

20-8443

No. _____

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

JACOBIE A. GREEN -- PETITIONER

vs.

STATE OF LOUISIANA -- RESPONDENT(S)


ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF LOUISIANA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

JACOBIE A. GREEN #736648
CAMP C BEAR 2
LOUISIANA STATE PRISON
ANGOLA, LOUISIANA 70712

Prepared By:

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ORIGINAL

QUESTION(S) PRESENTED

1. Did the Louisiana Supreme Court error in denying review after a State-created impediment occurred?
2. Whether the trial court erred in admitting defendant's statement at trial?
3. Whether the trial court erred in denying the Motion to Quash the superseding short form indictment?
4. Whether the trial court erred in admitting speculative photos?
5. Whether the trial court erred in including the State's requested jury charge?

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties ~~do not~~ appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Jacobie Green – Petitioner

State of Louisiana – Respondent

Paul D. Connick, District Attorney for the Parish of Jefferson

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

☒ For cases from state courts:

The opinion of the Louisiana Supreme Court to review the merits appears at Appendix "D" to the petition and is

- ☒ reported at State v. Green, 312 So.3d 583 (La. 2021); or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

The opinion of the Louisiana Court of Appeals, Fifth Circuit, appears at Appendix "E" to the petition and is

- ☒ reported at State v. Green, 286 So.3d 1230 (La. App. 5th Cir. 12/26/19); or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was March 9, 2021
A copy of that decision appears at Appendix "D".

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution

Sixth Amendment to the United States Constitution

Fourteenth Amendment to the United States Constitution

Louisiana Const. Art. I § 15

Louisiana C. Cr.P. Art. 703(D)

Louisiana R.S. 14:451

Louisiana C.E. Art. 401

Louisiana C.E. Art. 402

Louisiana C.E. Art. 403

STATEMENT OF THE CASE

On September 14, 2015, a grand jury returned indictments on Jacobie Green, along with two codefendants, Dartanya Spotville and Johnell Walker, for two counts of second degree murder and one count of attempted second degree murder. Jacobie Green was tried first, and the jury returned unanimous verdicts on each charge. Mr. Green sought a New Trial, which was denied by the trial court on September 12, 2018. R. 1287. Mr. Green was subsequently sentenced to two consecutive life sentences, both without the possibility of probation, parole, or suspension of sentence, and a third consecutive sentence of 50 years without benefit of probation, parole, or suspension of sentence.

STATEMENT OF THE FACTS

The evidence portion of the trial began on August 1, 2018. R. 599. The State first called Detective Christian Dabdoub of the Jefferson Parish Sheriff's Office's Personal Violence Unit. R. 611. He testified that on June 21, 2015, he was the first officer to respond to the scene of the shooting at 1617 Apache Drive, Apartment "H" in Harvey at 10:27 pm. As he approached the scene, he saw three victims laying outside of the apartment: Blake Lamb, Trammell Marshall, who was covered in blood, writhing on the ground, and Johnell Ovide, who was dead. R. 616. Detective Dabdoub saw inside the opened front door of apartment. He had observed the chaos inside – the window had been busted out, furniture moved, bullet casings were all over the floor and blood was everywhere. R. 616. He then spoke to Blake Lamb, who was sitting up in the doorway, and who had been shot in the face/throat. R. 617. Detective Dabdoub asked him who did this to him and Mr. Lamb said "Coby from Betty street." He then attended to Trammell Marshall, who was twenty paces away, R. 619, and who had been shot multiple times. Detective Dabdoub asked him who did this to him, and Mr. Marshall said, "Cobie from the Marrero Projects." R. 618. He said that a reference to the Marrero Projects is generally known as an area that includes Betty Street. R. 618. He said that Mr. Lamb spoke at a whisper and that he had to

lean close to hear him. R. 619. He testified that he believed the shooting took place indoors and that the gunfire would have interfered with their ability to hear. R. 620.

Deputy Tim Massenburg arrived soon after. R. 620. By the time crime scene came and documented the scene, Mr. Lamb and Mr. Marshall had been taken to University Hospital. R. 621. Detective Dabdoub learned that Reginald Henry had escaped out of the broken window and hid in a vehicle across the street. R. 624-25. He testified that Mr. Henry was shaking when he spoke with him in the ambulance that had been sent for Johnell Ovide. R. 629. Mr. Henry was being checked by EMS for cuts to his arm from the glass, and said the attack was carried out by three people: Jacobie Green, "Shadow", and a third suspect who he did not know. R. 630. He gave physical description of all three. *Id.* Detective Dabdoub knew someone named "Shadow" from when he worked in Jefferson Parish Correctional Center. *Id.* Mr. Henry directed him to the 1900 block of Betty Street as being a possible location for the suspect. *Id.*

On cross, Detective Dabdoub said he noticed that Mr. Lamb was disorientated and his speech was slurred. R. 641. He was trying to communicate a few other things but he couldn't understand what was said. *Id.* He did not learn of any bad blood between Jacobie Green or Reginald Henry or Black Lamb. R. 648.

The State next called Deputy Kenneth Bonura, of the Jefferson Parish Sheriff's Office. R. 656. Deputy Machuca pointed out the firearm beside Johnell Ovide's body and Deputy Bonura secured it. R. 657. He did not remember the make and model of the firearm but remembered that it had a fully loaded magazine of 8 rounds but no rounds in the chamber. R. 659.

