batson violation, then reversed that judgment and remanded the matter. Snyder v. Louisiana, 552 U.S. 472 (2008); State Rec., Vol. 19 of 20. On April 30, 2008, the Louisiana Supreme Court set aside the conviction and sentence and remanded the matter to the district court. State v. Snyder, 982 So. 2d 763 (La. 2008); State Rec., Vol. 13 of 20.

[2] State Rec., Vol. 17 of 20, transcript of February 3, 2012, p. 138.

[3] State Rec., Vol. 17 of 20, transcript of March 1, 2012.

medical records for East Jefferson General Hospital would establish that Mary Beth Snyder was admitted for medical treatment of injuries to her head on June 11, 1995.

On June 18, 1995, Allen tried to speak with Mary Beth, but she refused. Later that night, Allen disconnected the electrical box outside Mary Beth's parents' home, entered the home, and stabbed Mary Beth nine times in the neck, head, and arms. Mrs. Snyder was treated at the hospital for her injuries.[FN 13]

[FN 13] Sergeant Bonura testified that, on June 18, 1995, he was dispatched to a residence on Wilker Neal in response to an aggravated burglary. Upon arrival, he observed that the victim, Mary Beth Snyder, had sustained a puncture wound to her neck. Sergeant Bonura interviewed witnesses and developed Allen Snyder as a suspect. Further, the parties stipulated that the medical records for East Jefferson General Hospital revealed that Mary Beth Snyder was admitted for treatment of numerous deep puncture wounds on June 18, 1995.

Approximately two months later, on August 15, 1995, Allen called Mary Beth to discuss reconciliation. Mary Beth agreed to meet with him the following day, telling Allen that she had plans with her cousin that night. Allen, however, wanted to begin their reconciliation that night so he paged Mary Beth numerous times while he waited outside of her cousin's house, which is less than a block away from Mary Beth's parents' house.

In truth, Mary Beth went out with another man, Howard Wilson. Around 1:30 a.m., Howard Wilson drove Mary Beth back to her parents' house. Allen, who admitted that he was carrying a nine-inch-long knife to "scare" Mary Beth into talking to him, was hiding next to a nearby house and waiting for Mary Beth to return.

Not long after Howard Wilson stopped his car in front of Mary Beth's parents' house, Allen yanked open the driver's side door, leaned over Howard Wilson, and stabbed Mary Beth in the face, which, according to Allen "slowed her down." Allen then "tussled" with Howard, who "got stabbed" because he floored the car's accelerator causing Allen to fall onto Howard during the fight. At some point, Howard Wilson exited his car and stumbled down the street. Allen then got into Wilson's car and attempted to drive off with Mary Beth, who fought and pled for her life. Almost immediately, however, Allen crashed the car into a nearby fire hydrant then fled.[FN 14]

[FN 14] At trial, Allen testified that, when he approached the car, he observed Mary Beth and Howard kissing. He further testified that Howard Wilson "jumped up and that's how the scuffle started." Allen testified that Wilson was armed also. Further, Allen disarmed him then Wilson ran away. Finally, after trying to remove Mary Beth from the car, Allen eventually ran back to his car, and went home.

That night, Gwendolyn Williams was walking home on Wilker Neal Street when she observed a man "stooping down on the side of a trailer" with a knife. She saw the man run from behind the trailer toward a car parked across the street, then open the driver's door, jump inside, and start "tussling" with the driver. When the

driver exited the car, Ms. Williams observed that his "throat was cut." Then, the car moved forward until it hit a fire hydrant.

According to Ms. Williams, she could hear Mary Beth Snyder, who was inside the car, screaming for help while the man, who she recognized as Mary Beth's husband, "started cutting on her." Ms. Williams, who had known Mary Beth for a long time, screamed at the man, who jumped out of the car and fled. Ms. Williams then helped Mary Beth, who was cut "everywhere she could be cut" to her mother's house and waited for the paramedics and the police to arrive.

Deputy Michael Cooke of the Jefferson Parish Sheriff's Office ("JPSO") was on patrol when he was dispatched to a "traffic accident" at 312 Wilker Neal Street. When he arrived at the scene, he noticed that a white car had struck a fire hydrant. There were no passengers inside the vehicle; however, large amounts of blood were present on the ceiling and dashboard. Deputy Cooke then located Howard Wilson and Mary Beth Snyder, who each had sustained wounds that appeared to be from a sharp instrument, such as a knife. After both victims were determined to be free of weapons, they were rushed to the hospital.

According to medical records that were introduced at trial, Howard Wilson died from exsanguination caused by sharp force injuries inflicted with a double-edged blade. Dr. Susan Garcia, an expert forensic pathologist who performed the autopsy on the victim, testified that Howard Wilson sustained nine sharp force injuries to his upper torso. Of those nine, two wounds, which punctured his lung and opened an artery, were lethal. The manner of Mr. Wilson's death was homicide.[FN 15]

> [FN 15] That night, Mary Beth Snyder sustained 19 stab wounds, which required surgical intervention and hospitalization.

Meanwhile, as a result of investigation, Allen Snyder, defendant herein, was developed as a suspect. Approximately 12 hours later, defendant called the police claiming that he "cut some people and that he was considering suicide," and requested that an officer be sent to his house.

Officer Vic Giglio of the Kenner Police Department was dispatched to 508 Hanson Street, in Kenner, in response to the call. Defendant allowed Officer Giglio to enter his house then retreated to another room in the house, where he continued to speak with the dispatcher. Defendant did not have any visible injuries. Almost immediately, Sergeant Giglio realized that defendant was wanted for questioning regarding the homicide on Wilker Neal so he detained defendant for the Jefferson Parish Sheriff's Office.

Detective Debbie Labit of the JPSO arrived at defendant's home and advised him of his Miranda[FN 16] rights. She observed injuries to defendant's right hand, which appeared to be fresh and "indicative of offensive-type of injuries during an altercation where a knife is used." Detective Labit had defendant transported to the Detective's Bureau, where defendant told her that "he had cut them and that he had been beaten up emotionally by his ex – by his wife and that during the cutting, that the male had taken the knife and fled with the knife."[FN 17]

[FN 16] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
[FN 17] The weapon was never recovered.

Defendant's statement was played for the jury. In his statement, defendant indicated that he drove to Wilker Neal Street to find his wife and who was with her. Defendant stated that, when Mary Beth and Howard Wilson drove up, he was going to leave but decided to approach them with a knife. Defendant indicated that he intended to "scare her and her friend" "to make 'em talk to me." Defendant stated that he walked up to the white car, opened the driver's side door, and told Howard Wilson "we have to talk." According to defendant, Howard Wilson then "jumped up" and they started to "scuffle." Defendant stated that he pushed the victim back into the car, and that both he and the victim were armed with knives.

Defendant stated, "my wife, she got stabbed first" then Howard Wilson got stabbed because he pressed the accelerator, which caused defendant to fall onto Wilson. Next, Wilson exited the car and ran one way while defendant ran the other way. Defendant admitted that he threw the knife away as he fled.

On August 16, 1995, Lieutenant Schultz prepared and participated in the execution of a search warrant for defendant's residence and his vehicle. In defendant's house, deputies recovered a white t-shirt hidden in the attic that tested positive for blood consistent with Howard Wilson's DNA.

Further, at trial, Mary Beth identified defendant, who is now her ex-husband, as the person who stabbed her and Howard Wilson on the night of August 16, 1995. She also testified that neither she nor Howard Wilson had a weapon of any sort during the altercation in question. After hearing the testimony and reviewing the evidence, the twelve-person jury unanimously found defendant guilty as charged of second degree murder.[4]

The Court of Appeal then affirmed petitioner's conviction and sentence,[5] and the Louisiana Supreme Court thereafter denied his related writ application,[6] completing the direct-review proceedings in the state courts.

After subsequently seeking post-conviction relief in the state courts without success, petitioner filed the instant federal habeas corpus application on July 24, 2017.[7] In his application, he claimed that he received ineffective assistance of counsel both at trial and on appeal. Specifically, he claimed:

[4] State v. Snyder, 128 So. 3d 370, 373-75 (La. App. 5th Cir. 2013); State Rec., Vol. 17 of 20.
[5] Id. at 383.
[6] State v. Snyder, 138 So. 3d 643 (La. 2014); State Rec., Vol. 17 of 20.
[7] Rec. Doc. 3.

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1. Trial counsel was ineffective for

   (a) allowing the court to use "other crimes" evidence without argument,

   (b) failing to object to the prosecution's Batson violation in choosing prospective jurors with experiences of domestic abuse,

   (c) failing to impeach Mary Beth Snyder with her testimony from the first trial and failing to show her bias and/or motive for lying,

   (d) allowing Gwendolyn Williams's former testimony to be read into the record during the second trial in violation of petitioner's right to confront his accusers, and

   (e) requesting an oral continuance.

2. Appellate counsel was ineffective.

All of those claims were first raised by petitioner during the state post-conviction proceedings. However, of those claims, only Claim 1(b) was raised in the state district court. That court denied that claim, holding:

> The state urges this court to find the procedural bar of LSA-C.Cr.P. art. 926(B)(3) bars relief. That article requires that a petitioner include a "statement of the grounds upon which relief is sought, specifying with reasonable particularity the factual basis for such relief." In addition to this provision, at all times the burden of proof in a post-conviction case is on the petitioner. LSA-C.Cr.P. art. 930.2. Petitioner's brief contains a bare conclusion that his trial and appellate attorneys were ineffective in not objecting to jury composition. The court finds this claim procedurally barred by lack of specificity and failing to meet, or even allege, the necessary burden of proof.[8]

Petitioner then raised that same claim, along with additional new claims, in the related writ application he filed with the Louisiana Fifth Circuit Court of Appeal. In denying that writ application, the Court of Appeal held:

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[8] State Rec., Vol. 14 of 20, Order dated January 7, 2015, p. 2.

> In his writ application, for the first time, relator raises and briefs his allegations of ineffective assistance of counsel concerning the State's introduction of evidence of other crimes and bad acts, his right to full confrontation and cross-examination of the State's witnesses, and the injustice he suffered when trial counsel asked for an unnecessary oral continuance. Relator also raises and briefs his argument of ineffective assistance of appellate counsel when she failed to assign as error his motion to quash and writ of habeas corpus on direct appeal. Because appellate courts will only review issues that were submitted to the trial court, we decline to review relator's new ineffective assistance of counsel claims. See U.R.C.A. Rule 1-3.
>
> To the extent that relator's writ application seeks to challenge the denial of the one claim of ineffective assistance of counsel originally set forth in his application for post-conviction relief, we find that the district court did not err in denying this claim on procedural grounds. In his application for post-conviction relief, relator raised as claim 3 that his trial attorneys were ineffective when they failed to recognize and object to the discriminatory practice of selecting the jury pool. In his writ application, relator claims that as a Batson violation, his trial counsel was ineffective for not objecting to the "prosecution's consistent manipulation in choosing prospective jurors." Upon review, we find that the district court did not err in denying this claim of ineffective assistance of counsel, finding that relator failed to meet his burden of proof under La. C.Cr.P. art. 930.2, in that the claim lacked specificity and failed to meet or even allege the necessary burden of proof.[9]

Petitioner then sought further review by the Louisiana Supreme Court. However, that court likewise denied relief, stating simply: "Denied. Relator fails to show he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Relator's remaining claims are repetitive and/or unsupported. La.C.Cr.P. art. 930.2; La.C.Cr.P. art. 930.4."[10]

Exhaustion/Procedural Bar

"Before seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies, 28 U.S.C. § 2254(b)(1), thereby giving the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights." Baldwin v. Reese, 541 U.S. 27, 29 (2004) (quotation marks omitted). Moreover, the prisoner's claims must have been presented "in

[9] Snyder v. Cain, No. 15-KH-158 (La. App. 5th Cir. May 5, 2015); State Rec., Vol. 14 of 20.
[10] State *ex rel.* Snyder v. State, 202 So. 3d 481 (La. 2016); State Rec., Vol. 20 of 20.

a procedurally proper manner according to the rules of the state courts." Dupuy v. Butler, 837 F.2d 699, 702 (5th Cir. 1988) (quotation marks omitted); see also Carty v. Thaler, 583 F.3d 244, 254 (5th Cir. 2009) ("Fair presentation does not entertain presenting claims for the first and only time in a procedural context in which its merits will not be considered unless there are special and important reasons therefor. The purposes of the exhaustion requirement would be no less frustrated were we to allow federal review to a prisoner who had presented his claim to the state court, but in such a manner that the state court could not, consistent with its own procedural rules, have entertained it." (citation and quotation marks omitted)).

