No. 20-7674

In the Supreme Court of the United States

KAUNTAU REEDER
Petitioner

v.

TIMOTHY HOOPER, WARDEN,
Respondent.

ON PETITION TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

JASON ROGERS WILLIAMS
Orleans Parish District Attorney
G. BEN COHEN*
Chief of Appeals
619 S. White Street
New Orleans, La. 70119
(504) 822-2414
bcohen@orleansda.com
**Counsel of Record for Respondent*

EXHIBIT A

STATE OF LOUISIANA
VERSUS
KAUNTAU REEDER

FILED
TIME
AUG 02 2021
SIG:
DEPUTY CLERK
CRIMINAL DISTRICT COURT

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
CASE NO. 366-001, SECTION "E"

FILED: _____ DEPUTY CLERK: _____

SECOND SUPPLEMENT TO DEFENDANT/PETITIONER'S PENDING APPLICATION FOR POST CONVICTION RELIEF WITH THE DOCUMENTS PROVIDED BY THE CURRENT DISTRICT ATTORNEY'S OFFICE

Now into Court through undersigned counsel, comes Kuantau Reeder, the Defendant/ Petitioner herein, who files this Second Supplement to his pending Application for Post Conviction Relief (PCR) as a result of documentation recently provided to his counsel by the Civil Rights Division of the current New Orleans District Attorney's Office in accordance with their professional obligation under the Louisiana Rules of Professional Conduct and their legal duty under *Brady v. Maryland,* 373 U.S. 83 (1965) and its progeny. In order to set forth the relevant details and circumstances of this disclosure, counsel for Mr. Reeder informs this Honorable Court of the following.

INTRODUCTION

As set forth in Mr. Reeder's original Application for PCR and the Supplement filed in April of 2021, he is currently in the custody of the Louisiana Department of Corrections and is incarcerated in the Louisiana State Penitentiary in Angola, Louisiana, after having received a sentence of life in prison following his conviction for second degree murder. Mr. Reeder's conviction was obtained in violation of the Constitution of the United States and therefore must be set aside in accordance with federal jurisprudence and Louisiana Code of Criminal Procedure Article 930.3 (1).

RELEVANT PROCEDURAL HISTORY

On October 7, 1993, Kuantau Reeder was indicted for the second degree murder of Mark Broxton. Mr. Reeder's first trial, which began on July 8, 1994, ended in a hung jury. He was retried by the Orleans Parish District Attorney's Office, and at the conclusion of that three day trial on July 13, 1995, the jury found him "guilty as charged" by a non-unanimous verdict.[1] The Fourth Circuit Court of Appeal affirmed Mr. Reeder's conviction (*State v. Reeder, 698* So.2d 56 (La. App. 4 Cir. 1997).

[1] As explained below, this fact has now been confirmed by records in possession of the Orleans Parish District Attorney's Office.

CURRENT POSTURE OF THE CASE

Mr. Reeder currently has an Application for Writ of Certiorari pending before the United States Supreme Court seeking review of the U. S. Fifth Circuit Court of Appeals' refusal to reverse the federal district court's denial of his petition for writ of habeas corpus relief. He comes before this Court now due to two timely filed Supplements to his original state Application for Post Conviction Relief (PCR) in order that the trial court may conduct an evidentiary hearing on newly disclosed favorable information and its bearing on his PCR Application. Mr. Reeder's original petition alleged that the prosecution failed to inform trial counsel that its star witness – upon whose credibility the case depended - had a federal conviction for lying.

Within the last several weeks, additional non-disclosed impeachment information about Earl Price (the state's only eye-witness to the homicide) - that has a direct bearing on the *Brady* violation set forth in Mr. Reeder's PCR application - has come to the attention of present defense counsel as a result of disclosure by the current D.A.'s Office. Assistants in that office have also disclosed relevant evidence about another identified suspect to the murder of Mark Broxton. These uncontested non-disclosures by the 1994-1995 Orleans Parish D.A.'s Office violated the State's obligation under *Brady v. Maryland*, 373 U.S. 83 (1965) and *Giglio v. United States,* 405 U.S. 150 (1972). The defense seeks to provide this new information to the Court for its consideration with reference to Mr. Reeder's *Brady* violation claim.

In addition, in support of the good faith *Ramos* claim raised in the First PCR Supplement filed in this matter, the defense has now acquired proof that Mr. Reeder's conviction for second degree murder was the result of a non-unanimous verdict and he desires to provide this information to the Court.[2] The evidence consists of documentation recently provided to the defense by the current D.A.'s Office from Mr. Reeder's case file which confirms that his 1995 conviction was indeed the result of an 11 to 1 guilty verdict.

DEFENDANT/PETITIONER'S SUPPLEMENTAL EVIDENCE

I. SUPPLEMENT CONCERNING THE FAILURE OF TRIAL COUNSEL FOR THE ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE TO DISCLOSE ADDITIONAL IMPEACHMENT INFORMATION ABOUT THE STATE'S STAR WITNESS EARL PRICE AND EXCULPATORY

[2] *Ramos v. Louisiana,* ___U.S. ___(2020); 140 S. Ct. 1390 (2020). See also: *Edwards v. Vannoy,* ___ U.S. ___ (2021): 141 S. Ct. 1547 (2021).

EVIDENCE RELATIVE TO ANOTHER IDENTIFIED SUSPECT

After reviewing the PCR Application and First Supplement thereto filed on behalf of Mr. Reeder, the Assistant D. A. handling this matter for the New Orleans District Attorney's Civil Rights Division conducted a thorough review of the District Attorney's file for Mr. Reeder's case. During that review, it was discovered that prior to Mr. Reeder's trial, the Assistant District Attorney who tried the case personally met with the State's star witness Earl Price in preparation for trial. According to the prosecutor's handwritten notes (a copy of which were provided to defense counsel and are attached as "Exhibit "1A" and "Exhibit 1B.") Mr. Price repeated several times during his meeting with the prosecutor that, when presented by NOPD with a six person photographic lineup, he had **not** picked out photo #6 - which was the photo of Mr. Reeder - but instead had identified photo #5 as the person whom he saw shoot the decedent Mark Broxton. Photo #5 was that of Berzeracque Johnson, aka Byrd, whose name had been provided to NOPD as a possible suspect with an articulated motive to kill the victim. The prosecutor also wrote in his notes that Price had changed his story several times and suggested after the first trial ended in a hung jury, that the case should be reduced because Price was not credible as "each time Price tells his story, it changes." (See "Exhibit 2" which is attached.)