The State next called Reginald Henry, aka "Kunta", to the stand. R. 669, R. 671. At the time of the shooting, he was working as a club promoter. R. 670. He had two prior convictions for DWI and reckless operation. *Id.* Mr. Henry lived at apartment "H" at 1617 Apache on June 21, 2015. He was inside his apartment with Blake and Trammell and Johnell Ovide, and they were getting ready to go to

the party. R. 679. Mr. Henry was in his room choosing what clothes to wear, and he came out once he heard a knock at the door. R. 680. He said Trammell answered the door and then went to lay on the sofa. R. 681. Blake was sitting and Trammell was also laying down. R. 682. He said they weren't smoking marijuana that day. Shadow, Jacobie and Dartanya were outside. R. 683. Mr. Henry knew Shadow from the area, and he played basketball with Jacobie in high school. R. 683. He knew Dartanya, who was called "Lo", lived next door to Jacobie. R. 683. He said they asked where the party was at, *Id.*, they came in and Jacobie stood by the side of the door. R. 686. Blake Lamb had a gun which he had put down on the stool. R. 687. Dartanya reached for that gun as Mr. Henry was on his way to his bedroom. R. 688. Blake tried to intervene with Dartanya grabbing his gun, indicating that there was a round in the chamber: "Nah, they got one in the head." R. 688. Dartanya pointed the gun toward Ruga (Johnell Ovide) and shot once, then pointed it toward Blake, and shot him. R. 689. Mr. Henry, who was on his way to his bedroom, continued through his bedroom, swung around a pole which was in his bedroom, R. 696, and went straight through the window to escape. R. 689. He wasn't hurt except for a small cut on his arm. R. 696. As he escaped, he heard more shots and sounds of someone being shot. R. 694. He did not know how many shots he heard. R. 695. "It sounded like warfare." R. 697. He asked a neighbor to call the police, and he spoke to the police but he was not able to speak very much, he remembers saying, "They hit, They hit." R. 698-99. He said he was shocked because he didn't know they had a problem. R. 699. He was told to go sit in the ambulance. R. 700. He didn't remember much after that until they put him in the car to go to the Bureau. R. 701. He did not remember saying that he had seen Jacobie Green or Johnell Walker shooting a gun that day. R. 701. He did not remember anything until he go to the Bureau. *Id.* The last thing he remembers is seeing Trammell in the back of the ambulance, thrashing so much that it was shaking the ambulance. *Id.* He did remember seeing Shadow with a gun between his legs. R. 701. He said he observed Jacobie Green with guns before, and noted that they were all from the Marrero projects so they all had protection. R.

702. He did not recall telling an officer that he saw Dartanya shoot Blake in the face – he only saw that was right over him; and saw him shoot him on the right side of his body. R. 703-704. He told police where the three men lived. R. 707. Mr. Henry testified before the grand jury regarding the indictment of Jacobie Green. R. 708. Mr. Henry identified Mr. Green in the courtroom as the person in the living room that night who stood by the door. R. 709.

On cross, Mr. Henry said he did not remember speaking to a deputy or detective on the scene, he only remembered being in the ambulance and that maybe someone had come to check on him. R. 712. He remembered talking to a man and a woman at the Bureau. R. 714. He said they had been smoking marijuana after Mr. Green and the others entered the apartment. R. 715. They were smoking while Mr. Henry was walking back and forth for about 15 minutes before the shooting started. R. 717. He said he knew Mr. Green from school. R. 718. He knew Johnell Walker from the neighborhood, though before this he only knew him as Johnell. R. 719. He told the grand jury that he did not see Jacobie Green with a gun, but that he generally thought they all had guns for protection. R. 721. He knew Johnell Ovide carried a gun though he did not see it that day. R. 723. He remembered identifying a photo lineup of Dartanya as the one who shot Johnell and Blake. R. 731, 733. He said he had seen Jacobie Green with guns many times. R. 736.

The State next called Detective Jean Lincoln, of the homicide section of the Jefferson Parish Sheriff's Office. R. 742. She interviewed Mr. Henry on the night of the murders, wherein Mr. Henry identified Jacobie Green from a line up as one of the people who was there. R. 746. He gave her addresses for the three people. R. 748. He identified 1909 Betty Street as Jacobie Green's residence, and next door was the third person's address, 1911. He said Shadow – Johnell Walker – lived at 1477 Lincoln Avenue. R. 749. Detective Lincoln used police database searches to connect individuals which met the descriptions given by Mr. Henry, and identified Dartanya Spotville as the third person. R. 752. Detective Lincoln got a search warrant for Mr. Spotville's home and an arrest warrant for him. R. 755,

757. No evidence was recovered from that search.

She said that Denise Buras, who lived next door at 1909 Betty Street, gave consent for police to search the residence. R. 758. They identified Mr. Green's room in the home and noted targets on the wall, one with a number of holes in it. R. 760. Police recovered a Glock .40 caliber magazine and a box of Blazer .40 caliber ammunition. R. 761. They also collected a box for a Glock Model .22 handgun. R. 763. The box was empty, but inside contained a receipt with a customer name J. Green dated June 15, 2015. R. 763-764. She noted that .40 caliber casings were located at the scene of the crime. R. 766.