In its response in this proceeding, the state asserts that "all claims appear to be exhausted."[11] That concession appears to be based on the fact that all of the claims were asserted to the Louisiana Supreme Court. If so, then the concession is based on a common misunderstanding of the exhaustion requirement. "Attorneys who represent the State often mistakenly assume that because a case has progressed to the Supreme Court of Louisiana, claims have been exhausted. Claims are not exhausted, however, unless they are properly presented in the Petitioner's briefs *at each level of the state court system*, either on appeal or post-conviction." Wilson v. Warden, Riverbend Detention Center, Civ. Action No. 11-cv-0355, 2014 WL 1315557, at *3 (W.D. La. Mar. 31, 2014) (emphasis added); see also Baldwin, 541 U.S. at 29 (holding that to comply with the exhaustion requirement, "the prisoner must fairly present his claim in *each appropriate state court* (including a state supreme court with powers of discretionary review) ..." (emphasis added; quotation marks omitted)). Here, as noted, the Louisiana Fifth Circuit Court of Appeal held petitioner had asserted all but one of his ineffective assistance of counsel claims for

[11] Rec. Doc. 11, p. 19.

the first time to that court, *thereby bypassing the state district court.*[12] Because those new claims were not asserted *at each level of the state court system*, they are unexhausted.

Further, it is clear that a federal habeas claim is also procedurally defaulted if the "prisoner fail[ed] to exhaust available state remedies and the court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred." Nobles v. Johnson, 127 F.3d 409, 420 (5th Cir. 1997) (internal quotation marks omitted). Here, there is little doubt the state courts would deny any new attempt by petitioner to assert his unexhausted claims as procedurally barred, because any new application would now be both repetitive and untimely under articles 930.4 and 930.8 of the Louisiana Code of Criminal Procedure. That said, the state does not argue that the claims are procedurally barred *on that basis*, and the Court is not obliged to raise such a defense on the state's behalf. See Trest v. Cain, 522 U.S. 87 (1977); Prieto v. Quarterman, 456 F.3d 511, 518 (5th Cir. 2006); Magouirk v. Phillips, 144 F.3d 348, 359-60 (5th Cir. 1998).

The state does, however, argue that petitioner's claims are procedurally barred on *other* bases. The state notes that the Court of Appeal denied Claim 1(b) based on article 926(B)(3) of Louisiana Code of Criminal Procedure, which provides: "The petition [for post-conviction relief] shall allege ... [a] statement of the grounds upon which relief is sought, specifying with reasonable particularity the factual basis for such relief ...." The state further notes that petitioner's remaining claims were denied by the Court of Appeal because they were improperly asserted in violation of Rule 1-3 of the Uniform Rules of the Louisiana Courts of Appeal, which provides in pertinent part: "The Courts of Appeal will review only issues which were submitted to the trial court ...." The state then opines that it is presumed that the Louisiana Supreme Court adopted those same rulings.

[12] Snyder v. Cain, No. 15-KH-158 (La. App. 5th Cir. May 5, 2015); State Rec., Vol. 14 of 20.

However, it is far from clear that such a presumption is appropriate in the instant case. As noted, the Louisiana Supreme Court's cryptic judgment appears to indicate that it denied one or more unspecified claims on the merits and then denied the "remaining claims" (which were also unspecified) based on articles 930.2 "and/or" 930.4 of the Louisiana Code of Criminal Procedure. Because the Louisiana Supreme Court's ruling is so vague and is at least arguably inconsistent with the Court of Appeal's opinion and its bases for denial, this Court cannot definitively determine on which basis or bases each of petitioner's individual claims were denied by the Louisiana Supreme Court.

In the face of such uncertainty, and in an abundance of caution, the undersigned recommends that, because petitioner's claims clearly fail on the merits in any event, they simply be denied on that basis rather than on procedural grounds.[13]

Petitioner's Claims

As noted, petitioner claims that he received ineffective assistance of counsel both at trial and on appeal. The clearly established federal law concerning ineffective assistance of counsel claims is founded on the United States Supreme Court's decision in Strickland v. Washington, 466 U.S. 668 (1984). In that case, the Supreme Court established a two-prong test for evaluating

[13] A federal habeas court need not determine whether claims are in fact procedurally barred when the claims clearly fail on the merits. See Glover v. Hargett, 56 F.3d 682, 684 (5th Cir. 1995); Wiley v. Puckett, 969 F.2d 86, 104 (5th Cir. 1992); Corzo v. Murphy, Civ. Action No. 07-7409, 2008 WL 3347394, at *1 n.5 (E.D. La. July 30, 2008). A federal court additionally has the authority to deny a habeas claim on the merits regardless of whether the petitioner exhausted his state court remedies with respect to that claim and whether exhaustion is waived by the state. 28 U.S.C. § 2254(b)(2); Jones v. Jones, 163 F.3d 285, 299 (5th Cir. 1998); Lande v. Cooper, Civ. Action No. 11-3130, 2013 WL 5781691, at *26 n.68 (E.D. La. Oct. 25, 2013); Woods v. Cain, Civ. Action No. 06-2032, 2008 WL 2067002, at *8 n.8 (E.D. La. May 13, 2008).

Additionally, the Court notes that a federal habeas court is to apply a deferential standard of the review with respect to claims adjudicated on the merits by the state courts. See 28 U.S.C. § 2254(d). However, because this Court cannot ascertain which claims were adjudicated on the merits in the instant case, and because the claims fail even when considered under a more stringent *de novo* standard of review, the Court will simply apply the *de novo* standard. See Berghuis v. Thompkins, 560 U.S. 370, 390 (2010) ("Courts can ... deny writs of habeas corpus under § 2254 by engaging in *de novo* review when it is unclear whether AEDPA deference applies, because a habeas petitioner will not be entitled to a writ of habeas corpus if his or her claim is rejected on *de novo* review, see § 2254(a).").

ineffective assistance of counsel claims. Specifically, a petitioner seeking relief on such a claim is required to show both that counsel's performance was deficient *and* that the deficient performance prejudiced his defense. Strickland, 466 U.S. at 697. The petitioner bears the burden of proof and "must demonstrate, by a preponderance of the evidence, that his counsel was ineffective." Jernigan v. Collins, 980 F.2d 292, 296 (5th Cir. 1993); see also Clark v. Johnson, 227 F.3d 273, 284 (5th Cir. 2000). If a court finds that the petitioner has made an insufficient showing as to either of the two prongs of inquiry, i.e. deficient performance or actual prejudice, it may dispose of the ineffective assistance claim without addressing the other prong. Strickland, 466 U.S. at 697.

To prevail on the deficiency prong of the Strickland test, a petitioner must demonstrate that counsel's conduct fails to meet the constitutional minimum guaranteed by the Sixth Amendment. See Styron v. Johnson, 262 F.3d 438, 450 (5th Cir. 2001). "Counsel's performance is deficient if it falls below an objective standard of reasonableness." Little v. Johnson, 162 F.3d 855, 860 (5th Cir. 1998). Analysis of counsel's performance must take into account the reasonableness of counsel's actions in light of all the circumstances. See Strickland, 466 U.S. at 689. "[I]t is necessary to 'judge ... counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.'" Lockhart v. Fretwell, 506 U.S. 364, 371 (1993) (quoting Strickland, 466 U.S. at 690). The petitioner must overcome a strong presumption that the conduct of his counsel falls within a wide range of reasonable representation. See Crockett v. McCotter, 796 F.2d 787, 791 (5th Cir. 1986); Mattheson v. King, 751 F.2d 1432, 1441 (5th Cir. 1985).

The appropriate standard for determining prejudice varies slightly depending on whether a petitioner is challenging the actions of trial or appellate counsel. In order to prove prejudice with respect to trial counsel, a petitioner "must show that there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. In this context, a reasonable probability is "a probability sufficient to undermine confidence in the outcome." Id. In making a determination as to whether prejudice occurred, courts must review the record to determine "the relative role that the alleged trial errors played in the total context of [the] trial." Crockett, 796 F.2d at 793. On the other hand, to prove prejudice with respect to a claim that appellate counsel was ineffective, a petitioner must show a reasonable probability that he would have prevailed on appeal but for his counsel's deficient representation. Briseno v. Cockrell, 274 F.3d 204, 207 (5th Cir. 2001); see also Smith v. Robbins, 528 U.S. 259, 286 (2000). Therefore, a petitioner must demonstrate a reasonable probability that, if appellate counsel's performance had not been deficient in the manner claimed, the appellate court would have vacated or reversed the trial court judgment based on the alleged error. Briseno, 274 F.3d at 210.

Petitioner first contends that his trial counsel was ineffective for allowing the state to use "other crimes" evidence against him without argument and "for not briefing the trial court on how the State could not use mere allegations that were never proven against him."[14] That claim is wholly unsupported by the record, which shows that counsel in fact vigorously litigated this issue.

For example, at a hearing held on May 10, 2010, petitioner's trial counsel argued that the "other crimes" evidence was inadmissible.[15] At that time he argued that the evidence was hearsay and that the prior bad acts were unadjudicated. He further argued that the acts were irrelevant because they were not acts against Wilson, the actual victim in the case. After the hearing, defense counsel also filed an extensive memorandum further explaining his arguments as to why the "other

[14] Rec. Doc. 3, pp. 6 and 30.
[15] State Rec., Vol. 15 of 20, transcript of May 10, 2010.

crimes" evidence was inadmissible.[16] Among his various arguments, counsel argued that petitioner had not been prosecuted for any of the alleged incidents against Mary Beth Snyder and that the state had failed to show by clear and convincing evidence that the acts occurred and that they were committed by petitioner.[17] After the court found the evidence admissible, trial counsel then sought writs from the Louisiana Fifth Circuit Court of Appeal[18] and the Louisiana Supreme Court.[19] The mere fact that counsel's vigorous efforts were ultimately unsuccessful is not evidence that his performance was constitutionally deficient. See Martinez v. Dretke, 99 F. App'x 538, 543 (5th Cir. 2004). Because no deficient performance has been shown with respect to this claim, the claim necessarily fails.

Petitioner next contends that his trial counsel was "ineffective for not objecting to the State's consistent manipulation in choosing prospective jurors in this case. The State systematically chose women with past experiences of domestic abuse."[20] He further claims that the prosecution deliberately manipulated the jury pool by winnowing out "almost everyone not female and/or not biased on the issue of domestic violence."[21]

In Batson v. Kentucky, 476 U.S. 79 (1986), the Supreme Court held that purposeful racial discrimination in the use of peremptory strikes of prospective jurors violates the Equal Protection Clause. In J.E.B. v. Alabama *ex rel.* T.B., 511 U.S. 127 (1994), the Supreme Court extended that prohibition to include gender discrimination. In evaluating whether a petitioner has established a violation, a three-step analysis is employed, with the first step requiring that a petitioner make a

[16] State Rec., Vol. 13 of 20, Objection to State's Notice of Intent to Use Evidence of Other Crimes filed May 19, 2010.
[17] Id.
[18] See State v. Snyder, No. 10-K-628 (La. App. 5th Cir. Aug. 20, 2010); State Rec., Vol. 20 of 20.
[19] See State v. Snyder, 49 So. 3d 391 (La. 2010); State Rec., Vol. 20 of 20.
[20] Rec. Doc. 3, at pp. 6 and 34.
[21] Id. at pp. 34-35.

prima facie showing that a peremptory challenge has been exercised on the basis of gender. Stevens v. Epps, 618 F.3d 489, 492 (5th Cir. 2010).