Though defense counsel was informed that Johnson's name had been provided to NOPD as the possible shooter of the decedent by several individuals because he had told people that he would "get Broxton" for talking to his girlfriend while he had been in jail, the defense was not advised that Broxton was shot the **very** next day after Johnson was released from prison. Notes in the D.A.'s file also reported that when Johnson called his girlfriend "about ten minutes" after the murder to say that Broxton had been shot (the fact of his call was revealed to trial counsel), he asked her for the phone number of Broxton's mother. The newly provided information reveals that when the victim's mother (who is described in the page of the undisclosed notes attached as "Exhibit 3A" as saying that her first thought was that Byrd had killed her son), came home from work the day of her son's murder, there was a voice message on her phone (which she accidentally erased) saying, "Today, I killed that dog." (See "Exhibit 3B" which is attached.)

A copy of the written impeachment evidence about Price's photo identification of photo #5, the prosecutor's questions about his credibility, and the additional incriminating

evidence about Berzeracque Johnson was not provided to Mr. Reeder's trial counsel; in addition, the information was never verbally revealed to them. Review of the material sent to Mr. Reeder by the District Attorney's Office in response to the Public Records Request he made to the D. A.'s Office after his conviction became final confirms that the information was also withheld from him.

Sadly, history has documented that this glaring failure of the Orleans Parish District Attorney's Office under the leadership of D. A. Harry Connick to correctly comprehend and honor its obligation under Louisiana Rule of Professional Conduct 3.8(d)[3] and its constitutional duty under *Brady* was not a unique occurrence.[4]

II. SUPPLEMENT CONCERNING MR. REEDER'S CLAIM THAT HE WAS CONVICTED BY A NON-UNANIMOUS VERDICT AT HIS 1995 TRIAL FOLLOWING HIS 1994 TRIAL WHICH ENDED IN A HUNG JURY

In the Original Application for PCR filed on behalf of Kuantau Reeder, counsel alleged a good faith belief that the guilty verdict returned in his second trial in 1995 was non-unanimous. Counsel reiterated this belief in subsequent pleadings filed on behalf of Mr. Reeder, including: the Application for a Certificate of Appealability (p.10) and the subsequent Appellate Brief filed with the U. S. Fifth Circuit Court of Appeals (p. 3); and the

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[3] Louisiana Rule of Professional Conduct 3.8 concerning "Special Responsibilities of a Prosecutor" states as follows:

> The prosecutor in a criminal case shall:
>
> . . . .
>
> d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense. . . .

[4] Counsel's research to date has not determined if the New Orleans District Attorney's Office 1987 written *Brady* Policy had been amended or corrected by the time of Mr. Reeder's 1994 and 1995 trials. If not, then it "... was notably inaccurate, incomplete, and dated." *Connick v. Thompson*, 563 U.S. 51, 98-99 (2011); (Ginsberg, J., dissenting).

As Justice Ginsberg continued:

> The 1987 Office policy manual included exactly four sentences on *Brady*: "In most cases, in response to the request of defense attorneys, the Judge orders the State to produce so called *Brady* material --- that is, information in possession of the State which is exculpatory regarding the defendant. The duty to produce *Brady* material is ongoing and continues throughout the entirety of the trial. Failure to produce *Brady* material has resulted in mistrials and reversals, as well as extended court battles over jeopardy issues. In all cases, a review of *Brady* issues, including apparently self-serving statements made by the defendant, must be included in a pre-trial conference and each Assistant must be familiar with the law regarding exculpatory information possessed by the State. *Id.* at 98 n. 15.

Application for Writ of Certiorari filed in the United States Supreme Court (p. 6).

At no time, in its reply or opposition to any of these pleadings, did the Orleans Parish District Attorney's Office ever acknowledge that defense counsel's belief in a non-unanimous jury verdict was correct and that, in fact, it had documentation in its case file confirming that the guilty verdict returned in Mr. Reeder's 1995 trial was an 11-to-1 verdict. (A copy of the jury form with the trial prosecutor's notation about the verdict is attached as "Exhibit 4.")

In the First Supplement to Mr. Reeder's PCR Application, counsel addressed the possible significance of a non-unanimous verdict in light of the United States Supreme Court's decision in *Ramos v. Louisiana*, ___U.S. ___ (2020); 140 S. Ct. 1390 (2020). Given the ongoing activity of the Orleans Parish District Attorney's Office with respect to the issue of non-unanimous jury verdicts and possible state legislative action - and despite the Supreme Court's decision in *Edwards v. Vannoy*, ___ U.S.. ___ (2021); 141 S. Ct. 1547 (2021) - counsel for Mr. Reeder has attached the recently provided non-unanimous verdict documentation.

CONCLUSION

WHEREFORE, for the legal authority set forth in his Application for Post Conviction Relief, the Supplement filed in April of 2021 and this Second Supplement, Petitioner/Defendant Kuantau Reeder moves this Court to conduct a contradictory hearing on significance of the evidence newly disclosed to the defense, and after so doing, grant Mr. Reeder the relief to which he is lawfully entitled and reverse his conviction in this matter.

Respectfully submitted,

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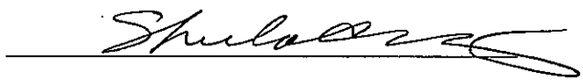
Attorney for Kuantau Reeder

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplement to Defendant/Petitioner's Application for Post-Conviction Relief has been delivered by hand, facsimile transmission, electronic mail or by placing same in the U.S. mail, properly addressed and first-class postage paid, this 30th day of July, 2021, to the Assistant District Attorney Biddish Sarma of the Civil Rights Division of the Orleans Parish District Attorney's Office



Earl Price – Office Interview
10-19-93

3/4 Cherokee –
Mom is Full Blooded Cherokee

Lived in Gulfport 37 yrs ago –
moved to D.O.T. in 1989 b/c Bus Father
Fred Price, died + he lives in his house.
Has 7 sisters, + 4 Brothers.
He is oldest now; older Bro died in
car wreck

Born in Prentiss, MS. Lived in
Gulfport.
Worked in tire shop – big truck
tires
Never seen sick b/c of Cherokee.
Jogs 5 miles a day – wears earphones.
Does mechanic work also.