Detective Lincoln learned the day after the crime that the .40 caliber ballistic evidence collected at the scene suggested that at least two firearms were in these murdered. R. 768. Mr. Green went to speak to police on the 23 of June, wanting to discuss that his gun had been stolen on the 21st. R. 784. Mr. Green first spoke with Detective Fancetta. R. 769. Detective Fancetta indicated to Detective Lincoln that he suspected Mr. Green's involvement in the crime. R. 770. Detective Lincoln said Mr. Green first wanted to talk about a gun that was stolen from him, wherein he said he was outside his home several days prior, where he had his weapon in his lap. R. 771. A stranger walked up and asked to see it, then pointed it at him and ran away with it. R. 771. She said Mr. Green said he was somewhere else that evening, and provided a name for an alibi. R. 773. After they had spoken for about 20 minutes, she began to suspect Mr. Green and moved him into an interview room to record their interview. R. 774. Detective Lincoln was pulled away for an emergency and Detective Fancetta took over at that point. R. 781. Near the end of his interactions with police, during an interview that lasted approximately 12 hours, Mr. Green admitted that he was present when the murder were committed. R. 790. The person who provided the alibi was charged and pleaded guilty for lying about the alibi. *Id*

The State called Deputy Joseph Gasquet of the Jefferson Parish Sheriff's Office. R. 799. He assisted in executing the search warrant at 1911 Betty Street. *Id*. He went through the consent to search form with Ms. Buras, Mr. Green's mother. R. 801. Later that day, he returned to the area and spoke with

Clinton Frank, who said he had information for the police. R. 803. Mr. Frank was arrested then for outstanding attachments. *Id*

The State next called Detective Gabriel Fancetta of the Jefferson Parish Sheriff's Office. R. 806. The State played the video of the interview for the jury. R. 817, State's Exhibit 60. Because the interview was so lengthy, the State played the snippets wherein Mr. Green spoke to interviewers. See State's Exhibit 60. In these interviews, Mr. Green identified a picture of Trammell Marshall, Blake Lamb, and Johnell Ovide. R. 819, 821. Mr. Green was not able to identify a lineup of Johnell Walker. R. 834.

The next day, August 2, 2018, the State continued presenting its evidence with Detective Fancetta. In their interview, Mr. Green maintained that he was with his cousin, Archie, during the time of this crime. R. 861. He gave Dartanya's phone number from memory. R. 862. The number Jacobie Green gave for Dartanya Spotville was correct. R. 922. The detective got Mr. Green and Dartanya's cell phone records. R. 863. The defense did not ask any questions of Mr. Fancetta. R. 866.

The State next called Detective Donald Zanutelli of the Jefferson Parish Sheriff's Office homicide section, who testified about his role in the investigation of the homicides on June 21, 2015. R. 869. He demonstrated evidence and photos from the scene to the jury. R. 870 *et seq.* Detective Zanutelli said that casings on crime scenes get in all different locations, and they can get kicked around a little bit by first responders. R. 902. He demonstrated photographic evidence of gunshots to Johnell Ovide's body – a projectile emerging from the front of his torso near his belly button. R. 906. Blake Lamb was shot in the mouth damaging two teeth. R. 910. After, the crime scene was closed, police were contacted by management of the apartment saying they had found another fired casing while they were cleaning up the apartment. R. 914-915. university Hospital removed projectile material from Blake Lamb's jaw. R. 919.

Detective Zanutelli showed photographic lineups to Blake Lamb. R. 923. Mr. Lamb identified

Dartanya Spotville, Johnell Walker, and Jacobie Green as having participated in the double homicide. R. 925. Detective Zanolelli identified the points on the map where cell sites were activated by calls from Dartanya Spotville and Jacobie Green's phone. R. 927. First he identified that the 911 call from 1617 Apache Drive came in at 10:26 pm. R. 937. At 10:26 pm, Mr. Spotville's cell phone communicated with a tower next to the homicide. R. 937. Mr. Green's cell phone connected with a tower off of 90 – near Camp Street – at 10:37 pm. Mr. Spotville's phone connected with a tower in the West at 10:52 pm, and Mr. Green's at 11:13 pm. R. 938. Mr. Green's cell phone connected at 11:28 and 11:29 pm to a tower in the Little Woods subdivision. R. 939. The detective had to leave for an appointment so there was a break in his testimony. R. 949.

In the interim, the State called Dana Troxclair, a forensic pathologist for the Jefferson Parish Coroner's Office. R. 949. She testified as an expert in forensic pathology. R. 950. Johnell Ovide had three gunshot wounds, R. 960, one which went through his torso through his intestines, which would not alone have been fatal. R. 964. The second, to the left chest, perforating the left lung and through the heart, and the projectile was recovered from the right seventh rib, R. 964, was fatal. R. 968. The third wound is to his wrist and hand. R. 968. She testified that she didn't know which way he was facing, but the shot came from behind him. R. 970. He had marijuana and caffeine in his blood. R. 971.