The relevant circumstances of the jury selection in this case simply do not allow for the conclusion that a prima facie case of gender discrimination can be made. The record provides no evidence or any indication that peremptory challenges were used to discriminate against males. The record reflects that the final jury proper consisted of nine females and three males, along with two females chosen as alternate jurors.[22] After the venire members were randomly drawn, 39 persons were questioned prior to the final jury selection.[23] Of the 15 males examined, six were stricken for cause, leaving only nine on the venire.[24] The State used only three peremptory challenges consisting of one strike on a male and two strikes on females.[25] Given the facts of this particular case and this particular jury panel, the State's use of one of its strikes on a male is neither surprising nor inherently suspect. Where, as here, a petitioner has failed to present any evidence showing that there was in fact a basis for a Batson challenge, he cannot meet his burden to prove that counsel was ineffective for failing to make such a challenge. See, e.g., Dennis v. Vannoy, Civ. Action No. 16-6889, 2017 WL 9855222, at *15 (E.D. La. June 2, 2017), adopted, 2018 WL 3417872 (E.D. La. July 12, 2018); Stogner v. Cain, Civ. Action No. 12-2703, 2013 WL 2444667, at *19 (E.D. La. June 4, 2013); accord Bell v. Director, TDCJ-CID, No. 03-36, 2005 WL 2977771, at *6 (E.D. Tex. Nov. 2, 2005) ("[T]here is nothing in the record to support the Petitioner's allegation that a particular juror was improperly struck. From the record, it is not possible to draw a reasonable inference of purposeful discrimination as required by Batson. Petitioner has provided no proof of his allegation. The Petitioner's claim is a conclusory allegation not supported by the

[22] State Rec., Vol. 13 of 20, minute entry dated January 31, 2012.
[23] Id.
[24] Id.
[25] Id.

record. Conclusory allegations and bald assertions are insufficient to support a petition for a writ of habeas corpus."). Accordingly, this claim must likewise be rejected.

Petitioner next contends that trial counsel was ineffective in his cross-examination of Mary Beth Snyder. He claims his trial counsel "had a duty to impeach Mary Beth, and reveal her bias and/or motive for lying to so many people."[26]

It is clear that "[t]he decision whether to cross-examine a witness, and if so, how vigorously to challenge the witness' testimony, requires a quintessential exercise of professional judgment." Ford v. Cockrell, 315 F. Supp. 2d 831, 859 (W.D. Tex. 2004), aff'd, 135 F. App'x 769 (5th Cir. 2005); accord Lewis v. Cain, Civ. Action No. 09-2848, 2009 WL 3367055, at *8 (E.D. La. Oct. 16, 2009), aff'd, 444 F. App'x 835 (5th Cir. 2011); Williams v. Cain, Civ. Action Nos. 06-0224 and 06-0344, 2009 WL 1269282, at *11 (E.D. La. May 7, 2009), aff'd, 359 F. App'x 462 (5th Cir. 2009); Packnett v. Cain, Civ. Action No. 06-5973, 2008 WL 148486, at *11 (E.D. La. Jan. 10, 2008); Parker v. Cain, 445 F. Supp. 2d 685, 710 (E.D. La. 2006). Moreover, the United States Supreme Court has cautioned courts not to second-guess counsel's decisions on such tactical matters through the distorting lens of hindsight; rather, courts are to employ a strong presumption that counsel's conduct falls within a wide range of reasonable assistance and, under the circumstances, might be considered sound trial strategy. Strickland, 466 U.S. at 689. Additionally, it is irrelevant that another attorney might have made other choices or handled such issues differently. As the Supreme Court noted: "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Id.

[26] Rec. Doc. 3, p. 6.

Here, petitioner has failed to show that counsel's cross-examination of Mary Beth Snyder was deficient. First, petitioner does not identify any relevant questions that counsel failed to ask on cross-examination. Further, while petitioner contends that Mary Beth Snyder's testimony was inconsistent with the testimony she provided at the first trial, the record reflects that defense counsel did in fact question her about the inconsistencies.[27] Defense counsel used the transcript of her prior testimony to refresh her recollection as well as to impeach her testimony.[28] After a review of the transcripts in their entirety the Court finds that counsel's cross-examination and attempts to challenge her credibility were not deficient and that petitioner was not prejudiced by counsel's performance.

The court notes that petitioner also seems to fault trial counsel for failing to introduce into evidence letters Mary Beth Snyder wrote to petitioner. However, on federal habeas corpus review, "[a] conscious and informed decision on trial tactics and strategy cannot be the basis for constitutionally ineffective assistance of counsel unless it is so ill chosen that it permeates the entire trial with obvious unfairness." Garland v. Maggio, 717 F.2d 199, 206 (5th Cir. 1983); see also Pape v. Thaler, 645 F.3d 281, 291 (5th Cir. 2011). "'Failure to present [evidence does] not constitute "deficient" performance within the meaning of Strickland if [counsel] could have concluded, for tactical reasons, that attempting to present such evidence would be unwise.'" Williams v. Cockrell, 31 F. App'x 832, 2002 WL 180359, at *3 (5th Cir. Jan. 4, 2002) (quoting Williams v. Cain, 125 F.3d 269, 278 (5th Cir. 1997)).

In this case, defense counsel questioned the witness about two of the letters. The trial court, however, limited defense counsel's examination, ordered that the letters could not be admitted into evidence or read to the jury, and allowed the prosecution to review the two letters over the

[27] State Rec., Vol. 16 of 20, trial transcript of February 2, 2012, pp. 130-32, 136-37, and 139-40.
[28] Id. at pp. 124-25, 128-29, 130-32, and 139-40.

defense's objection. Defense counsel then decided to conclude his questioning of the witness because he did not want to risk having to produce additional letters, which the defense believed to be non-discoverable, to the prosecution.[29] It is clear from defense counsel's statements at trial that he made a tactical decision to conclude his cross-examination of the witness.[30]

Because petitioner cannot establish that his counsel performed deficiently with respect to his cross-examination of Mary Beth Snyder, this claim fails.

Read broadly, petitioner's next contention is that his trial counsel was ineffective for failing to object to Gwendolyn Williams's testimony from the first trial being read into the record at his second trial. He claims because his attorney at the first trial chose not to cross-examine Williams, then the admission of her testimony at the second trial violated his right to confrontation.

Petitioner's suggestion that his counsel failed to object to the admission into evidence of Williams's prior testimony is simply untrue. The state filed a notice of intent to use prior statements of an unavailable witness pursuant to La. Code Evid. art. 804 on August 3, 2009.[31] At a hearing held on August 31, 2009, trial counsel vigorously opposed the state's request to use Williams's prior testimony.[32] Counsel argued both that the prosecution failed to show that Williams was deceased and therefore unavailable and that the statement should not be admitted because Williams was not cross-examined by petitioner's counsel during the first trial.[33] The trial court found that the state met its burden of demonstrating that Williams was unavailable and ruled

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[29] State Rec., Vol. 17 of 20, trial transcript of February 2, 2012, pp. 172-83.

[30] To the extent that petitioner focuses on actions of the state trial court in limiting cross-examination regarding the content of the letters, finding the letters inadmissible, and allowing the prosecution to read the letters, those actions were not the performance of counsel. In other words, petitioner fails to state a cognizable challenge to *counsel's performance* when he complains of the *trial court's rulings* regarding the letters.

[31] State Rec., Vol. 13 of 20, Notice of Intent to Use Prior Statement of Unavailable Witness Pursuant to C.E. Art. 804 filed August 3, 2009.

[32] State Rec., Vol. 15 of 20, transcript of August 31, 2009.

[33] Id. at pp. 28-29.

that her previous testimony could be submitted at the second trial.[34] At trial, defense counsel renewed their objections to the testimony and successfully argued against the prosecution's request to publish the transcript of Williams's testimony to the jury.[35] The testimony was instead read to the jury.[36] Again, the mere fact that the challenge to the testimony was unsuccessful is not evidence that counsel performed deficiently. See Martinez, 99 F. App'x at 543.

Petitioner's last claim of ineffective assistance of trial counsel is that his counsel requested an unnecessary oral continuance.[37] However, "a decision on whether or not to seek a continuance is inherently one of trial strategy and, as such, is generally accorded great deference." Johnson v. Cain, Civ. Action No. 08-4208, 2009 WL 2366385, at *8 (E.D. La. July 29, 2009); Brooks v. Cain, Civ. Action No. 06-1869, 2009 WL 3088323, at *3 (E.D. La. Sept. 21, 2009) (citing McVean v. United States, 88 F. App'x 847, 849 (6th Cir. 2004)); Moore v. Casperson, 345 F.3d 474, 490 (7th Cir. 2003)).

Here, after petitioner's first conviction was vacated, the Louisiana Supreme Court remanded the case for further proceedings on April 30, 2008.[38] On December 1, 2008, the trial court appointed counsel from the Louisiana Capital Assistance project to represent petitioner.[39] On January 23, 2009, the indictment was amended to charge petitioner with the lesser offense of second degree murder, petitioner's counsel withdrew (presumably because petitioner was no longer charged with a capital offense), and a trial was scheduled for February 17, 2009.[40] However, on February 17, 2009, the same day the trial was set to commence, new counsel enrolled for petitioner and requested a continuance. That request was granted and a status hearing was

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[34] Id. at p. 29.
[35] State Rec., Vol. 16 of 20, trial transcript of February 2, 2012, pp. 76-79.
[36] Id. at pp. 82-87.
[37] Rec. Doc. 3, pp. 37-38.
[38] State v. Snyder, 982 So. 2d 763 (La. 2008); State Rec., Vol. 13 of 20.
[39] State Rec., Vol. 13 of 20, minute entry dated December 1, 2008.
[40] State Rec., Vol. 13 of 20, minute entry dated January 23, 2009.

scheduled for April 9, 2009.[41] While the reason for the continuance was not specified in the minutes, it is safe to assume that, because petitioner's new counsel had just enrolled, he needed time to familiarize himself with the case and to prepare for trial. At the status hearing on April 9, 2009, defense counsel then requested and was granted a second continuance.[42] The reason for the continuance was petitioner had not been transferred from the Louisiana State Penitentiary in Angola to the Jefferson Parish Correctional Center as ordered, thereby inhibiting counsel's ability to prepare for trial.[43]

Defense counsel obviously decided that the delays would be beneficial, and this Court has no sound basis to second-guess that determination. Furthermore, a continuance "to gain time to complete necessary trial preparation" does not constitute an unreasonable act by counsel. United States v. Webb, 796 F.2d 60, 63 (5th Cir. 1986); Brownlee v. Knipp, No. CV 12-0859, 2012 WL 6773361, at *33 (C.D. Cal. Nov. 5, 2012), adopted, 2013 WL 74705 (C.D. Cal. Jan. 4, 2013); Gibbs v. Koster, No. 4:12CV1714, 2015 WL 5157522, at *7-8 (E.D. Mo. Sept. 2, 2015) (holding that petitioner failed to demonstrate that his counsel's motions for continuances were unreasonable or that the results of the proceedings would have been different had counsel not requested the continuances); Jones v. Haws, No. CIV S-09-1735, 2011 WL 4479842, at *13 (E.D. Cal. Sept. 26, 2011) ("Here, Jones fails to demonstrate deficient performance by defense counsel Lauper. The record reflects that Lauper, having been newly appointed, was forced to choose between obtaining a continuance over Jones's personal objection in order to properly prepare for trial, or, in the

[41] State Rec., Vol. 13 of 20, minute entry dated February 17, 2009.
[42] State Rec., Vol. 13 of 20, minute entry dated April 9, 2009.
[43] Id. The Department of Corrections did not originally comply with the trial court's February 26, 2009 order to house petitioner at the Jefferson Parish Correctional Center. State Rec., Vol. 13 of 20, order dated February 26, 2009. On April 29, 2009, after the trial court ordered the Department of Corrections and the Warden to show cause why they should not be held in contempt for failing to abide by the order, petitioner was transferred to the Jefferson Parish Correctional Center. State Rec., Vol. 13 of 20, Rule to Show Cause Why Warden Should Not be Held in Contempt for Failing to Abide by District Court's Order filed March 27, 2009; order dated April 15, 2009; minute entry dated May 4, 2009; Petition for a Writ of Habeas Corpus filed August 6, 2010.

alternative, proceeding to trial unprepared but within the statutory time period. Lauper sought the continuance for a valid reason and the decision did not constitute deficient performance. To the contrary, it may have constituted ineffective assistance for Lauper to proceed to trial inadequately prepared to defend Jones."); Taylor v. Dormire, No. 4:06-CV-426, 2007 WL 1063534, at *5 (E.D. Mo. Apr. 9, 2007) ("Moving for continuances in order to prepare for trial properly is not deficient performance by counsel."). Without more, petitioner has obviously failed to meet his burden of proof with respect to this ineffective assistance claim.