~~Lived~~ from country – walked 5-6 miles
to school every day.

Has no kids but talks to all kids in
projects b/c feels he was saved when he
didn't die from bullets
Shot 3 yrs ago – 7 bullets. In
intensive care 3 days.

Kids call him "Mr. Red"

Tells kids to tell the truth

CERTIFIED DA OFFICE COPY

Kentucky - went to college for 2 years studied psychology.
They told him he didn't have good sense.

Kentucky Reader -
Didn't know him - Never saw him before.
(V) on phone. D walked up + talked to (V). (V) hung up.
At first D had back to him. (V) then walked away as D turned around to face him. Took gun out coat pocket - D'm says to Georgia 1st shot in arm - in muscle
then 2 more shots in abdomen.

He was standing on corner.
(V) went in store paid for cold drink
then fell + he caught him

He then went to van to drive (V) to hospital. Ended up jumping
D comes from around behind store w/ hood over head.
Raymond sitting on car w/. 25 auto.
could have stopped him
D passed him by.
D came by him + looked back at him.
Told police he saw him.

Was 5-10 mins later when D passed by again
No more than 5 ft away - turned around to look @ at him.

CERTIFIED DA OFFICE COPY

When got to back of building he threw jacket in 2nd dumpster. Didn't throw gun away.
Ran went in breezeway

Never know (V) or his mom.

(V) had no weapon.

As was holding (V), was asking for gunman's name (V) said not

(V) Was not in store when police spoke to.

~~Robert~~ Told police he saw (V). Prey

Knows Norma Varisk, b/c had worked

4th + 5th shots hit car. Still daylight

D came from behind store by laundry-
There's another corner door. Go across to Fischer.

Was taking jumper cables off when D passed him.

Raymond right across double highway from him.

Police showed him picture-one shot - he picked out. Signed back of picture #5.

CERTIFIED DA OFFICE COPY

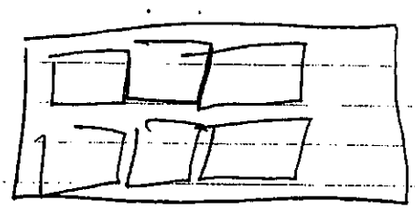
No glasses - sees 20/20.
Was not drinking.
No trouble seeing Δ.

Has great weight
Had gold teeth - saw little smile on Δ's face
Has garden - grows eggplant.
Lives at 325 Pacific Gardena
367-9120

Office Interview
w/ Earl Price
On. 10/27/93

Due to length,
have just included
portion about
photo lineup.

DEFENDANT'S EXHIBIT
Reeder
B



Price says he picked # 5 — that would be Beatrice Johnson

Price is absent that he picked # 5 & not # 6

Price is absent that he pickd out # 5

Detective was typing while statement.

Price says his name will be under # 5

JURY TRIAL REPORT

To: HARRY CONNICK

Submit Mdl 7-8

From: Michael Daniels (Lead Counsel) Melanie Talia (Co-Counsel) Date: July 9, 1994

Section "E" Judge Johnson

Case No. 366-001 Date of B/I 10-08-93 Date of Trial 07-6/7/8-94 Date of Offense 04-13-93

DEFENDENTS NAME	JAIL	AGE	ADDRESS	CHARGE	VERDICT	PREVIOUS RECORD	SENTENCE
Kuantau Reeder	Yes	21	2010 Hendee 3A NOLA	14:30.1	Ilung	'90 PWIT Cocaine & Poss. Cocaine	10yS/S;5yAP

Defense Counsel Loyola Law Clinic Length of Trial 3 days Screened By Doug Freese

Number of Jurors: 12 Length of time jury out 4 hours

Was a pre-sentence investigation ordered? N/A Date set for sentencing N/A

Is defendant eligible for multiple billing? Defendant is a double bill.

Appeal No Remarks Victim is on the pay phone at Julien's when defendant walks up to him and shoots him 4 times. Victim ra into Julien's where he collapsed. Victim died later that night at CHNO. He was conscious when P/Os arrived but refused to say who shot him or why. Victim and defendant have known each other since childhood. Shooting was witnessed by Earl Price and Norma Variste. Only Price would testify. Price has convictions for assault with intent to kill, armed robbery, agg. burglary & felon with a firearm. He's been out of trouble for 20 years. Each time Price tells his story, it changes. Defense was alibi. They put on 3 witnesses to say defendant was on the basketball court when the shots rang out. 2 of the 3 came out of the back & have convictions for narcotics and negligent homicide. Defendant also took the stand.

DPDA FORM 105

Notes From ADA
interview of
V's mother Ms Mcnine
(unsure of date)

Her 1st thought was Byrd was the murderer

Byrd may have thought Mark
turned against him
Byrd said he would get Mark
when he got out
Byrd told this to Kristen Smith
who was Byrd's girlfriend

Mark was killed a few days after
of Byrd got out.

Byrd knew how her phone #
night mark killed - someone
left a msg on her machine
"Tonite I killed that dog"

Mark & Kwantay
they were not friends

Michael Lovick. Mark's friend.
for many years -13 yrs.

they would hang out together.

Easter night - Sunday prior to Mark's
killing.

Mark, Michael, & 3 person went
to A club.

CERTIFIED DA OFFICE COPY

M E M O R A N D U M

TO: CAMILLE BURAS

FROM: MIKE DANIELS MJD
MELANIE TALIA MT

DATE: July 5, 1994

SCREENER: Doug Freese

RE: State v. Kuantau Reeder
Case No. 366-001 "E"
REDUCTION TO 14:31 AND 20 YEARS
W/ MULTIPLE BILL

OK - submitted 7-5-94

I agree w/ plea of have discussed case w/ Mike 7-5-94

PRIOR RECORD

PGAC 14:64 as a Juvenile
PGAC PWITD Crack 4/10/90 340-622 "H"

FACTS

On April 13, 1993, Mark Bruxton (victim) was using the pay phone at Julien's Food Store on Whitney Ave. across from the Fischer Housing Development. The defendant approached Bruxton from behind. They began to argue, Reeder then pulled out a pistol and fired, striking the victim four times. The victim staggered into Julien's and collapsed. The witnesses located on the scene are Kadhim Ali, Ella Fletcher, Earl Price, Salah Abdella and Charley Joseph. Bruxton died later that day but the case was not assigned to Wesley Morris until April 16, 1993.