Trammell Marshall had five gunshot wounds. R. 976. Mr. Marshall received a left thoracotomy, wherein his chest was cut open in an effort to save his life. R. 978. The first gunshot entered his left upper chest and landed in the left fifth rib. R. 979. This injury was fatal. R. 980. Ms. Troxclair testified that she didn't know what position he was in at the time of the shooting, he "may have been bending forward or backwards or laying on the ground." R. 981. The second shot was superficial wound to the chest. R. 982. The third wound was another superficial wound at the chest/abdomen. R. 983. The fourth was to the right posterior thigh, from which a projectile was recovered from the bone, and Gabapentin or Neurontin, Tramadol and nicotine in his urine. R. 988. She said his injuries two, three, and four

were from behind; the first one was from front to back; and the fifth one is unknown because she did not know how his hands were positioned at the time. R. 989. On cross, she explains that the downward slant was a slight angle, from the third rib to the fifth rib, which is just a couple of inches. R. 992.

The State next called Linda Tran, a firearms examiner at the Jefferson Parish Crime Lab. R. 994. Ms. Tran testified as an expert in the field of firearm ballistic identification and analysis. R. 1002. The gun found next to Johnell Ovide's body – a .280 semiautomatic pistol – was examined and there was no evidence that the gun was fired on the scene. R. 1013. Evidence of casings numbered 3, 4, 5, 6, 8, 10, 11, and 23 are consistent with having been fired by the same Glock firearm. R. 1013. Casings 9, 22, and 48 were from a different gun, but all three from the same gun. R. 1017. The gun would be consistent with a Smith & Wesson M&P Model. R. 1018.

Evidence of casing numbered 12, 24, and 38 which caused the fatal wound recovered from Mr. Ovide's torso, was consistent with having been fired from a Glock firearm. R. 1022. And number 49, which was removed from Blake Lamb's jaw, is consistent with having been fired from a Glock firearm. R. 1022. The projectile recovered from Trammell Marshall's chest, number 46, was a DRT brand projectile, which has a powder core metal base. R. 1023. She said this one was damaged but she could see the cut rifling on the copper jacket and could measure that it was .40 caliber, but it was too damaged for any further conclusions. However, cut rifling demonstrates that it was not a Glock. R. 1042. Therefore, 46A is not from Glock. *Id.*, R. 1024. Specimen 7 was a lead-like projectile. R. 1025.

She said she had problems with testing the Walther, as it did not work properly. R. 1030. For number 38, she could only say that it was from a Glock, but could not say which Glock. R. 1047. Because projectiles and casings do not come in contact with the same part of the weapon, they cannot link them to each other without the firearm itself. R. 1042. And, she said, it bears ballistic similarities with casing number 48, R. 1048-1049, which was consistent with being fired from a Smith & Wesson.

R. 1049. This was the ballistic material taken from Trammell Marshall's chest. R. 1051.

On redirect, she demonstrated the Polygonal rifling on 12, 24, 38, and 49 – and explained that [t]he majority of these comes from Glocks. R. 1055. The same is true of the elliptical firing pin – the majority are from Glocks. *Id.* The only manufacturer that produces both effects is the Glocks. R. 1056. She noted defendant's cell phone connecting with a cell phone tower right next to Lake Ponchartrain, and said a person can dispose of a gun in the lake. R. 1062.

Detective Daniel Lincoln did the consent to search form with Ms. Buras, Jacobie Greens' mother at 1909 Betty Street. R. 1084. He went over the form with her word-for-word. R. 1085. During the search, an Apple phone with a gold cover and a black Kyocera phone were seized. R. 1085-1086.

The State called Detective Solomon Burke of the Jefferson Parish Sheriff's Office digital crimes unit. R. 1096. He testified as an expert in the field of digital forensics analysis. R. 1101. He examined six devices in this case. R. 1103. He was able to extract information of an Apple iPhone. R. 1115. It connected to an email with Jacobie Green's name and phone number 504-503-2534. R. 1116. The Instagram account name was for "Cobie3". R. 1117. there were web searches related to Glock products in February 2015. R. 1117-1118. It shows communications between this phone and Dartanya Spotville's phone number 35 times. R. 1120. Three contacts were made between this phone and a contact named Pumba, at 504-316-8634. R. 1122. Defense made the same objections at 1124, to Exhibit 206. Continuing objection 207, photo that appears to be a Glock firearm, and the target in his room. R. 1127. Exhibit 208 is a Glock. R. 1120. Exhibit 206 is at a public firing range. R. 1131. Expert was unable to extract information of three photographs taken from this phone, which included two photos of a Glock, and Mr. Green with a Glock at a firing range with a target. R. 1124. The expert was unable to extract information from all the other phones. R. 1132.