Furthermore, petitioner has not demonstrated any prejudice as a result of counsel's actions. There is no evidence that his counsel was prepared to try the case when he was appointed on February 17, 2009. The delay of the trial therefore allowed counsel the necessary time to properly prepare the defense by reviewing the discovery, consulting with petitioner, reviewing the earlier proceedings, and filing necessary motions. Had the delay not been sought and granted, the alternative would have been for petitioner to proceed to trial with unprepared counsel.

Petitioner's last claim of ineffective assistance is that his appellate counsel was ineffective for failing to brief two issues on appeal. Specifically, he claims his appellate counsel should have asserted a claim that trial counsel was ineffective for seeking continuance of the trial. He also claims his appellate counsel should have challenged the trial court's denial of petitioner's *pro se* motion to quash and writ of habeas corpus.

With respect to such ineffective assistance of appellate counsel claims, it must be remembered that counsel "is not obligated to urge on appeal every nonfrivolous issue that might be raised (not even those requested by defendant)." West v. Johnson, 92 F.3d 1385, 1396 (5th Cir. 1996). Rather, "[e]xperienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if

possible, or at most on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52 (1983). Far from evidencing ineffectiveness, an appellant counsel's restraint often benefits his client because "a brief that raises every colorable issue runs the risk of burying good arguments ... in a verbal mound made up of strong and weak contentions." Id. at 753. As a result, the applicable test to be applied in assessing such a claim is whether the issue ignored by appellate counsel was "clearly stronger" than the issues actually presented on appeal. See, e.g., Diaz v. Quarterman, 228 F. App'x 417, 427 (5th Cir. 2007); accord Smith v. Robbins, 528 U.S. 259, 288 (2000).

In the instant case, appellate counsel raised three assignments of error on direct appeal: (1) the trial court erred in denying his motion for mistrial after the jury was shown petitioner's advice of rights form, which indicated that he was originally charged with first degree murder; (2) the trial court erred in allowing the state to introduce "other crimes" evidence; and (3) the trial court erred in allowing the state to read petitioner's personal letters even though they were never offered or intended to be introduced at trial. Although those three claims were ultimately unsuccessful, it can hardly be said that the two claims petitioner now proposes were "clearly stronger."

As to petitioner's contention that appellate counsel should have raised a claim that petitioner's trial counsel was ineffective for seeking continuance of the trial, that contention is clearly meritless. Louisiana law in fact *discourages* the assertion of ineffective assistance of claims on direct appeal. See, e.g., State v. Truitt, 500 So. 2d 355, 359 (La. 1987) ("The appropriate avenue for asserting a claim for ineffective assistance of counsel is through postconviction relief, not by direct appeal."). As a result, Louisiana state courts normally decline to consider such claims on direct appeal unless the record is sufficient to decide the issue without the need for an additional post-conviction hearing to obtain additional evidence. See, e.g., State v. Ratcliff, 416 So. 2d 528, 530 (La. 1982). Obviously, counsel performance is not deficient, and no prejudice results, where,

as here, appellate counsel's actions conform to such state court norms and his client does not lose the opportunity to have his claim addressed later at a more appropriate time.

As to petitioner's contention that appellate counsel was ineffective for failing to challenge the trial court's denial of the motion to quash and the writ of habeas corpus, that contention fares no better. The trial court's ruling *had already been challenged and upheld in pretrial supervisory writs.* On February 3, 2011, the Louisiana Fifth Circuit Court of Appeal found the trial court's ruling to be correct, holding:

> Relator, Allen Snyder, brings this writ application for review of the trial court's denial of his motion to quash the indictment for failure to timely prosecute.[FN4] Snyder was originally indicted on September 19, 1995 for first degree murder. He was tried and convicted of the charge and sentenced to death. However, the United States Supreme Court overturned that conviction and sentence in Snyder v. Louisiana, ___ U.S. ____, 228 S.Ct. 1203, 170 L.Ed.2d 175 (2008) rendered on April 30, 2008, and remanded the matter to the trial court for further proceedings. Snyder was re-indicted on January 29, 2009 for second degree murder.
>
> [FN 4] This writ application was filed by defense counsel. Relator has also filed a writ seeking review of the same ruling. State v. Snyder, 11-K-14.
>
> Snyder entered a plea of not guilty on February 12, 2009 and a trial date was set for February 17, 2009. For various reasons the new trial did not occur, and on August 6, 2010, Snyder filed a *pro se* motion to quash the indictment and a petition for writ of Habeas Corpus. The State opposed the motion and after a hearing, the trial court denied the motion to quash. That ruling is the subject of this writ application.
>
> La. C.Cr.P. art. 582 provides, that "(w)hen a defendant obtains a new trial or there is a mistrial, the state must commence the second trial within one year from the date the new trial is granted, or the mistrial is ordered, or within the period established by Article 578[FN 5], which ever is longer." The prescriptive period set forth in the above article commences to run when the court's judgment becomes final.[FN 6] La. C.Cr.P. art. 922 provides that a judgment rendered by the Supreme Court becomes final when the delay for applying for a rehearing (14 days) has expired.
>
> [FN 5] La. C.Cr.P. art. 578 allows two years from the date of the institution of the prosecution.
> [FN 6] State v. Brown, 451 So.2d 1074 (La. 1984).

Therefore, the State had one year and 14 days from April 30, 2008, or until May 14, 2009 to commence the new trial.

Pursuant to La. C.Cr.P. art. 580 the time limitation is suspended when a defendant filed a motion to quash or another preliminary plea until a ruling on that motion. However, article 580 also provides that "in no case shall the state have less than one year after the ruling to commence the trial."

Relator concedes that he filed a motion to continue for the purpose of enrollment of new counsel on February 17, 2009 and also asked for a status date. That motion was granted by the trial court. Relator also states that he filed a motion for continuance on April 9, 2009.

Relator contends that those two defense motions to continue trial did not suspend the time limitation since those motions were granted the same day they were made. We disagree.

Pursuant to La. C.Cr.P. art. 580, the prescriptive period was suspended when relator filed the motion for continuance of trial to enroll new counsel on February 17, 2009, giving the State one year after the ruling thereon made that same date or until February 17, 2010 to commence trial.

On June 11, 2009, within the extended limitations period, relator filed omnibus motions to suppress evidence, statements, and identifications. Those motions were also preliminary plea that suspended the prescription period until March 8, 2010, when they were denied. On March 4, 2010, relator filed a motion to quash which suspended the prescription period until the trial judge denied it on May 27, 2010, thereby giving the State until May 27, 2011 to commence trial.

On July 23, 2010, within the extended limitations period, relator filed an application for supervisory writs in this Court seeking review of the trial judge's granting of the Prieur motion, which suspended the prescription period until August 20, 2010, when this Court denied relator's application. Thus, the State would have had until August 20, 2011, one year from the date of the ruling, in which to commence trial. Relator filed a writ application with the Louisiana Supreme Court challenging this Court's ruling. On November 19, 2010, the Supreme Court denied writs, which would give the State until November 11, 2011, to commence trial.

On August 6, 2010, relator filed a petition for writ of habeas corpus and another motion to quash (that form the basis of the instant writ application), that suspended the prescription period until the trial judge denied it. Relator filed the instant writ applications which will suspend the prescription period until this Court rules on them, thereby giving the State one year from the date of this Court's ruling to commence trial.

Accordingly, we find no error in the trial court's decision to deny the motion to quash.[44]

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[44] State v. Snyder, No. 11-K-23 (La. App. Feb. 3, 2011); State Rec., Vol. 13 of 20. On that same date, the Court of Appeal likewise denied the *pro se* writ application referenced in footnote 4 of the opinion. State v. Snyder, No. 11-K-14 (La. App. 5th Cir. Feb. 3, 2011) ("For reasons set forth in a related writ application, State of Louisiana v. Allen Snyder, 11-K-23, we find no error in the trial court's decision to deny relator's motion to quash the indictment for untimely prosecution.").

On May 20, 2011, the Louisiana Supreme Court then likewise denied the related writ application without assigning additional reasons.[45]

While it is true that the denial of such pretrial writs does not *preclude* a defendant from raising the same issue in a subsequent direct appeal, such repetitive challenges face daunting obstacles and, therefore, rarely succeed. As the Louisiana Fourth Circuit Court of Appeal noted in a case in which a defendant similarly attempted to relitigate the denial of pretrial writs challenging a motion to quash:

> Both this court and the Louisiana Supreme Court denied [defendant's] writ application seeking review of the district court's ruling denying his motion to quash. Under the law of the case doctrine, appellate courts generally decline to reconsider their own rulings of law on a subsequent appeal in the same case. State v. Duncan, 11-0563, p. 26 (La.App. 4 Cir. 5/2/12), 91 So.3d 504, 520 (citing Pitre v. Louisiana Tech University, 95-1466, p. 7 (La. 5/10/96), 673 So.2d 585, 589). The law of the case doctrine applies to all prior rulings or decisions of an appellate court or the Supreme Court in the same case, not only those arising from an appeal. Duncan, *supra* (citing State v. Molineux, 11-0275, p. 3 (La.App. 4 Cir. 10/19/11), 76 So.3d 617, 619).
>
> Applying the law of the case doctrine, an appellate court will not reverse its pretrial decision unless the defendant presents new evidence tending to show that the pretrial decision was patently erroneous and produced an unjust result. Duncan, *supra* (citing State v. Gillet, 99-2474, p. 5 (La.App. 4 Cir. 5/10/00), 763 So.2d 725, 728). Although a different decision on appeal is not absolutely precluded, judicial efficiency demands that great deference be accorded to the earlier decision. Id.
>
> Here, [defendant] failed to present any new evidence bearing on the correctness of this court's prior decision denying his pre-trial writ application seeking review of the district court's denial of his motion to quash. State v. Lewis, 15-0021, (La. App. 4 Cir. 3/5/15) (unpub.). Thus, [defendant] has failed to show that this court should not follow the law of the case doctrine and decline to exercise its discretion to reconsider its prior ruling on this issue.
>
> Regardless, turning to the merits of the motion to quash, we reach the same result. A trial court's ruling on a motion to quash is discretionary and should not be disturbed by an appellate court absent a clear abuse of discretion. State v. Love, 00-3347, pp. 9-10 (La. 5/23/03), 847 So.2d 1198, 1206 ("[b]ecause the complementary role of trial courts and appellate courts demands that deference be given to a trial court's discretionary decision, an appellate court is allowed to reverse a trial court judgment on a motion to quash only if that finding represents an abuse of the trial court's discretion."). See also State v. Sorden, 09-1416, p. 3 (La.App. 4 Cir. 8/4/10), 45 So.3d 181, 183; State v. Kitchens, 09-0834, 09-0836, p.

[45] State v. Snyder, 63 So. 3d 976 (La. 2011); State Rec., Vol. 13 of 20.

42

> 4 (La.App. 4 Cir. 3/24/10), 35 So.3d 404, 406; State v. Ramirez, 07-0652, p. 4 (La.App. 4 Cir. 1/9/08), 976 So.2d 204, 207. As the Supreme Court explained in Love, "[w]hen a trial judge exercises his discretion to deny a motion to quash, he presumably acts appropriately, based on his appreciation of the statutory and procedural rules giving him the right to run his court." 00-3347 at p. 12, 847 So.2d at 1208.

State v. Lewis, 209 So. 3d 202, 209-10 (La. App. 4th Cir. 2016) (footnote omitted).