Bruxton spoke to the scene officers. He said, "He didn't know who shot him or why he was shot." Fletcher said she saw someone fleeing and saw that person discard a jacket in a dumpster. The jacket was recovered and a stamp in the pocket was processed for prints, with negative results. Price told the officers he saw someone running away. Ali Kadhim said he heard 5 shots and the victim came in and collapsed. No other witnesses saw the shooting.

During the course of the investigation, Morris received a phone call from Norma Variste. She said that she observed the shooting and identified the defendant. She would only sign her middle name because she was afraid. She said that she had heard that Bruxton had just purchased heroin prior to being shot. Earl Price missed several appointments with Morris and finally in May, he identified the defendant. Price also gave a statement. Price's statement of facts is basically the same except that he maintains that after Bruxton was shot 4 times, Bruxton entered the store like nothing happened and that he went to the cooler and got a cold drink and then collapsed. Morris issued a warrant. The defendant was arrested August 14, 1993.

REASONS FOR THE REDUCTION

From the very beginning of the investigation, Norma Variste has been hesitant about testifying. That is noted in Morris's supplemental. She was also interested in Crime Stopper money. In the case review sheet, Lisa Lavie emphasized this point and said that Variste should be moved. This case was transferred to Section "E" when Judge Bigelow took the bench. Variste had her number changed and then we located her. I sent a DA subpoena for December 27, 1993, which Variste failed to appear. Variste missed another appointment on January 7, 1994. She missed another appointment on February 2, 1994 after Det. McConnell put the subpoena in her hand. On February 16, 1994, I went to Variste's apartment in the Fischer. She was not happy to see me and said she would not talk. She was supposed to call me but she didn't. She also missed a court date on March 9, 1994 after I spoke to her about it. She again asked about the reward, but she showed no signs of cooperating. I spoke to her again on April 4, 1994 and she said that she would not cooperate. On February 16, 1994, Variste told me that she did not see anything. I spoke to her about moving, and that was no good. I talked to her about the money, and she said she doesn't care. The victim's mother has talked to her and that didn't work. She says she will cooperate and then does not. Melanie and I talked to her on June 29, 1994. We asked her to come to court on July 5, 1994 and she said she would. She told the victim's mother that she would come. Variste failed to appear.

Variste says that she is threatened but is vague and will not tell us who is doing it. We can't help her if she doesn't want our help or won't tell us who is responsible to the threats. Melanie met Variste in another case. Her nephew had his lower leg blown off and he dropped charges for $500.00. We have no reason to believe that she will appear for trial.

That leaves us with Earl Price as our star witness. He has convictions for manslaughter, felon with a firearm, and aggravated assault. These were all committed in Mississippi and he served time in Parcham. He claims that he heard part of the conversation between the Bruxton and Reeder but he says he was standing on DeGaulle closest to Fischer. The phone is across four lanes on DeGaulle and a big neutral ground. The phone is also at the far end of the store. I also spoke to Ali Kadhim and he said that Bruxton stumbled into the store and collapsed. Nothing about getting a cold drink. Kadhim also said that he locked the doors after Mark came in so Price could not have been in the store and /or saw the shooting. The victim's mother saw Price testify at motions and saw him crumble on the stand. We do not believe that we stand a chance of getting a conviction on Price's testimony.

There is also another possible perpetrator. This perpetrator is Berzeracque Johnson, aka Bird. While Bird was in jail, Bruxton was seeing his girlfriend. Bird told his girlfriend that he would get Bruxton. Bird was released from jail on April 12. Bruxton was killed April 13th. About 10 minutes after Bruxton was shot, Bird called his girlfriend and told her of the shooting. He also asked for Bruxton's mother's number. She gave it to him. When Bruxton's mother returned home that day, there was a message on her machine about having killed her son. The tape accidentally erased by Bruxton's mother.

As usual, there is no gun.

The victim is a heroin addict who also sold to pay for his habit. His mother would drop him off at the Fischer knowing he was going to use heroin. On July 1, 1994, we spoke to the victim's mother who indicated that she would go along with a plea of 20 years.

/ca

toxicology Negative

CERTIFIED DA OFFICE COPY

Great Win!
MDAN 7-13

JURY TRIAL REPORT

To: **HARRY CONNICK** Date: July 13, 1995

From: Michael J. Daniels (Lead Counsel) C. Byron Berry (Co-Counsel) Section E Judge Johnson

Case No. 366-001 Date of B/I 10/7/93 Date of Trial 7/11-13/95 Date of Offense 4/13/95

DEFENDENTS NAME	JAIL	AGE	ADDRESS	CHARGE	VERDICT	PREVIOUS RECORD	SENTENCE
Kuantau Reeder	Y	21	2010 Hendee Ct	14:30.1	GAC	'90 PGAC DIST of CRACK	
						'90 PGAC POSS of CRACK	

Defense Counsel Loyola Law Clinic Daryl Derbigny Length of Trial 2½ days Screened By Doug Freese

Number of Jurors: 12 Length of time jury out 90 minutes

Was a pre-sentence investigation ordered? N/A Date set for sentencing 7/17/95

Is defendant eligible for multiple billing? N/A

Appeal No Notice Remarks Mark Broxton was using a pay phone in front of Julien's foodstore in Algiers. The defendant approached him and they began to argue. The defendant the shot Broxton four times. A witness who was accross the street at the time of the shooting later identified the defendant in a photo line-up. Other witnesses refused to talk or refused to testify. The defense pointed to another suspect and presented an alibi. Jury was 11-1.