The State next called Blake Lamb. R. 1139. His criminal background includes pleas to misdemeanor possession of marijuana and misdemeanor theft and simple battery. R. 1140. He knew

Trammell from school and called him Meil. R. 1141. He also knew Johnell Ovide from school, who he called Ruga. *Id.* He knew Reginald Henry from parties. R. 1143. He said they were at Reginald's house on June 21, 2015. Reginald's nickname was Pumba. *Id.* He said they were smoking marijuana and playing on their phones and Jacobie, Lo, and Shadow knocked on the door. R. 1144. Mr. Lamb knew Jacobie from around in Marrero but he did not know Shadow before that night. R. 1145. He knew Lo from before. *Id.* Mr. Lamb said they came to smoke with them. *Id.* He explained where everyone was positioned in the crowded houses. *Id.* Lo sat right next to Mr. Lamb. R. 1147. Jacobie was the door. R. 1147. Lo went to a stool in the middle of the sofas. R. 1148. Reginald Henry was moving around. *Id.* He knew Johnell Ovide had a gun with him that night. R. 1149. Mr. Lamb had a gun but he did not know the specific make or model of his gun. R. 1150. Then Lo asked for Mr. Lamb's gun, which was sitting on a chair or stool, and when Lo picked it up, Mr. Lamb said there was one in the chamber, and to give it back. R. 1151. Lo pointed the gun Johnell Ovide, and shot him. R. 1151. Then he pointed the gun at Mr. Lamb and hit him in his shoulder. R. 1152. He said, "then Lo started shooting, everybody else started shooting," saying he meant Cobie and Shadow. R. 1154. He said that Mr. Green appeared to be in control of the gun and did not seem surprised. R. 1156. Before this happened, he had seen Shadow with a gun. But he did not see Jacobie with a gun until it happened, and he got "a little glance at it." R. 1158. He said it looked similar to State's 208. R. 1159. When the shooting started, Trammell Marshall dove into the kitchen and Reginald Henry escaped through the window. R. 1159. Cobie opened the door and Lo went outside, and Johnell Ovide ran behind Lo. Then Mr. Walker and Mr. Green followed Trammell into the kitchen and he heard screaming and gunshots R. 1162. He called out stop to Cobie, who came over to him and told him to shut up, and shot him in the mouth. R. 1163. He said then Mr. Green and Mr. Walker screamed and ran out. R. 1163. He said Trammell got up from the kitchen crying and walked out the front door and slid down, thinking he was about to die. R. 1164. He remembered telling someone who came to the scene who he believed was involved in the shooting, and

he remembered being very hot and needing water. R. 1164. Mr. Lamb was shot in his face, his hand, his shoulder, his side, and his forearm. R. 1170. He identified Jacobie Green as the person who was at the house that night shooting. R. 1171.

In cross-examination, Mr. Lamb said that when Mr. Spotville handled his gun, he warned him that there was one in the chamber and by the time he had told him that, the gun had fired, and then everybody started shooting. R. 1190. He said "when the gun went off, Mell jumped into the kitchen and I was getting shot up at the time so I just slid off the couch and Ruga ran behind Lo. R. 1190. Mr. Lamb had slid to the ground with the back of his head against the sofa when he says Mr. Green came over and shot him in the face. R. 1194. He said that he thought his gun was a forty millimeter. R. 1196. He reiterated that as soon as he told Lo there was one in the chamber, the gun went off. R. 1197. He also says Lo deliberately shot the gun. R. 1197. Shadow shot him on his left side. R. 1198. He still has a bullet in his left shoulder. R. 1199. When Lo started shooting, Mr. Green started shooting. *Id.*

The State next called Detective William Roniger. R. 1208 He explained that police examined the silver Pontiac G6 which was right in front of the apartment. R. 1210. They observed a bullet strike on the windshield that is going away from the house, but determined that it had been there before this incident. R. 1212. He got consent from Reginald Henry to search his apartment. R. 1213. Police drove him around and he pointed out there residences. R. 1215. He spoke to Archie Hulbert, who initially corroborated that he was Mr. Green's alibi but then said he was being untruthful. R. 1219. Ultimately cell phone records which were collected showed that this information was false. *Id.* State Exhibit 60, the recorded interview, was played for the jury. R. 1221. Detective Roniger during the course of his interview with Jacobie Green, obtained an arrest warrant for Mr. Green, who was arrested at the end of the interview on two counts of first degree murder and one count of attempted first degree murder. R. 1235. Mr. Green was at the detective bureau for about 12 hours. R. 1254.

The jury was charged. R. 1277. The jury returned with verdicts of guilty of second degree

murder of Johnell Ovide, guilty of second degree murder of Trammell Marshall, and guilty of attempted second degree murder of Blake Lamb. R. 1280. The verdict was unanimous. R. 1282.

Sentencing took place on September 12, 2018. R. 1285. The court denied the defense Motion For New Trial, and the defense objected. R. 1287. The court sentenced Mr. Green to two (2) life sentences for the second degree murder convictions and a sentence of fifty (50) years, without benefit of parole, probation, or suspension of sentence, for the attempted second degree murder convictions. All to be ran consecutive. R. 1290.

REASONS FOR GRANTING THE PETITION

Petitioner first contends the Louisiana Supreme Court erred in denying the Writ of Certiorari as being untimely. The Louisiana Supreme Court failed to review Petitioner writ although he present the fact there was a State-created impediment which should have allowed for equitable tolling in this case.

When Petitioner arrived at Angola, security had inspected his property. Although there was contraband found, Petitioner never received his legal documents which was not part of the contraband. (See Appendix "E" for support of this State-created impediment). Furthermore, after the Louisiana Court of Appeals, Fifth Circuit denied Petitioner, appellate counsel did not notify Petitioner of this until over 6 months later. This effectively denied the Petitioner an adequate review because his time for filing was past the time limit of 30 days.