Here, the instant petitioner likewise points to no "new evidence tending to show that the pretrial decision was patently erroneous and produced an unjust result." Accordingly, considering the deference that must be accorded to both the trial court's discretionary decision and the rulings of the Court of Appeal and the Louisiana Supreme Court on the pretrial writ applications, there is no reason to believe that this claim, even if it had been reasserted on direct appeal, had any reasonable likelihood of success.[46]

For all of these reasons, it is clear that petitioner has not demonstrated that either his trial or appellate counsel performed deficiently or any resulting prejudice. Accordingly, petitioner's claims should be denied.

---

[46] In his federal application, petitioner also opines that trial counsel's oral motion for a continuance was not valid. It is unclear whether those references are intended merely as further support for his contention that his motion to quash should have been granted or whether they are instead intended as a separate and distinct claim appellate counsel should have asserted on appeal.

If he intended the former, it must be noted that the contention does not in fact support his claim regarding the motion to quash. Under Louisiana law, an oral motion for continuance suspends the limitations period. State v. Watts, 738 So. 2d 628, 630 (La. App. 5th Cir. 1999) ("[W]hether the writing requirement was followed in this case has no bearing on the end result – continuances were granted for defendant and suspension periods therefore exist."); State v. Jones, 620 So. 2d 341, 343 (La. App. 5th Cir. 1993) (holding that an oral continuance by defense suspended the prescriptive period set forth in article 578); State v. Brujic, No. 2009 KA 0719, 2009 WL 3452893, at *4 (La. App. 1st Cir. Oct. 23, 2009) (citing cases); State v. Lathan, 953 So. 2d 890, 895 (La. App. 2d Cir. 2007).

If he intended the latter, then the Court notes that a separate claim on that basis would also lack merit and, therefore, is not "clearly stronger" than the claims asserted by appellate counsel. It is true that motions for a continuance are generally required to be in writing and filed seven days prior to the commencement of trial. La. Code Crim. P. art. 707. However, there is an exception to that requirement whenever the grounds for the continuance arise unexpectedly. State v. Washington, 407 So. 2d 1138, 1148 (La.1981); State v. Shannon, 61 So. 3d 706, 714 (La. App. 5th Cir. 2011). In this case, petitioner's original defense counsel was allowed to withdraw, and his new counsel was not enrolled until February 17, 2009, the same day the trial was set to begin. Thus, it would not have been possible for new counsel to comply with article 707.

RECOMMENDATION

It is therefore **RECOMMENDED** that the federal application seeking habeas corpus relief filed by Allen Snyder be **DISMISSED WITH PREJUDICE**.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. 28 U.S.C. § 636(b)(1); Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).[47]

New Orleans, Louisiana, this sixth day of September, 2018.

Janis van Meerveld

JANIS VAN MEERVELD
UNITED STATES MAGISTRATE JUDGE

[47] Douglass referenced the previously applicable ten-day period for the filing of objections. Effective December 1, 2009, 28 U.S.C. § 636(b)(1) was amended to extend that period to fourteen days.

The Supreme Court of the State of Louisiana

STATE EX REL. ALLEN SNYDER

NO. 2015-KH-1056

VS.

STATE OF LOUISIANA

- - - - - -

IN RE: Allen Snyder; - Plaintiff; Applying For Supervisory and/or Remedial Writs, Parish of Jefferson, 24th Judicial District Court Div. H, No. 95-5114; to the Court of Appeal, Fifth Circuit, No. 15-KH-158;

- - - - - -

October 17, 2016

Denied. See per curiam.

JTK

JLW

GGG

MRC

SJC

Supreme Court of Louisiana
October 17,2016

Deputy Clerk of Court
For the Court

APPENDIX
D

SUPREME COURT OF LOUISIANA

No. 15-KH-1056

OCT 17 2016

STATE EX REL. ALLEN SNYDER

v.

STATE OF LOUISIANA

ON SUPERVISORY WRITS TO THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON

PER CURIAM:

gjk

Denied. Relator fails to show he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Relator's remaining claims are repetitive and/or unsupported. La.C.Cr.P. art. 930.2; La.C.Cr.P. art. 930.4.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended La.C.Cr.P. art. 930.4 to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in state collateral proceedings in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The District Court is ordered to record a minute entry consistent with this per curiam.

Application For Writs

No. 15-KH-158

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

MARCH 09, 2015

Susan Buchholz

Deputy Clerk

ALLEN SNYDER
VERSUS
N. BURL CAIN, WARDEN
LOUISIANA STATE PENITENTIARY

IN RE ALLEN SNYDER

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE GLENN B. ANSARDI, DIVISION "H", NUMBER 95-5114

Attorneys for Relator:

Allen Snyder #169143
Louisiana State Penitentiary
Angola, LA 70712

Attorneys for Respondent:

Terry M. Boudreaux
Assistant District Attorney
200 Derbigny Street
Gretna, LA 70053
(504) 368-1020

WRIT DENIED

(SEE ATTACHED DISPOSITION)

Gretna, Louisiana, this 5th day of May, 2015.

APPENDIX
E

ALLEN SNYDER

VERSUS

N. BURL CAIN, WARDEN LOUISIANA STATE PENITENTIARY

NO. 15-KH-158

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

WRIT DENIED

In his *pro se* writ application, relator alleges that the district court erred in its January 7, 2015 denial of his application for post-conviction relief which was filed on August 8, 2014.

In his writ application, for the first time, relator raises and briefs his allegations of ineffective assistance of counsel concerning the State's introduction of evidence of other crimes and bad acts, his right to full confrontation and cross-examination of the State's witnesses, and the injustice he suffered when trial counsel asked for an unnecessary oral continuance. Relator also raises and briefs his argument of ineffective assistance of appellate counsel when she failed to assign as error his motion to quash and writ of habeas corpus on direct appeal. Because appellate courts will only review issues that were submitted to the trial court, we decline to review relator's new ineffective assistance of counsel claims. *See* U.R.C.A. Rule 1-3.

To the extent that relator's writ application seeks to challenge the denial of the one claim of ineffective assistance of counsel originally set forth in his application for post-conviction relief, we find that the district court did not err in denying this claim on procedural grounds. In his application for post-conviction relief, relator raised as claim 3 that his trial attorneys were ineffective when they failed to recognize and object to the discriminatory practice in selecting the jury pool. In his writ application, relator claims that as a *Batson* violation, his trial counsel was ineffective for not objecting to the "prosecution's consistent manipulation in choosing prospective jurors." Upon review, we find that the district court did not err in denying this claim of ineffective assistance of counsel, finding that relator failed to carry his burden of proof under La. C.Cr.P. art. 930.2, in that the claim lacked specificity and failed to meet or even allege the necessary burden of proof. Further, relator failed to demonstrate any abuse in the district court's ruling to summarily deny the application for post-conviction relief. Thus, relator's request that this Court reverse the January 7, 2015 ruling and remand the matter to the district court for an evidentiary hearing is hereby denied.

For the foregoing reasons, this writ application is denied.

Gretna, Louisiana, this 5th day of May, 2015.

JUDGE JUDE G. GRAVOIS

JUDGE ROBERT M. MURPHY

JUDGE STEPHEN J. WINDHORST

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GRETNA
MAY 05 2015
DEPUTY CLERK
COURT OF APPEAL, FIFTH CIRCUIT

SERVICE
W.Feb

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 95-5114 DIVISION "H"

STATE OF LOUISIANA

VERSUS

ALLEN SNYDER

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Legal Programs Department

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W.F.P.S.O.

FILED: January 7, 2015 _____ DEPUTY CLERK

ORDER

This matter comes before the court on the petitioner's **APPLICATION FOR POST-CONVICITON RELIEF, STAMPED AS FILED AUGUST 8, 2014, THE STATE'S RESPONSE, STAMPED AS FILED OCTOBER 6, 2014, AND THE PETITIONER'S OBJECTIONS TO STATE'S ATTEMPT TO HAVE APPELLANT CLAIMS DISMISSED, STAMPED AS FILED OCTOBER 21, 2014.**

The petitioner challenges his conviction for the second degree murder of his wife, Mary Snyder, and his resulting life sentence. His conviction and sentence from this trial were upheld on direct appeal. *State v. Snyder*, 128 So.3d 370 (La. 5 10/9/13), writ denied, 138 So.3d 643 (La. 4/25/14). The issues raised on appeal were: prejudice from the jury's viewing a document that indicated Petitioner had previously been charged with first degree murder, admission of evidence of prior bad acts, and confrontation claims arising from the accused's letters to the victim were read.

Claims Raised

The petitioner raises ten separate claims in his application for post-conviction relief. He argues:

1. The trial court erred by denying petitioner's motion to suppress evidence and allowing the state to introduce evidence of other crimes.
2. The trial court erred by denying petitioner's Motion to Quash and Writ of Habeas Corpus.
3. The trial court erred when the state monopolized the entire jury pool and petitioner's trial attorney and appellate attorney were ineffective.
4. The trial court erred in failing to grant the motion for mistrial.
5. The trial court erred in allowing the state to read petitioner's personal letters though they were never offered or intended to be introduced at trial.
6. The trial court erred in allowing the most damaging statement be injected into petitioner's trial by the coerced testimony of Gwendolyn Williams, "That She Seen Petitioner with a Knife."
7. The trial court erred in not considering Detective Michael Cooke's testimony or his report about the state's key witness Ms. Williams.
8. The trial court erred in over-looking the testimony of Sgt. Matthew Bonura and his report about the June 18, 1995 incident.
9. The trial court erred in allowing the state to compel Mary B. Snyder against her will and coerced to commit perjury and testified to that effect.
10. The trial court erred by denying petitioner's motion for new trial and a motion for post-verdict judgment of acquittal.

The state raises various procedural bars on all claims. By contrast, the petitioner files a motion urging the court to find all procedural defaults were excused.

APPENDIX
F

Procedural Objections

Post-conviction law contains many strict procedural requirements. Of particular importance is LSA-C.Cr.P. art. 930.4, which, at the time of the petitioner's filing, provides six separate procedural objections, specifically as follows:

> A. Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.
> B. If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.
> C. If the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.
> D. A successive application shall be dismissed if it fails to raise a new or different claim.
> E. A successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application.
> F. If the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. If the court finds that the failure was excusable, it shall consider the merits of the claim.
>
> LSA-C.Cr.P. art. 930.4.

The state urges this court to find that the procedural bar of LSA-C.Cr.P. art. 930.4(A)[1] applies to the petitioner's first, fourth, and fifth claims. On review, the court agrees. These three claims were raised on appeal and thus the court does find the procedural bar precludes further review.

The state urges this court to find the procedural bar of LSA-C.Cr.P. art. 930.4(C) apply to petitioner's second, sixth, seventh, eighth, ninth, and tenth claims. On review, the court agrees. These claims were known prior to appeal but not brought. The court finds the procedural bar precludes further review.

The state urges this court to find the procedural bar of LSA-C.Cr.P. art. 926(B)(3) bars relief. That article requires that a petitioner include a "statement of the grounds upon which relief is sought, specifying with reasonable particularity the factual basis for such relief." In addition to this provision, at all times the burden of proof in a post-conviction case is on the petitioner. LSA-C.Cr.P. art. 930.2. Petitioner's brief contains a bare conclusion that his trial and appellate attorneys were ineffective in not objecting to jury composition. The court finds this claim procedurally barred by lack of specificity and failing to meet, or even allege, the necessary burden of proof.

The court is aware that the petitioner argues his failure to raise issues is excusable. However, the court does not agree. The Supreme Court of Louisiana has held:

> We also note that the required Uniform Application for Post Conviction relief, see La.C.Cr.P. art. 926(D); La.S.Ct.R. App'x A; U.R.C.A. App'x A, requires an inmate filing an application for post-conviction relief to "explain why" he may have "failed to raise [a particular] ground" in earlier proceedings. The Uniform Application thus in most cases both provides an inmate with an opportunity to explain his failure to raise a claim earlier and provides the district judge with enough information to undertake the informed exercise of his discretion and to determine whether default of an application under La.C.Cr.P. art 930.4(B), art. 930.4(C), or art. 930.4(E) is appropriate. Proper use of the Uniform Application thus satisfies the requirements of La.C.Cr.P. art. 930.4(F) without the need for further filings, formal proceedings, or a hearing.
>
> *State ex rel. Rice v. State*, 749 So.2d 650 (La. 1999).