OPDA FORM 103

IN THE

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

CASE NUMBER 366-001 "E"

STATE OF LOUISIANA

VERSUS

KUANTAU REEDER

STATE'S STIPULATIONS IN RESPONSE TO PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF

JASON R. WILLIAMS
District Attorney
Parish of Orleans

EMILY MAW, Bar No. 32976
BIDISH SARMA, Bar No. 31955
Assistant District Attorneys
Civil Rights Division
Parish of Orleans

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INTRODUCTION

Through these stipulations, the State agrees that the Defendant is entitled to a new trial due to its failure to disclose crucial impeachment evidence pertaining to the State's sole testifying eyewitness—specifically, evidence that this witness twice notified prosecutors that he identified in the photo lineup the *other* suspect for this murder, not the defendant.

The Fourth Circuit Court of Appeal has observed that there is a "storied, shameful history of the local prosecuting authorities' noncompliance with *Brady*." *State v. Wells*, 191 So. 3d 1127, 1139 (La. App. 4 Cir. 2016), *writ denied*, 219 So. 3d 1097 (La. 2017) (citing cases).[1] In light of this history—and recognizing the need to rectify it—the Orleans Parish District Attorney's office ("OPDA") this year created a new Civil Rights Division. The Division seeks to redress past harms and injustices the office has caused by identifying, among other things, cases involving State misconduct, wrongful convictions, and extreme sentences.

The Civil Rights Division began reviewing this case because the defendant has been litigating a separate claim of State misconduct pertaining to the OPDA's failure to disclose one of the same witness's prior criminal convictions. Current counsel for Mr. Reeder has been litigating that claim in federal court for more than seven years.[2] In accordance to OPDA's internal policy, the Appeals Division referred the Defendant's case to the Civil Rights Division due to the nature of the claim for relief. The Civil Rights Division then reviewed Mr. Reeder's case in accordance with its mandate. In its review of the OPDA file, undersigned counsel

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[1] *See also* Clyde Rastetter, *The New York Prosecutorial Conduct Commission and the Dawn of A New Era of Reform for Prosecutors*, 2020 CARDOZO L. REV. DE NOVO 55, 67–68 (2020) ("OPDA's culture of flagrant disregard toward defendants' constitutional rights under *Brady* and its progeny has proven to be so deeply ingrained and pervasive that publicly available information reveals OPDA failed to comply with *Brady* in no less than forty-five different cases—at least fourteen of which have resulted in reversals of convictions by the U.S. Supreme Court, the U.S. Court of Appeals for the Fifth Circuit, and the Louisiana Supreme Court.").

[2] *See, e.g.*, *Reeder v. Vannoy*, 978 F.3d 272, 275 (5th Cir. 2020) (noting that defendant filed a federal application in 2013, and denying relief though acknowledging "the State did not disclose Price's 1973 federal convictions for lying on a firearms application and for being a convicted felon in possession of a firearm").

located additional significant exculpatory evidence that had never in 25 years been disclosed to defense counsel. The Division promptly disclosed to defense counsel the evidence that the Defendant has now raised in the *Second Supplement to Defendant/Petitioner's Pending Application for Post Conviction Relief With the Documents Provided by the Current District Attorney's Office*, which was filed on August 2, 2021.

After reviewing the file and locating never-previously-disclosed exculpatory evidence, the Civil Rights Division conducted its own investigation into the OPDA's withholding of the information. Counsel for the State have reached the conclusion that the OPDA failed to abide by its constitutional duties to disclose material favorable information and thereby violated Mr. Reeder's constitutional rights.

The review of this case found that the police investigation into the murder of Mr. Mark Broxton was not particularly thorough or strategic, but produced evidence legally sufficient to support the charge and prosecution. However, it was evidence generated in the course of OPDA's investigation—not NOPD's investigation—that was not disclosed. The OPDA failed to make disclosures which the State agrees would have been reasonably likely to create reasonable doubt. (The jury delivered a non-unanimous verdict; one juror has thus already disagreed with the verdict imposed.[3] That suggests legitimate doubt about the strength of the evidence presented even absent the exculpatory information now disclosed.[4]) The State's withholding of evidence undermines confidence in the verdict.

[3] Defense counsel had raised the question of whether the verdict was non-unanimous during federal proceedings. *See* Petitioner-Appellant's Brief, *Reeder v. Vannoy*, No. 17-cv-30351 (12/28/2018), at 11 n.3. Despite having in its file contemporaneous proof that the verdict was not unanimous, the State did not inform the defense of this fact until this year. On its review of the OPDA file, the Civil Rights Division located proof that the verdict was non-unanimous. A "jury trial report" authored by the trial prosecutor indicated that the verdict was "11-1." *Second Supplement to Defendant/Petitioner's Pending Application for Post Conviction Relief* at Exh. 4. The Division immediately disclosed this fact to defense counsel.

[4] *See, e.g.*, *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972) ("Of course, the State's proof could perhaps be regarded as more certain if it had convinced all 12 jurors instead of [fewer than 12] . . . .").

Accordingly, the State agrees that Mr. Reeder's conviction should be reversed. *See, e.g., Brady v. Maryland*, 373 U.S. 83 (1963); *State v. Kemp*, 828 So. 2d 540, 545 (La. 2002).

STIPULATION OF RELEVANT FACTS

Mark Broxton was killed near a phone booth outside of Julien's Grocery store in Algiers, New Orleans on April 13, 1993. The central witness was a man named Earl Price who was standing across several lanes of traffic at the time of the shooting. The day of the crime, when interviewed by police, Mr. Price said he saw a "black male wearing a black, blue, and purple jacket" running from Whitney Avenue and them dumping the jacket near a dumpster. *See* NOPD Report at 4 of 14 [report attached as Exhibit A].

Some further investigation led to the identification of two primary suspects: Kuantau Reeder and Berzeracque Johnson. One of the victim's girlfriends at the time, Lillian Lipscomb, told NOPD on April 18 that she had heard the names of Reeder and Johnson as possible perpetrators. She also told them that Johnson always carried a 9mm, had once previously fired a shot at her, had threatened the victim recently when he learned Broxton was seeing a woman named Krischon Smith, and was released from jail the day before the killing. *Id.* at 5. That same day, Ms. Smith also spoke to NOPD and confirmed that Johnson had threatened the victim when he learned that the victim was seeing her. *Id.* She went on to say that Johnson called her immediately after the crime with accurate details about how many times the victim was shot and where he suffered injuries on his body. *See id.* at 5-6.