Petitioner did not create any of the circumstances presented here. His paperwork was missing due to the State's penitentiary security, causing a hindrance on timely filing; further complicated by a State-appointed Louisiana Appellate Project attorney who withheld his denial.

The circumstances of this issue must be charged to the State and Petitioner should receive equitable tolling. As a result of applying equitable tolling, this Honorable Court should be inclined to remand this matter to the Louisiana Supreme Court for a just and proper review.

In the alternative, Petitioner would ask this Honorable Court to *de novo* review the claims are argued before the Louisiana Supreme Court. These claims are presented in the Law and Argument that follows.

LAW AND ARGUMENT

1. The trial court erred in admitting defendant's statement at trial.

The defense sought to suppress Mr. Green's statements which he made over the course of approximately 12 hours at the police bureau. Mr. Green came to speak to police voluntarily, and over the course of the day, the interview evolved into a custodial interrogation wherein Mr. Green ultimately admitted that he had been present at the scene of the shooting. All of the motion to suppress, the defense argued that, despite Mr. Green's waiver of his rights at the beginning of the interview, the statements were nevertheless not voluntarily given. See 72-77. The trial court made a finding of fact that the entire interview constituted a custodial interrogation, finding that "Even though [Mr. Green] voluntarily went to the police bureau without being summoned there, I think once the interview started, once he was placed in that room, and once he was sat at the table, I think from that point on basically he was not free to go. I don't think he would have been allowed to leave within moments after he got there certainly after he started to provide information which the police believed to be false." R. 465. The court also found that the police interview did not rise to a level of being threatening or coercive. R. 466. Accordingly, the court denied Mr. Green's Motion to Suppress. *Id.* But the interview did not begin as a custodial interrogation. And although Mr. Green signed a waiver of rights at the beginning of his voluntarily statement, at some point the interview became coercive and interrogation, wherein Mr. Green should have been re-informed of his rights.

Before inculpatory statements made by a defendant during a custodial interrogation may be used in evidence against him, the State must prove beyond a reasonable doubt that the defendant was advised of his rights, that he freely and voluntarily waived them, and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducement, or promises. La. C.Cr.P. Art. 703(D); La. R.S. 14:451; *State v. Lee*, 05-2098, p. 15 (La. 2008), 976 So.2d 109, 122.

Miranda adopted a "set of prophylactic measures" designed to offset the "inherently compelling pressures" of custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). *Miranda* did not establish that police questioning of a suspect at the station house is always custodial. See *Oregon v. Mathiason*, 429 U.S. 492, 495, (1997) (declining to find that *Miranda* warnings are required "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect"); *Howes v. Fields*, 565 U.S. 499, 507-8 (2012).

Mr. Green was informed of his rights at the start of his voluntary interaction with detectives, and he signed a Waiver of Rights pursuant to *Miranda*, which informed him not that he was under arrest, but that he was under investigation. R. 357. Detective Jean Lincoln testified that Mr. Green was free to leave as this was a voluntary interaction, and she did not suggest in any way that he was not free to leave. R. 356. Soon thereafter, Detective Lincoln was called away on an emergency and the interview was taken over by other detectives, and what may have begun as a voluntary interview soon became a custodial interrogation for which Mr. Green should have been re-warned.

The validity of a waiver of *Miranda* rights is determined on the basis of the totality of the circumstances. *State v. Benoit*, 440 So.2d 219, 131 (La. 1983). The circumstances which indicate a custodial interrogation was not present when Mr. Green signed the Waiver of Rights form, but they soon became apparent, and Mr. Green should have been advised of his rights once the nature of the interview changed. Mr. Green did not make statements about being involved in this incident until about 9 hours into the interview. R. 74. Around that point, Detective Rodrigue enters the interrogation room and the interrogation becomes heated, and Mr. Green begins to make statements about pulling his gun out. R. 75.

As the trial court noted, and as the circumstances of the interrogation makes clear, Mr. Green was not free to leave. See also Defense Motion to Suppress. R. 74-77. However, the court's findings that this was a custodial interrogation from the very start is incorrect, as Detective Jean Lincoln

specifically testified that, at that point, Mr. Green was free to leave. R. 356-357. After that, the interrogation was handled by other detectives, who should have re-Mirandized Mr. Green so that he could be aware of his rights to remain silent and to an attorney. The Rights form was presented to him at a moment in the interview wherein it was emphasized that he was free to leave. But once the interview became an interrogation wherein he would not have been free to leave, he needed to be re-advised of his rights to offset the inherently compelling pressure of custodial interrogation. See *Miranda, supra*.

Because the statements which were introduced at trial were not given pursuant to a valid waiver of Mr. Green's *Miranda* rights and were not freely and voluntarily made, the statements should have been suppressed.

2. *The trial court erred in denying the Motion to Quash the superseding short-form indictment.*

The defense filed Motion to Quash the Indictment as Constitutionally Deficient on January 16, 2018. R. 84. The superseding indictment, on October 8, 2015, alleges, in pertinent part:

JACOBIE A. GREEN aka "Cobie" ... did commit second degree murder of Johnell Ovide aka "Ruga" and

JACOBIE A. GREEN aka "Cobie" ... did commit second degree murder of Trammell Marshall.