---

[1] Throughout its brief, the state quotes language from the statute but fails to cite to the specific paragraphs in question.

In accordance with *Rice*, the court finds that the petitioner, an experienced pro se litigant, had an opportunity to explain the failure to raise his ten post-conviction claims properly. The court will not order any further pleadings on the issue of excusability and will issue a ruling based on the pleadings submitted to date.

Conclusion

For the reasons stated above, the court finds the procedural objections have merit. The petitioner is not entitled to post-conviction relief because the claims he raises are procedurally barred.

Accordingly,

IT IS ORDERED BY THE COURT that the application for post-conviction relief be and is hereby **DENIED**.

Gretna, Louisiana this 7th day of January, 20 15.

JUDGE

PLEASE SERVE:

DEFENDANT: Allen Snyder, DOC # 169143, Louisiana State Penitentiary, Angola, LA 70712

District Attorney's Office, Terry Boudreux, Anne Wallis, 200 Derbigny St., Gretna, LA 70053

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24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2013-KO-2647

VS.

ALLEN SNYDER

- - - - - -

IN RE: Snyder, Allen; - Defendant; Applying For Writ of Certiorari and/or Review, Parish of Jefferson, 24th Judicial District Court Div. H, No. 95-5114; to the Court of Appeal, Fifth Circuit, Nos. 12-KA-896, 12-KA-896;

- - - - - -

April 25, 2014

Denied.

BJJ

JPV

JTK

JLW

GGG

MRC

JDH

Supreme Court of Louisiana
April 25,2014

Deputy Clerk of Court
For the Court

APPENDIX G

STATE OF LOUISIANA	NO. 12-KA-896
VERSUS	FIFTH CIRCUIT
ALLEN SNYDER	COURT OF APPEAL
	STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 95-5114, DIVISION "H"
HONORABLE GLENN B. ANSARDI, JUDGE PRESIDING

October 9, 2013

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Stephen J. Windhorst

PAUL D. CONNICK, JR.
DISTRICT ATTORNEY
Twenty-Fourth Judicial District
Parish of Jefferson
TERRY M. BOUDREAUX
ANNE M. WALLIS – APPELLATE COUNSEL
J. BRANDON KINNETT
KELLIE M. RISH
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Twenty-Fourth Judicial District
200 Derbigny Street
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COUNSEL FOR APPELLEE,
STATE OF LOUISIANA

JANE L. BEEBE
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Louisiana Appellate Project
Post Office Box 6351
New Orleans, Louisiana 70174-6351
COUNSEL FOR APPELLANT,
ALLEN SNYDER

AFFIRMED

APPENDIX H

On appeal, defendant seeks review of his conviction for second degree murder and life sentence. For the following reasons, we affirm his conviction and sentence.

Procedural History

This matter has an extensive procedural history. On August 29, 1996, defendant, Allen Snyder, was convicted by a twelve-member jury of first degree murder and subsequently sentenced to death. Defendant appealed his conviction. In 1999, the Supreme Court of Louisiana conditionally affirmed his conviction and sentence but remanded for a "nunc pro tunc hearing to determine whether defendant was competent at the time of his trial."[1]

On October 26, 2000, after a hearing as ordered by the Louisiana Supreme Court, the district court ruled that, "Based on the evidence taken as a whole, the Court finds that the defendant was competent on the date of his trial."[2] On April 14, 2004, the Louisiana Supreme Court affirmed.[3]

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[1] *State v. Snyder*, 98-1078 (La. 4/14/99), 750 So.2d 832, 854.
[2] *State v. Snyder*, 95-5114 (La. Dist. Ct. 10/26/00), 2000 WL 35631882.
[3] *State v. Snyder*, 98-1078 (La. 4/14/04), 874 So. 2d 739.

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In 2005, the United States Supreme Court granted defendant's petition for a writ of certiorari, vacated the judgment, and remanded the case to the Louisiana Supreme Court for consideration of defendant's *Batson*[4] claims, in light of *Miller-El v. Dretke*, 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005).[5] On remand, the Louisiana Supreme Court found no merit in defendant's claim that the State excused potential jurors in a racially discriminatory manner and again affirmed defendant's conviction and sentence.[6]

The United States Supreme Court again granted petitioner's writ of certiorari.[7] In *Snyder v. Louisiana*, 552 U.S. 472, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008), the United States Supreme Court held that the trial judge committed clear error in rejecting defendant's claim that the prosecution exercised peremptory challenges based on race, in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), which required reversal and remand of the matter to the Louisiana Supreme Court. Thereafter, the Louisiana Supreme Court remanded the matter to the district court for "further proceedings in accord with the law."[8]

On January 29, 2009, a Jefferson Parish Grand Jury indicted defendant on one count of second degree murder, in violation of La. R.S. 14:30.1, for the homicide of Howard Wilson. On February 12, 2009, defendant pled not guilty. Subsequently, the State filed Notices of Intent to Use Evidence of Other Crimes. On May 4, 2010, a *Prieur*[9] hearing was held. On May 27, 2010, the trial court

[4] *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).
[5] *Snyder v. Louisiana*, 545 U.S. 1137, 125 S.Ct. 2956, 162 L.Ed.2d 884 (2005).
[6] *State v. Snyder*, 98-1078 (La. 9/6/06), 942 So.2d 484, *reh'g denied*, (La. 12/15/06).
[7] *Snyder v. Louisiana*, 551 U.S. 1144, 127 S.Ct. 3004, 168 L.Ed.2d 726 (2007).
[8] *State v. Snyder*, 98-1078 (La. 4/30/08), 982 So.2d 763.
[9] *State v. Prieur*, 277 So.2d 126 (La. 1973).

granted the State's motion. Defendant sought review of that ruling in this Court, which denied relief.[10]

On January 31, 2012, trial of this matter commenced. After a three-day trial, a twelve-member jury found defendant guilty as charged on February 2, 2012. On March 1, 2012, the trial judge heard and denied numerous post-trial motions. That same day, after defendant waived the statutory delays, the trial court sentenced defendant, as statutorily mandated, to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant timely filed a Motion for Appeal, which was granted on March 5, 2012. This appeal follows.

Facts

In 1995, Allen Snyder and his then-wife, Mary Beth, had a troubled marriage.[11] According to Mary Beth, however, after the birth of their third child, Allen became very controlling and jealous. He would not allow her to speak to other men and prohibited her from leaving the house alone.

Eventually, Allen's jealousy escalated to physical abuse. Mary Beth testified that, on March 18, 1995, Allen, using his hand, violently shoved her head against the passenger side window of his car, which caused injuries to her face. Mary Beth did not seek medical treatment that night.

About three months later, in May of 1995, Allen struck Mary Beth in the leg with a baseball bat as she lay sleeping. She had a large bruise and limped for about a week. Not long after that incident, Allen drove Mary Beth to an isolated road, opened the trunk of his car, and threatened her that he could do "whatever he wanted to" her and "nobody would ever find" her.

[10] *State v. Snyder*, 10-628 (La.App. 5 Cir. 8/20/10)(unpublished writ disposition), *writ denied*, 10-2129 (La. 11/19/10), 49 So.3d 391.

[11] It is undisputed that both parties had engaged in extramarital relationships in 1994 or 1995.

That summer the violence escalated. On the morning of June 11, 1995, Allen "slammed" Mary Beth's head into the wall of their children's bedroom, which caused injuries requiring hospitalization.[12] After this instance, which their children witnessed, Mary Beth took their children and went to stay at her parents' house on Wilker Neal Street in River Ridge.

On June 18, 1995, Allen tried to speak with Mary Beth, but she refused. Later that night, Allen disconnected the electrical box outside Mary Beth's parents' home, entered the home, and stabbed Mary Beth nine times in the neck, head, and arms. Mrs. Snyder was treated at the hospital for her injuries.[13]

Approximately two months later, on August 15, 1995, Allen called Mary Beth to discuss reconciliation. Mary Beth agreed to meet with him the following day, telling Allen that she had plans with her cousin that night. Allen, however, wanted to begin their reconciliation that night so he paged Mary Beth numerous times while he waited outside of her cousin's house, which is less than a block away from Mary Beth's parents' house.

In truth, Mary Beth went out with another man, Howard Wilson. Around 1:30 a.m., Howard Wilson drove Mary Beth back to her parents' house. Allen, who admitted that he was carrying a nine-inch-long knife to "scare" Mary Beth into talking to him, was hiding next to a nearby house and waiting for Mary Beth to return.

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[12] Daniel Kilian, former patrol officer for the Kenner Police Department, testified that, on June 11, 1995, he responded to a call at the Snyder's home at 508 Hanson Street in Kenner. When he arrived, he observed Mary Beth Snyder, who was bleeding from her head and had a scratch on her face. She reported that Allen had pushed her head into a wall in their children's bedroom. Defendant was arrested in connection with this incident. Further, the parties stipulated that the medical records for East Jefferson General Hospital would establish that Mary Beth Snyder was admitted for medical treatment of injuries to her head on June 11, 1995.

[13] Sergeant Bonura testified that, on June 18, 1995, he was dispatched to a residence on Wilker Neal in response to an aggravated burglary. Upon arrival, he observed that the victim, Mary Beth Snyder, had sustained a puncture wound to her neck. Sergeant Bonura interviewed witnesses and developed Allen Snyder as a suspect. Further, the parties stipulated that the medical records for East Jefferson General Hospital revealed that Mary Beth Snyder was admitted for treatment of numerous deep puncture wounds on June 18, 1995.

Not long after Howard Wilson stopped his car in front of Mary Beth's parents' house, Allen yanked open the driver's side door, leaned over Howard Wilson, and stabbed Mary Beth in the face, which, according to Allen "slowed her down." Allen then "tussled" with Howard, who "got stabbed" because he floored the car's accelerator causing Allen to fall onto Howard during the fight. At some point, Howard Wilson exited his car and stumbled down the street. Allen then got into Wilson's car and attempted to drive off with Mary Beth, who fought and pled for her life. Almost immediately, however, Allen crashed the car into a nearby fire hydrant then fled.[14]

That night, Gwendolyn Williams was walking home on Wilker Neal Street when she observed a man "stooping down on the side of a trailer" with a knife. She saw the man run from behind the trailer toward a car parked across the street, then open the driver's door, jump inside, and start "tussling" with the driver. When the driver exited the car, Ms. Williams observed that his "throat was cut." Then, the car moved forward until it hit a fire hydrant.

According to Ms. Williams, she could hear Mary Beth Snyder, who was inside the car, screaming for help while the man, who she recognized as Mary Beth's husband, "started cutting on her." Ms. Williams, who had known Mary Beth for a long time, screamed at the man, who jumped out of the car and fled. Ms. Williams then helped Mary Beth, who was cut "everywhere she could be cut" to her mother's house and waited for the paramedics and the police to arrive.

Deputy Michael Cooke of the Jefferson Parish Sheriff's Office ("JPSO") was on patrol when he was dispatched to a "traffic accident" at 312 Wilker Neal Street. When he arrived at the scene, he noticed that a white car had struck a fire

[14] At trial, Allen testified that, when he approached the car, he observed Mary Beth and Howard kissing. He further testified that Howard Wilson "jumped up and that's how the scuffle started." Allen testified that Wilson was armed also. Further, Allen disarmed him then Wilson ran away. Finally, after trying to remove Mary Beth from the car, Allen eventually ran back to his car, and went home.

hydrant. There were no passengers inside the vehicle; however, large amounts of blood were present on the ceiling and dashboard. Deputy Cooke then located Howard Wilson and Mary Beth Snyder, who each had sustained wounds that appeared to be from a sharp instrument, such as a knife. After both victims were determined to be free of weapons, they were rushed to the hospital.

According to medical records that were introduced at trial, Howard Wilson died from exsanguination caused by sharp force injuries inflicted with a double-edged blade. Dr. Susan Garcia, an expert forensic pathologist who performed the autopsy on the victim, testified that Howard Wilson sustained nine sharp force injuries to his upper torso. Of those nine, two wounds, which punctured his lung and opened an artery, were lethal. The manner of Mr. Wilson's death was homicide.[15]

Meanwhile, as a result of investigation, Allen Snyder, defendant herein, was developed as a suspect. Approximately 12 hours later, defendant called the police claiming that he "cut some people and that he was considering suicide," and requested that an officer be sent to his house.