Detective Wesley Morris on April 26, 1993 compiled a photo lineup that had photos of both suspects. *See id.* at 9. A few days later, more than two weeks after the offense, a second eyewitness named Norma Varist identified Mr. Reeder as the shooter. She also stated that on the date of the murder, Reeder admitted he

committed the crime. *See id.* at 10. However, Ms. Varist was very reluctant to participate in the investigation from the start, and ultimately refused altogether to testify. (OPDA actually had the witness jailed because she refused to take the stand at Mr. Reeder's trial. *See* Trial Transcript from July 1995 at 141-47 (attached as Exhibit B).)

Some three months after the crime, after the lead detective experienced considerable difficulty in meeting with him, Mr. Price finally arrived in the homicide office for an interview. At that time, he described the perpetrator as "Black dude, bout 6'1, about 165-170 pounds, he had a heavy mustache, bout 22-23 years old." Exhibit A at 12. (When he was arrested in August of 1993, Mr. Reeder was listed as 6'1" tall and 221 pounds. Berzeracque Johnson, according to information in the OPDA file, was listed at 6'1" and 147 pounds. (*See* Exhibit C)). During this interview, Detective Morris showed Mr. Price the lineup he had generated; according to the NOPD report, Mr. Price identified Mr. Reeder as the shooter and signed the back of his photo, which was #6. *See* Exhibit A at 12-13).

In both the first trial and the second trial of Mr. Reeder, Mr. Price testified that he had identified the Defendant as the shooter. At the first trial, which resulted in a hung jury, he said the perpetrator was about the same height as he is, 6'2", and "was between a hundred fifty to sixty pounds." *See* Trial Transcript from July 1994 at 72 (attached as Exhibit D). He confirmed that he signed the back of photo #6, and that was the photo of the shooter. *Id.* at 73-74, 90. At the second trial, he again testified that he picked out the photo of Mr. Reeder, whom he said was the shooter. *See* Exhibit B at 95-96.

In addition to Price's eyewitness testimony, the State introduced hearsay evidence from two different witnesses about Varist's eyewitness identification of

the defendant although Varist did not herself provide any testimony at trial. *See, e.g.*, *Reeder*, *supra* note 2, 978 F.3d at 278–79.[5]

The Civil Rights Division review of the OPDA file identified two sets of handwritten notes taken by prosecutors who interviewed Mr. Price before the first trial. Neither these notes nor their contents were ever disclosed to defense counsel before trial or during post-trial litigation until June of 2021. According to those notes, a prosecutor interviewed Mr. Price on October 19, 1993. He told the State that he chose photo #5 from the lineup (which would have been the other suspect, Mr. Johnson). The notes reflect Mr. Price "[s]igned [the] back of picture #5." *Second Supplement to Defendant/Petitioner's Pending Application for Post Conviction Relief* at Exh. 1A. Another prosecutor interviewed Mr. Price again on December 27, 1993. The notes indicate: "Price says he picked #5 – that would be Bezacque [sp] Johnson." *Id.* at Exh. 1B. Moreover, "Price is adamant that he picked #5 & not #6." *Id.* And, "Price is adamant that he pickd [sp] out #5." *Id.* Apparently the witness indicated that the "[d]etective was typing" while taking Mr. Price's statement. *Id.* Mr. Price told the prosecutor that his name would be under photo #5. *See id.*

The prosecutor who interviewed Mr. Price on December 27, 1993 wrote a note in the file on December 30, 1993 stating: "viewed both photographic line ups in DCD evidence room. Earl Price signed in under #6."[6] *See* file notes, attached as Exhibit E.

The State did not inform defense counsel that Mr. Price had twice claimed he identified the person at position #5—Johnson—in the lineup photo. The Civil

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[5] "Price's testimony identifying Reeder as the shooter was corroborated by other witness accounts. Specifically, Sergeant Morris testified that both Price and Varist [sic] identified Reeder as the shooter. Broxton's mother, Mary Menina, also testified that, based on information received from Varist [sic], she believed that Reeder was the shooter. Although some of this corroborating testimony may have qualified as hearsay, no such objections were made at trial."

[6] Undersigned counsel has only been able to locate one lineup, which was in the NOPD file, but that lineup appears to be a preliminary one because it does not have a photo of Berzeracque Johnson in it.

Rights Division's investigation of the *Brady* concerns confirmed the fact of non-disclosure.[7] It confirmed that the State, as a matter of practice at the time, did not disclose handwritten notes taken by prosecutors during witness interviews. Moreover, it confirmed that the prosecution in this case does not recall turning over Mr. Price's inconsistent statements, and would not have done so because Mr. Price had actually signed the back of Defendant Reeder's photograph. Trial counsel for Mr. Reeder informed the parties that he had never been notified about Mr. Price's prior inconsistent statements regarding the substance of his eyewitness identification. Trial counsel made clear that such statements—had they been disclosed—would have played a central role in the cross-examination of Mr. Price.

The Division's reinvestigation identified additional favorable information that tends to exculpate Mr. Reeder. In October of 2021, a fingerprint analysis of print images lifted from a stamp found in the pocket of the jacket identified as the perpetrator's excluded Reeder as the contributor. *See* Latent Prints Report from 10/10/21 (attached as Exhibit F). The Division also located evidence corroborating Krischon Smith's statement that the alternate suspect, Johnson, had been released from jail the day before the crime occurred. *See* report printout from AS400 (attached as Exhibit G). There is no additional physical evidence remaining in the case, and the State has re-evaluated the only available physical evidence—the image of the fingerprints. This pleading is being filed upon the conclusion of the Division's investigation.[8]

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[7] This investigation included interviews with three prosecutors involved in the case, including the two prosecutors who took the notes from October 19, 1993 and December 27, 1993. It also included an interview with the lead defense attorney. These interviews made clear that Mr. Price's inconsistent statements about whom he identified were never disclosed to the defense team.

[8] Unfortunately, the passage of so much time since the conviction has rendered the reinvestigation of certain aspects of this prosecution extremely difficult. Mr. Price passed away on August 18, 2020. Ms. Varist passed away on October 3, 2019.