See also La. R.S. 14:30.1

The continued constitutional validity of Louisiana's short-form indictments in capital cases has been called into question by *Ring v. Arizona*, 536 U.S. 584 (2002); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); and *Jones v. United States*, 526 U.S. 227 (1999). Read collectively, these cases lead to the conclusion that the indictment here is unconstitutional.

Under the Louisiana and Federal Constitution, no prosecution may be initiated for an offense necessarily punishable by life imprisonment except by true bill of indictment returned by a duly

constituted grand jury. La. Const. Art. I § 15; U.S. Const. Amend. V and XIV. This constitutional imperative provides fundamental protections to the accused, as the grand jury acts as an independent and essential check on the prosecutorial function.

The United States Supreme Court has recognized the broad powers extended to grand juries in Louisiana:

The grand jury, like the petit jury, "acts as a vital check against the wrongful exercise of power by the State and its prosecutors" ...It controls not only the initial decision to indict, but also significant decision such as how many counts to charge and whether to charge a greater or lesser offense...

Campbell v. Louisiana, 523 U.S. 392, 399 (1998).

The bare bones indictment here fails to identify whether the grand jury found that Jacobie Green acted with specific intent to kill or inflict great bodily harm. The Supreme Court's 1884 ruling that the right to grand jury presentment is not an incorporated right accruing to state defendants is constitutionally suspect. In *Hurtado v. California*, 110 U.S. 516 (1884), the Court concluded that the Fifth Amendment's right to grand jury indictment was not an element of due process because the Fifth Amendment spoke of both "due process" and the right to indictment:

According to a recognized canon of interpretation, especially applicable to formal and solemn instruments of constitutional law, we are forbidden to assume, without clear reason to the contrary, that any part of this most important amendment is superfluous. The natural and obvious inference is, that in the sense of the Constitution, "due process of law" was not meant or intended to include, *ex vi termini*, the institution and procedure of a grand jury in any case. The conclusion is equally irresistible, what when the same phrase was employed in the Fourteenth Amendment to restrain the action of the States, it was used in the same sense and with no greater extent; and that if in the adoption of that amendment it had been part of its purpose to perpetuate the institution of the grand jury in all the States, it would have embodied, as did the Fifth Amendment, express declarations to that effect.

Hurtado, 110 U.S. at 534-535. This interpretation of the rights guaranteed by the due process clause has been breaking down significantly since 1884. See, e.g., *Malley v. Hogan*, 378 U.S. 1 (1964) (holding that the privilege against self-incrimination is incorporated in the Fourteenth Amendment's

due process clause). It is only a matter of time before the United States Supreme Court chooses to address the question again. Mr. Green asserts that Due Process Clause of the Fourteenth Amendment guarantees his right to have a grand jury consider and return an indictment concerning each and every element of the crime for which he is charged, prosecuted, and convicted. He asserts accordingly that the indictment in this case was deficient and should have been quashed.

3. *The trial court erred in admitting speculative photos.*

On July 24, 2018, the defense filed a Motion in Limine to Prohibit[] Introduction of Speculative Photographs. R. 164. In it, the defense argued that the photos taken from Mr. Green's phone depicting Mr. Green holding and firing a gun, and photos that show what purports to be narcotics in close proximity to a gun, and photos showing Mr. Green holding a gun and pointing to a shooting range target, should be excluded from introduction into evidence at trial. *Id.* The defense argued that the photos were irrelevant. Mr. Green was not charged with any narcotics violations and did not have any felony convictions, and the State did not provide a notice pursuant to *State v. Priour*, 277 So.2d 126 (La. 1973), regarding the introduction of prior acts, and suggested that this evidence amounted to character evidence. R. 164-165. Moreover, Mr. Green had given a statement wherein he stated that he owned two Glock pistols, so in that way the evidence was cumulative. R. 164. Moreover, the defense argued, if the evidence was relevant it was substantially outweighed by the risk of "unfair prejudice, confusing the issues, misleading the jury, or by considerations of undue delay, or waste of time." R. 165, referencing La. C.E. Art. 403. The defense argued that these photos were highly speculative, and that they would be given significant weight by the jury. R. 165. At the hearing on the matter, the defense urged that the photos were cumulative and that there would be no reason to admit these photos other than to prejudice the jury. R. 564-565.

The State responded that the first photo was relevant because in Mr. Green's statement to police he admitted that this photo depicted that he had the night of the shooting. R. 171, see R. 174, State

Exhibit 1. The State also argued that the surviving victim described the weapon used by Mr. Green, and that the photograph is needed to corroborate this account. *Id.* The State argued, "It is probative and relevant for purpose of the jury to understand the type of weapon used and will assist them in evaluating the other ballistics evidence that will be submitted in this case. As well it is probative to corroborate the victim's credibility as to his ability to view and recall this weapon." *Id.*

As to the second and third photographs, See R. 175-176, State Exhibits 2 and 3, the State said they were relevant "as they depict one of the shooting range outlines that was recovered from a search of the defendant's home that were located in the defendant's bedroom." "The evidence will be presented at trial and is relevant and probative to show the defendant's knowledge and familiarity with the weapon in question and his skill in the use of the weapon. These are factors that are relevant to establish whether the manner in which he used that weapon establish specific intent to commit the crimes for which he is indicted" R. 172.