Officer Vic Giglio of the Kenner Police Department was dispatched to 508 Hanson Street, in Kenner, in response to the call. Defendant allowed Officer Giglio to enter his house then retreated to another room in the house, where he continued to speak with the dispatcher. Defendant did not have any visible injuries. Almost immediately, Sergeant Giglio realized that defendant was wanted for questioning regarding the homicide on Wilker Neal so he detained defendant for the Jefferson Parish Sheriff's Office.

[15] That night, Mary Beth Snyder sustained 19 stab wounds, which required surgical intervention and hospitalization.

Detective Debbie Labit of the JPSO arrived at defendant's home and advised him of his *Miranda*[16] rights. She observed injuries to defendant's right hand, which appeared to be fresh and "indicative of offensive-type of injuries during an altercation where a knife is used." Detective Labit had defendant transported to the Detective's Bureau, where defendant told her that "he had cut them and that he had been beaten up emotionally by his ex – by his wife and that during the cutting, that the male had taken the knife and fled with the knife."[17]

Defendant's statement was played for the jury. In his statement, defendant indicated that he drove to Wilker Neal Street to find his wife and who was with her. Defendant stated that, when Mary Beth and Howard Wilson drove up, he was going to leave but decided to approach them with a knife. Defendant indicated that he intended to "scare her and her friend" "to make 'em talk to me." Defendant stated that he walked up to the white car, opened the driver's side door, and told Howard Wilson "we have to talk." According to defendant, Howard Wilson then "jumped up" and they started to "scuffle." Defendant stated that he pushed the victim back into the car, and that both he and the victim were armed with knives.

Defendant stated, "my wife, she got stabbed first" then Howard Wilson got stabbed because he pressed the accelerator, which caused defendant to fall onto Wilson. Next, Wilson exited the car and ran one way while defendant ran the other way. Defendant admitted that he threw the knife away as he fled.

On August 16, 1995, Lieutenant Schultz prepared and participated in the execution of a search warrant for defendant's residence and his vehicle. In defendant's house, deputies recovered a white t-shirt hidden in the attic that tested positive for blood consistent with Howard Wilson's DNA.

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[16] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
[17] The weapon was never recovered.

Further, at trial, Mary Beth identified defendant, who is now her ex-husband, as the person who stabbed her and Howard Wilson on the night of August 16, 1995. She also testified that neither she nor Howard Wilson had a weapon of any sort during the altercation in question. After hearing the testimony and reviewing the evidence, the twelve-person jury unanimously found defendant guilty as charged of second degree murder.

Law and Argument

On appeal, defendant raises three assignments of error: first, the trial court erred in denying his motion for mistrial; second, the trial court erred in allowing the state to introduce other crimes evidence; and third, the trial court erred in allowing the state to read Mr. Snyder's personal letters even though they were never offered or intended to be introduced at trial.

In his first assignment of error, defendant argues that the trial court erred in denying his motion for mistrial. Specifically, defendant contends that a mistrial was warranted when the jury was shown his advice of rights form, which indicated that he was charged with first degree murder. Defendant submits that this information was prejudicial.

In response, the State argues that pursuant to La. C.Cr.P. art. 841, defendant failed to inform the trial court of the basis for his objection at the time of occurrence. Thus, the State contends that this issue was not preserved for appeal. Specifically, the State asserts that defendant did not inform the trial court of why the jury "may have been prejudiced." The State alternatively submits that there is no indication in the record that the jury ever saw the portion of the form that indicated defendant was originally arrested for first degree murder, which tends to indicate that defendant cannot substantiate his claim of prejudice. The State further contends that, even if the jurors did see the subject reference on the form,

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there was no showing that any of the jurors were influenced or could not render a fair and impartial verdict based on the evidence presented, or that defendant's presumption of innocence was destroyed.

At trial, during the State's direct examination of Detective Debbie Labit, the prosecutor introduced the document that defendant signed with Detective Labit, in which defendant waived his *Miranda* rights. The State offered the document into evidence without objection by defendant and the trial court admitted it. When the State requested publication of the document to the jury, the document was momentarily shown via overhead projector.

The defense team immediately asked for a bench conference and alerted the trial judge and the prosecutors that the document contained that language, "You are under arrest for and will be charged with First Degree Murder." The defense counsel moved for a mistrial on the basis that the information was "prejudicial."

After discussion, the trial judge determined that the language was an oversight to all counsel, instructed the State to redact the language from the document, and denied defendant's motion for mistrial. Specifically, the trial judge noted that the document was visible for such a "brief period of time, that any juror would [not] have ... noticed that or if they did, place any sort of significance on it....but I don't think that it would prejudice the jury to an extent that they couldn't make a fair and impartial decision."

First, this Court has held that to preserve the right to seek appellate review of an alleged trial court error, a party must state an objection contemporaneously with the occurrence of the alleged error, as well as the grounds for that objection. La. C.Cr.P. art. 841; *State v. Smith*, 11-638 (La.App. 5 Cir. 3/13/12), 90 So.3d 1114, 1123. An objection made after the evidence is before the jury is too late. *Id.* The

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contemporaneous objection rule is also applied to motions for mistrials. *Smith supra.*

Here, the defendant moved for a mistrial on the basis that the jury was "prejudiced" by language in a document that was introduced into evidence without objection. The defendant did not offer any further argument regarding how the jury was prejudiced by the language on the document.

A defendant is limited on appeal to those grounds articulated at trial. *State v. Jackson,* 450 So.2d 621 (La.1984); *State v. Styles*, 96-897 (La.App. 5 Cir. 3/25/97), 692 So.2d 1222, 1228 n.2, *writ denied*, 97-1069 (La. 10/13/97), 703 So.2d 609. Here, defendant failed to articulate grounds for his objection at trial so defendant has no grounds to raise on appeal. Thus, under La. C.Cr.P. art. 841, this issue was not preserved for appeal.

Furthermore, even if this error had been preserved for appeal, we would find no abuse of the trial court's discretion in denying defendant's motion for mistrial. A mistrial is a drastic remedy and, except in instances in which a mistrial is mandatory, is warranted only when a trial error results in substantial prejudice to defendant, depriving him of a reasonable expectation of a fair trial. *State v. Dorsey*, 11-745 (La.App. 5 Cir. 4/24/12), 94 So.3d 49, 56, *writ denied*, 12-998 (La. 10/12/12), 99 So.3d 39. Whether a mistrial should be granted is within the sound discretion of the trial court and the denial of a motion for mistrial will not be disturbed absent an abuse of discretion. *Id.*

When the conduct does not fall within the mandatory mistrial provisions of La. C.Cr.P. art. 770,[18] the judge has the sound discretion to determine whether the

[18] La. C.Cr.P. art. 770 provides the following regarding prejudicial remarks:
Upon motion of a defendant, a mistrial shall be ordered when a remark or comment, made within the hearing of the jury by the judge, district attorney, or a court official, during the trial or in argument, refers directly or indirectly to:
(1) Race, religion, color or national origin, if the remark or comment is not material and relevant and might create prejudice against the defendant in the mind of the jury;

activity or comment so prejudiced the defendant that he could not receive a fair trial. *State v. Talbot*, 408 So.2d 861, 866 (La. 1980); *State v. Chairs*, 12-363 (La.App. 5 Cir. 12/27/12), 106 So.3d 1232, 1249. The mere possibility that a defendant was prejudiced is insufficient to support an appellate court's finding of reversible error. *State v. Bradham*, 638 So.2d 428, 429 (La.App. 5 Cir. 5/31/94).

In this case, the trial judge determined that a brief glimpse of language in a document was not sufficient to establish prejudice in this case. The defendant has not shown in his appellate argument that the trial court abused his discretion when he made that determination. Finally, the mere possibility that a defendant was prejudiced does not constitute reversible error. *Bradham, supra.* Based on the foregoing, we find no error in the trial judge's denial of defendant's motion for mistrial. This assignment of error lacks merit.

In his second assignment of error, defendant argues that the trial court erred in allowing the State to introduce other crimes evidence under La. C.E. art. 404(B)(1). Specifically, defendant contends that the trial court erred in allowing the introduction of previous domestic disputes between defendant and his wife, which he maintains served no purpose other than to depict him as a chronic domestic violence offender. Defendant argues that this error was not harmless because, without this evidence, the jury would likely have convicted him of manslaughter, rather than second degree murder.

The State responds that this issue was previously litigated so this Court could decline further review under the "law of the case" doctrine. The State

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(2) Another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible;
(3) The failure of the defendant to testify in his own defense; or
(4) The refusal of the judge to direct a verdict.
An admonition to the jury to disregard the remark or comment shall not be sufficient to prevent a mistrial. If the defendant, however, requests that only an admonition be given, the court shall admonish the jury to disregard the remark or comment but shall not declare a mistrial.

concludes that reconsideration should not be afforded because the defense has failed to show palpable error or manifest injustice in this Court's prior ruling.

Between October 21, 2009 and April 26, 2010, the State filed its original and two amended Notices of Intent to Use Evidence of Other Crimes at defendant's trial. The *Prieur* hearing was held on May 4, 2010. At the hearing, the State sought to introduce evidence that defendant had committed other bad acts against his wife in the months leading up to the attack that resulted in the instant homicide. These acts included: simple battery on March 11, 1995, when defendant caused Mary Beth's head to strike the interior window of his vehicle, causing injury; aggravated battery in May of 1995, when defendant hit Mary Beth in the leg with a baseball bat while she was sleeping; assault in May of 1995, when defendant threatened to "get rid of" Mary Beth; arrest for simple battery on June 11, 1995, when defendant pushed Mrs. Snyder's head through the sheetrock of their children's bedroom; aggravated battery on June 18, 1995, when defendant disabled the electricity to Mary Beth's parents' house, illegally entered the house, and stabbed Mary Beth nine (9) times with a screwdriver, which required hospitalization; and, finally, an incident in July of 1995, in which defendant called Mary Beth stating that "he better not catch her out on the street."

At that hearing, the State argued that the evidence showed that defendant had a history of harassing, threatening, and physically abusing Mary Beth in the months prior to the attack on her and the victim. The State indicated that defendant was extremely jealous, frequently accused Mary Beth of seeing other men, and followed his accusations with physical violence. The State contended that, on the night in question, defendant's jealousy again caused him to attack and severely injure Mary Beth and kill Howard Wilson.

The State contended that the evidence of defendant's escalating attacks showed defendant's intent, motive, identity, preparation, and plan. Specifically, the State contended that the prior bad acts against Mary Beth demonstrated defendant's continuing intent to keep her from either leaving him and/or seeing other men and motive for the fatal attack on Howard Wilson. Further, the evidence reflected preparation and plan as well as defendant's intent to kill or to inflict great bodily harm on the victim, which is an element of the charged crime. The State maintained that the prior bad acts put the attack on the victim in context and, thus, were relevant. Finally, the State argued that the probative value outweighed any prejudicial effect to defendant.

On May 27, 2010, the trial judge granted the State's *Prieur* motions, which would allow the State to introduce this evidence at trial. On July 23, 2010, defendant sought supervisory review of the trial court's ruling with this Court. On August 20, 2010, this Court denied relief, as follows, in pertinent part:

> Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401. All relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.
>
> Evidence of other crimes or bad acts committed by a criminal defendant is generally not admissible at trial. La. C.E. art. 404(B)(1); *State v. Prieur*, 277 So.2d 126, 128 (La. 1973). However, when such evidence tends to prove a material issue and has independent relevance other than showing that the defendant is of bad character, it may be admitted by certain statutory and jurisprudential exceptions to the exclusionary rule. *State v. Aleman*, 01-743 (La.App. 5 Cir. 1/15/02), 809 So.2d 1056, 1065.
>
> La. C.E. art. 404(B)(1) provides:
>
> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for

other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

In order for other crimes evidence to be admitted, certain requirements must be met. First, one of the above-enumerated factors must be at issue, have some independent relevance, or be an element of the crime charged in order for the evidence to be admissible. *State v. Jackson*, 625 So.2d 146, 149 (La. 1993). Second, the State must prove that the defendant committed the other acts by a preponderance of the evidence. *State v. Hernandez*, 98-448 (La.App. 5 Cir. 5/19/99), 735 So.2d 888, 898-899, *writ denied*, 99-1688 (La. 11/12/99), 750 So.2d 194; *Huddleston v. U.S.*, 485 U.S. 681, 685, 108 S.Ct. 1496, 1499, 99 L.Ed.2d 771 (1988). Third, the requirements for admission of such evidence, set forth in *State v. Prieur*, 277 So.2d 126, 130 (La. 1973), must be met: Within a reasonable time before trial, the State must furnish to the defendant a written statement of the acts or offenses it intends to offer, describing same with the general particularity required of an indictment or information. In the written statement, the State must specify the exception to the general exclusionary rule upon which it relies for the admissibility of the evidence of other acts or offenses. Finally, the probative value of such evidence must be weighed against its prejudicial effect. *State v. Lisotta*, 97-406 (La.App. 5 Cir. 2/25/98), 712 So.2d 527, 530.