CONCLUSIONS OF LAW

1. The State has a constitutional, legal, and ethical obligation to disclose evidence favorable to the defense. *See Brady*, *supra*.
2. This disclosure obligation includes a requirement to turn over evidence that impeaches the credibility of the State's witnesses. *See, e.g.*, *Giglio v. United States*, 405 U.S. 150, 155 (1972); *United States v. Bagley*, 473 U.S. 667, 676 (1985) ("Impeachment evidence . . . falls within the *Brady* rule."); *Kemp*, 828 So. 2d at 545 (La. 2002) ("For purposes of the prosecution's due process duty to disclose evidence favorable to a defendant . . . no distinction exists between exculpatory and impeachment evidence.").
3. An eyewitness's statement to prosecutors that he identified someone other than the defendant—anyone else—as the individual who shot the victim is quintessential *Brady* impeachment evidence. *See, e.g.*, Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703, 727 (2004) ("*Brady* material can take many shapes and forms, including: a prior criminal record . . . failure to make an identification of the accused, identification of someone other than the accused, information suggesting that someone other than the accused is the perpetrator, . . . or a witness's prior inconsistent statement."); *Jacobs v. Singletary*, 952 F.2d 1282, 1289 (11th Cir. 1992) (noting the impeachment value of information that "centrally concern[s] [defendant's] guilt or innocence"). The weight of that impeachment is even greater when the person whose photograph the eyewitness said he identified is that of a credible alternate suspect in the case.
4. While a prosecutor may in some circumstances fairly wonder whether an eyewitness could later have become confused about whom he initially

identified, the initial inconsistent statement retains impeachment value to the defense. If that were the situation here, one could argue that "the prudent prosecutor w[ould] resolve doubtful questions in favor of disclosure." *United States v. Agurs*, 427 US 97, 108 (1976); *see also Kyles v. Whitley*, 514 U.S. 419, 440 (1995) (discussing the wisdom in "preserv[ing] the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations"). Here, the eyewitness on multiple occasions indicated to the State that he identified someone other than the defendant. The office's notes in fact indicate that he was "adamant." *Second Supplement to Defendant/Petitioner's Pending Application for Post Conviction Relief* at Exh. 1B. Under these circumstances, any question of whether to disclose the inconsistent statements must be answered in the affirmative. *See also Smith v. Cain*, 565 U.S. 73, 76 (2012) ("the State's argument [about the information that was not disclosed] offers a reason that the jury *could* have disbelieved Boatner's undisclosed statements, but gives us no confidence that it *would* have done so." (emphasis in original)).

5. The State agrees that OPDA did not fulfill its obligation to disclose crucial impeachment evidence, namely, Mr. Price's multiple statements to the office that when he viewed the lineup, he selected the photo of the alternate suspect, not Mr. Reeder.
6. On review and enquiry, undersigned counsel could identify no evidence of disclosure of this impeachment evidence or any plausible legal justification for its nondisclosure.
7. The State's failure to disclose the contradictory statements Mr. Price made to the prosecution constitutes a violation of its *Brady* obligation.

8. As established in the prior litigation of this case, the State also failed to disclose other impeachment evidence, specifically Mr. Price's federal conviction for lying on a firearms application. *See Reeder*, *supra*, 978 F.3d at 275 ("the State did not disclose Price's 1973 federal convictions for lying on a firearms application and for being a convicted felon in possession of a firearm").

9. Viewed collectively in light of the State's other failures to disclose exculpatory information—as they must be viewed—the State agrees that these nondisclosures are significant. *See State v. Marshall*, 94-0461 (La. 9/5/95), 660 So. 2d 819, 826 (explaining that the court "must provide a cumulative evaluation of the suppressed evidence"). The State agrees that consideration must be given to how the defense would have been able to make use of this evidence in fashioning its approach. *See, e.g.*, *Graves v. Dretke*, 442 F.3d 334, 344 (5th Cir. 2006) (discussing how "the defense's approach could have been much different . . . and probably highly effective" if the required disclosures had been made).

10. To warrant a new trial, the State's failure to disclose must meet the *Brady* materiality standard. According to the U.S. Supreme Court, "evidence is 'material' within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. . . . A reasonable probability does not mean that the defendant 'would more likely than not have received a different verdict with the evidence,' only that the likelihood of a different result is great enough to 'undermine[ ] confidence in the outcome of the trial.'" *Smith v. Cain*, 565 U.S. 73, 75–76 (2012) (internal citations and quotations omitted). The Louisiana Supreme Court has recognized that, "[g]iven appropriate circumstances, 'the effective impeachment of one

eyewitness can call for a new trial even though the attack does not extend directly to others.'" *Kemp*, 828 So. 2d at 545 (quoting *Kyles*, 514 U.S. at 445). The U.S. Supreme Court has also held that "evidence impeaching an eyewitness may [] be material if the State's other evidence is [not] strong enough to sustain confidence in the verdict." *Smith*, 565 U.S. at 76.

11. The State agrees that a cumulative analysis of all the information the State has admittedly failed to disclose—prior statements Mr. Price made about identifying the alternate suspect rather than the defendant, Mr. Price's prior federal conviction for lying on a firearms application, and evidence confirming that the alternate suspect (who had reportedly threatened the defendant from jail about a month before the crime) was released from jail the day before the offense[9]—requires Mr. Reeder's conviction to be vacated.

12. The State observes that the importance of the undisclosed material to the defense is highlighted by previous judicial analyses of the defense's early *Brady* claim, which was based solely on Mr. Price's undisclosed federal criminal conviction. The courts focused in part on how Mr. Price had other convictions which had been disclosed, rendering the impeachment value of the federal conviction "cumulative." *Reeder*, 78 F.3d at 279. The information that was not disclosed until this year, on the other hand, is indisputably non-cumulative of other evidence presented at trial.[10]

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[9] There are some additional pieces of exculpatory information that the Civil Rights Division recently disclosed to defense which are not emphasized in this pleading because they are not necessary to inform the conclusion reached here. For example, Ms. Menina, the victim's mother, told the prosecution in an interview that she initially believed that Johnson must have been the one who killed her son. This note was never shared with the defense. The defense was informed before trial that Ms. Menina told law enforcement she received a voicemail message of someone saying "Tonight I killed that dog." However, it is not clear whether the State ever disclosed that Ms. Menina also told the prosecution that Johnson had her phone number.