The trial court agreed with the State. Prior to trial on July 30, 2018, the court ruled:

All right. So the Court has, obviously, taken a look at the memos in support and opposition to, as well as the photographs involved. I would tend to agree with the State in this particular matter in that I think the photographs are probative of the weapon involved in the shooting and Mr. Green's connection to that weapon.

The State will have to prove intent as they're going to attempt to prove the specific intent to kill. I think the familiarity with the use and the ability to use the gun effectively goes into that issue as well so I think it is probative for those reasons.

And then clearly the photos depicting Mr. Green and the fact that the items were taken from Mr. Green's room is probative of the fact that he is connected to the weapon and/or to that ability to use the weapon effectively.

So for all those reasons, I think that the probative value outweighs any prejudicial effect. I don't believe it's cumulative given the nature of the case so the Court's going to deny the motion. I will note defense counsel's objection for the record. R. 567-568.

Evidence is relevant if it has 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

law, and irrelevant evidence is not admissible. La. C.E. Art. 402. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. Art. 403. *State v. Lanioux*, 39 So.3d 606 (La. App. 2010).

Here, the photos were indeed cumulative. The State already had ample evidence linking Mr. Green with two Glock firearms – including through a statement by Mr. Green himself and the empty Glock box and receipt found in his room. There was no more need for additional evidence on this point. The court's ruling that the photos were probative of Mr. Green's ability to use the weapon effectively is not relevant because that was not at issue in this case. What was at issue was whether Mr. Green acted in self-defense or whether he formed specific intent to kill or commit great bodily harm. Instead, the evidence served to bolster the State's only eyewitness who said that Mr. Green shot a weapon in a deliberate manner. But that eyewitness said he only caught a glimpse of Mr. Green's gun.

The admission of these photos was thus harmful to Mr. Green's defense because it unnecessarily placed an unrelated image of Mr. Green with a Glock firearm before the jury, when the images depicted totally separate events. The purpose for which they were admitted – to show Mr. Green's facility with the weapon or the fact that it was with him on the night of the shooting – were unnecessary as those purposes were not at issue in the case. Thus, because these photos were not probative of an issue in the case, they used these images of Mr. Green using a gun in circumstances totally unrelated to the circumstances at issue here, their prejudicial nature outweighed their probative value, and they should have been excluded. As explained above, their admission prejudiced Mr. Green because they unduly bolstered a critical witness, whose credibility was central to the allegations against Mr. Green. In this way, the error was prejudicial and not harmless.

4. *The trial court erred in including the State's requested jury charge.*

The State requested special jury charges, R. 120-122, and the following was incorporated into the court's jury charges, over the defense's objection, R. 1265: "Deliberately pointing and firing a deadly weapon at close range are circumstances which will support a finding of specific intent to kill." *State v. Broaden*, 99-2124 (La. 2/21/01), 780 So.2d 349, 362.

The defense objected, noting that the charge was extraneous and already covered in the other charges. R. 1265. Indeed, the charges had already set forth that specific criminal intent "is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequence to follow his act or failure to act." R. 192. And: "Whether criminal intent is present must be determined in light of ordinary experience. Intent is a question of fact which may be inferred from the circumstances. You may infer that the defendant intended the natural and probable consequences of his acts." R. 192. These instruction as to specific intent were sufficient, and the added comment about specific intent being supported by a finding of "deliberately pointing and firing a deadly weapon at close range" was extraneous and possibly confusing to the jury. The State specifically requested the instruction on the grounds that it fell in line with Mr. Lamb's account of the shooting. R. 1265. And the trial court agreed:

The state had requested to inclusion of deliberately pointing and firing a deadly weapon at close range are circumstances which will support a finding of specific criminal intent based upon the very specific testimony by Mr. Lamb regarding Mr. Green's actions of pointing the gun against his face and pulling the trigger. I think that that definition or that additional clarification of the definition of specific intent would be appropriate in this particular case...

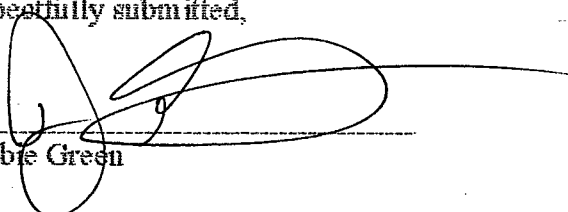
But the jury should have been left to evaluate Mr. Lamb's testimony without this extraneous instruction. Had the jury determined Mr. Lamb's account to be credible, it could have found specific intent under the original specific intent charges. But including an instruction that mirrors his account seems to lend credibility to Mr. Lamb's testimony instead of allowing the jury to evaluate the circumstances on their

own. Moreover, while this instruction was nonetheless included relative to all three charges. See R. 192. And finally, because the instruction was adopted as being so close to the specific testimony of Mr. Lamb's "regarding Mr. Green's actions of pointing the gun against his face and pulling the trigger," R. 1265, the inclusion of this instruction could have been seen by the jury as the court's endorsement of the State's allegations. Accordingly, this charge was irrelevant, extraneous and prejudicial to Mr. Green.

CONCLUSION

The petition for a writ of certiorari should be granted.


Respectfully submitted,



Jacobie Green

Date: June 7, 2021

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