Additionally, the probative value of the extraneous evidence must outweigh its prejudicial effect. *State v. Maise*, 759 So.2d at 894. The burden is on the defendant to show that he was prejudiced by the trial court's admission of *Prieur* evidence. *State v. Temple*, 01-655 (La.App. 5 Cir. 12/12/01), 806 So.2d 697, 709. Absent an abuse of discretion, a trial court's ruling on the admissibility of evidence pursuant to La. C.E. art 404(B)(1) will not be disturbed. *State v. Williams*, 02-645, p. 16 (La.App. 5 Cir. 11/26/02), 833 So.2d 497, 507, *writ denied*, 02-3182 (La. 4/25/03), 842 So.2d 398.

After reviewing the writ application, we find no abuse of the trial court's discretion in this case. The application reflects that the state had two primary justifications for introducing evidence of bad acts into the record: (1) to prove that Relator had a motive to kill the victim, and (2) to prove that Relator had the specific intent to kill or to inflict great bodily harm upon the victim.

Contrary to Relator's assertion, the trial court's reliance on the factually similar case of *State v. Colbert*, 2007-0947 (La.App. 4 Cir. 7/23/08), 990 So.2d 76 was not misplaced. In *Colbert*, the state sought to introduce evidence of several bad acts or other crimes the defendant committed before attempting to kidnap his ex-girlfriend and killing his ex-girlfriend's friend. The state allowed the defendant's ex-girlfriend to testify about incidents that occurred in the summer of

> 2003, even though the police were not called to respond to those incidents.
>
> The Fourth Circuit found no error in the trial court's ruling which allowed the state to introduce the evidence. According to Jennifer Alexander (the defendant's ex-girlfriend), the defendant threatened to harm her and any man with whom he caught her, as is the case here. *Id.* at 88. The defendant committed a series of prior bad acts that were "all part of a pattern of the appellant's obsession with Ms. Alexander." *Id.* The Fourth Circuit concluded that "evidence of the prior incidents was relevant to show the appellant's intent to murder Jefferson as well as his motive for doing so." *Id.* The Fourth Circuit also concluded that the probative value of evidence of the prior offenses far outweighed its prejudicial effect. *Id.*
>
> We similarly conclude that evidence of bad acts or other crimes the defendant committed prior to being charged with second-degree murder are relevant to show intent and motive. We also conclude that the probative value of evidence of the prior bad acts outweighs its prejudicial effect.

State v. Snyder, 10-628 (La.App. 5 Cir. 8/20/10) (unpublished writ disposition), *writ denied*, 10-2129 (La. 11/19/10), 49 So.3d 391.

On appeal, defendant presents essentially the same argument as he made in his writ application. As noted previously, the State urges this Court to refuse reconsideration under the "law of the case" doctrine.

Under the discretionary principle of "law of the case," an appellate court may refuse to reconsider its own rulings of law on a subsequent appeal in the same case. *State v. Burciaga*, 05-357 (La.App. 5 Cir. 2/27/06), 924 So.2d 1125, 1128; *State v. Junior*, 542 So.2d 23, 27 (La.App. 5 Cir. 1989), *writ denied*, 546 So.2d 1212 (La. 1989). The principle is applicable to all decisions of an appellate court; not solely those arising from full appeal. *State v. Johnson*, 06-859 (La.App. 5 Cir. 4/11/07), 957 So.2d 833, 840. Reconsideration is warranted, however, when, in light of a subsequent trial record, it is apparent that the determination was patently erroneous and produced unjust results. *In re K.R.W., Jr.*, 03-1371 (La.App. 5 Cir. 5/26/04), 875 So.2d 903, 905; *State v. Davis*, 03-488 (La.App. 5 Cir. 11/12/03), 861 So.2d 638, 641, *writ denied*, 03-3401 (La. 4/2/04), 869 So.2d 874.

In this case, the record reflects that, at trial, witnesses, including Mary Beth and several police officers, testified regarding five violent incidents that were the subject of the *Prieur* hearing and subsequently reviewed by this Court.[19] Neither our review nor defendant's brief reveals any new facts adduced at trial that would cast aspersions on this Court's previous ruling. Further, defendant does not cite to any statutory or jurisprudential authority that reveals that this Court's prior disposition was patently erroneous and produced an unjust result. Accordingly, in this instance, we will consider our previous ruling on the trial court's granting of the State's *Prieur* motion as the "law of the case" and decline reconsideration. *State v. Jones*, 08-306 (La.App. 5 Cir. 10/28/08), 998 So.2d 173, 177, *writ denied*, 08-2895 (La. 9/4/09), 17 So.3d 947, *cert. denied*, 130 S.Ct. 1519, 176 L.Ed.2d 126 (2010); *State v. Lande*, 06-24 (La.App. 5 Cir. 6/28/06), 934 So.2d 280, 299, *writ denied*, 06-1894 (La. 4/20/07), 954 So.2d 154; *State v. Hollimon*, 04-1195 (La.App. 5 Cir. 3/29/05), 900 So.2d 999, 1001.

In his final assignment of error, defendant argues that the trial court erred in allowing the State to read defendant's personal letters even though they were never offered or intended to be introduced at trial. Specifically, defendant claims that he was denied his right to present a defense when his cross-examination of Mary Beth Snyder was "stymied" by the trial court when the trial judge required him to disclose Mary Beth's letters to him, to the State. Defendant maintains that by ordering him to provide the subject "impeachment" letters to the State, defendant was forced to stop questioning Mary Beth Snyder about her true motives in the

[19] Those incidents were: (1) simple battery on March 11, 1995, when defendant caused Mary Beth's head to strike the interior window of his vehicle, causing injury; (2) aggravated battery in May of 1995, when defendant hit Mary Beth in the leg with a baseball bat while she was sleeping; (3) assault in May of 1995, when defendant threatened to "get rid of" Mary Beth; (4) arrest for simple battery on June 11, 1995, when defendant pushed Mrs. Snyder's head through the sheetrock of their children's bedroom; and (5) aggravated battery on June 18, 1995, when defendant disabled the electricity to Mary Beth's parents' house, illegally entered the house, and stabbed Mary Beth nine(9) times with a screwdriver, which required hospitalization.

case for fear that the trial court would require further revelation of the content of additional letters in his possession.

In response, the State argues that defendant's argument on appeal is not the argument that defendant raised at trial, which precludes him from asserting this issue. Specifically, the State contends that, at trial, when the letters were discussed, defendant argued that his personal letters were protected from discovery by the State, yet, on appeal, defendant argues that his right to confrontation was violated because he had to stop questioning Mary Beth about her letters to avoid having to disclose those letters to the State. Alternatively, the State argues that defendant failed to proffer the questions it would have asked Mary Beth, and therefore, is unable to show how his cross-examination was "stymied."

During cross-examination of Mary Beth Snyder, defense counsel asked her if she had communicated with the defendant since 1996, and Mary Beth replied that she had spoken to him over the phone and had written letters to him. Defense counsel questioned Mary Beth about her intent and state of mind when she wrote to defendant then read small excerpts from two documents. The State vociferously objected to defense counsel reading to the jury from a document that had neither been authenticated nor previously disclosed to the prosecution. The trial judge admonished defense counsel not to read from the documents.

Immediately thereafter, the prosecution objected to the use of the purported letters from Mary Beth, based on defense counsel's failure to disclose the letters to the prosecutor through the State's request for discovery. The State requested an *in camera* inspection of the documents by the trial judge to determine if the letters contained evidence that the State may be entitled to discover regarding Mary Beth's state of mind when she wrote the letters. After reviewing two separate letters that defense counsel had referenced while cross-examining Mary Beth

Snyder, the trial judge ruled that, although defense counsel may not intend to introduce the letters, the letters contained information regarding Mary Beth Snyder's state of mind that the State was entitled to know "to conduct a meaningful redirect examination."

In response to the trial judge's ruling, defense counsel informed the trial judge during a bench conference, "given the court's prior ruling regarding the two letters, the 1998 letter and the 1999 letter authored by Mrs. Snyder and sent to Mr. Snyder, I would have had additional questions regarding additional letters written by her but given the court's ruling, I'm going to stop any questioning along the lines of those letters." Defense counsel revealed that he was declining further cross-examination on the letters to avoid the risk of the trial judge ordering the defense team to "turn over the letters[,] which are not discoverable in our opinion."

The trial judge noted, "None of my rulings prevented [defense counsel] from asking your questions as it relates to the letters as of this point in time. I mean, we had the court reporter review the brief series of questions [defense counsel] asked about and you were allowed to do that." When the prosecutor suggested that defense counsel proffer the questions that he was choosing not to ask Mary Beth because "the appellate court might want to know what ... those questions [are] ... that they've been denied the opportunity to ask," defense counsel "declined."

First, we note that a defendant is limited on appeal to those grounds articulated at trial. *State v. Styles*, *supra*. Here, defendant articulated an evidentiary basis for his objection at trial yet raises different grounds on appeal. A new basis for a claim, even if it would be meritorious, cannot be raised for the first time on appeal. *State v. Jackson*, 04-1388 (La.App. 5 Cir. 5/31/05), 904 So.2d 907, 911, *writ denied*, 05-1740 (La. 2/10/06), 924 So.2d 162. Thus, we find that this issue was not preserved for appeal.

Furthermore, even if the claim had been properly raised in the trial court, the defendant failed to proffer the substance of the "excluded evidence," and, thus, failed to preserve the issue for review by this Court. "Error may not be predicated upon a ruling which ... excludes evidence unless a substantial right of the party is affected, and ... the substance of the evidence was made known to the court by counsel." La. C.E. art. 103(A)(2). "This can be effected by proffer, either in the form of a complete record of the excluded testimony or a statement describing what the party expects to establish by the excluded evidence." *State v. Magee*, 11-0574 (La. 9/28/12), 103 So.3d 285, 326.

This Court has consistently held that when a defendant does not make known the substance of the excluded evidence for the purpose of consideration by the trial and appellate court, the alleged error is not preserved for review on appeal. *See, State v. Massey*, 11-358 (La.App. 5 Cir. 3/27/12), 97 So.3d 13, *writ denied*, 12-0993 (La. 9/21/12), 98 So.3d 332 (this Court held that defendant failed to show that the trial judge's exclusion affected a substantial right where he made no showing of how the excluded testimony was relevant and material to the defense and the record was devoid of any proffer regarding the excluded testimony or the reasons for its admissibility); *State v. Thompson*, 12-409 (La.App. 5 Cir. 12/11/12), 106 So.3d 1102, 1109-10 (defendant chose not to proffer witness' testimony and did not make known the substance of the excluded evidence so this Court held defendant failed to preserve the excluded testimony for appeal by failing to object and failing to proffer the evidence). Here, defendant failed to make known the substance of the allegedly excluded evidence and failed to show that the alleged exclusion affected a substantial right. Accordingly, this issue was not preserved for appeal.

Error patent review

Finally, as is our customary practice, we have reviewed the record for errors patent, pursuant to La. C.Cr.P. art. 920, and found none requiring corrective action.

Conclusion

In conclusion, we find no merit in defendant's arguments on appeal. Defendant's conviction and sentence are hereby affirmed.

AFFIRMED