[10] *See United States v. Torres*, 569 F.3d 1277, 1284 (10th Cir. 2009) ("Merely because other impeachment evidence was presented does not mean that additional impeachment evidence is cumulative; rather, this is a case where the agents' identification is weak at best and no physical evidence exists to link the defendant to the alleged crime. The government's near-total reliance on the testimony of the CI to establish that Mr. Torres was indeed the person participating in the controlled buy requires a new trial. *See Trammell*, 485 F.3d at 552 ("We need

13. The significance of Mr. Price's prior statements indicating that he identified someone other than Reeder is underscored by the prosecutor's effort at trial to portray the eyewitness as unwavering. For example, the prosecution asked the lead detective: "And in showing that lineup to Mr. Price, did Mr. Price hesitate, say it could be 5 or 6—or in any way indicate to you that No. 5 was a possible suspect in the murder?" Trial Transcript, Exhibit B, at 36-37. The response? "No, sir." *Id.*

14. The importance of Price's consistency became even more apparent on redirect examination. The prosecution asked the detective: "And did either of those individuals ever identify Berserack [sic] Johnson as the person who killed Mark Broxton?" The detective, who answered truthfully from his own perspective, said, "No." *Id.* at 51.

15. Given the prosecutor knew that the witness had actually said he identified the alternate suspect, the prosecutor's questions about Mr. Price's identification were materially misleading. This line of questioning represents an additional form of misconduct; the State knowingly enabled its key witness to "g[i]ve the jury [a] false impression." *Alcorta v. Texas*, 355 U.S. 28, 31 (1957); *cf. Miller v. Pate*, 386 U.S. 1, 6 (1967) (reversing a conviction for a due process violation where the "prosecution deliberately misrepresented the truth").

16. One of the reasons the courts have, to this point, upheld Mr. Reeder's conviction is that the State managed to introduce hearsay evidence about Varist's pre-trial eyewitness identification of the defendant. *See Reeder*, 978 F.3d at 278–79 (noting that "some of this corroborating testimony may have qualified as hearsay"). This hearsay testimony was problematic because law enforcement officers may not testify as to the contents of an informant's tip

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to be convinced only that the government's evidentiary suppression undermines confidence in the outcome of the trial." (internal quotation marks omitted))."

because such testimony violates the accused's constitutional right to confront and cross-examine his accusers. *See State v. Hearold*, 603 So. 2d 731, 737 (La. 1992).[11] Nor was it appropriate for the State to elicit that hearsay from another lay witness who did not make the identification. *Cf. State v. Arbuthnot*, 367 So.2d 296, 298 (La. 1979) ("the state may not bolster its case with an inadmissible extrajudicial identification when the identifier has not testified that she made such a pre-trial identification" (internal citation omitted)).

17. Relevant caselaw indicates that both the false impression the State left suggesting that Mr. Price had been consistent in his identification of the defendant as the shooter and the elicitation of Ms. Varist's hearsay eyewitness identification were the product of State misconduct. The Fifth Circuit held in *United States v. Johnston*, 127 F.3d 380, 395–96 (5th Cir. 1997) (internal citation omitted):

> Based upon the large number of instances of similar improper questioning we conclude that the prosecutors intentionally used such questioning as part of their trial strategy. . . . The questions were clearly improper and highly prejudicial to the defendants. Prosecutors have an obligation "to refrain from improper methods calculated to produce a wrongful conviction . . . ." A breach of that obligation constitutes serious prosecutorial misconduct.

18. Combined with the other misconduct and the failure to disclose critical impeachment evidence in this case, Mr. Reeder's conviction is unworthy of confidence.

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[11] *See also State v. Banks*, 439 So.2d 407 (La.1983) (officer's testimony that an informant told him defendant was standing on a particular street corner waiting to buy ten bags of heroin from a New York dealer was inadmissible and prejudicial hearsay); *State v. Thompson*, 331 So.2d 848 (La.1976) (officer's testimony that an informant told him the defendant committed the armed robbery was inadmissible hearsay and was prejudicial because it directly related to the guilt of the accused); *State v. Murphy*, 309 So.2d 134 (La.1975) (officer's testimony that a confidential informant told him the defendant was one of the perpetrators involved in the armed robbery was inadmissible hearsay and the erroneous admission was not harmless because it impermissibly bolstered the testimony of two victims who identified the defendant as one of the robbers).

19. Put most simply and clearly, the State had an obligation to disclose the sole testifying eyewitness's repeated insistence that he identified the alternate suspect's photo in the lineup in this case. Had that information been turned over, there is a reasonably probability that the outcome of the trial would have been different—even without the other nondisclosures. The jury, which was already not unanimous, may have had serious and legitimate reasons to question whether Mr. Reeder participated in this crime. The State's failure to provide favorable evidence to the defense renders the verdict unworthy of confidence and, therefore, Mr. Reeder's conviction and incarceration violate the Constitution.

CONCLUSION

Based on the foregoing, the State agrees the Court should grant the Defendant's request that his conviction be vacated.

Respectfully submitted,

Bidish Sarma
Assistant District Attorney

VERIFICATION AFFIDAVIT AND CERTIFICATE OF SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, appeared Bidish Sarma, to me personally known, who, after being duly sworn, did depose and say:

1. That he is an Assistant District Attorney for the Parish of Orleans.

2. That he has reviewed the foregoing pleading and that the allegations contained therein are truthful.

3. That he has delivered on this date (November 18, 2021) a copy of this pleading and the attachment thereto to opposing counsel by email and the trial court judge by email and hand delivery, to wit:

Sheila Myers (LSBA# 9871)
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The Honorable Rhonda Goode-Douglas, Judge
Criminal District Court, Section "E"
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New Orleans, LA 70119
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Bidish Sarma
Assistant District Attorney

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS THE 18TH
DAY OF NOV., 2021.

NOTARY PUBLIC
CORMAC Boyle, #144315
Commission is for Life