No. _____

IN THE

Supreme Court of the United States

COLTON MATTHEWS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

KATHERINE E. GILMER
GILMER & GIGLIO LLC
3541 Youree Drive
Shreveport, LA 71105

CAROL A. KOLINCHAK
2563 Bayou Road, 2nd Floor
New Orleans, LA 70119

JAMES E. BOREN
Counsel of Record
830 Main Street
Baton Rouge, LA 70802
(225) 387-5787
jim@jamesboren.com

Attorneys for Petitioner

116725

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

This case squarely addresses the constitutional right to present a defense. Absent this Court's intervention, Mr. Matthews will be precluded from presenting any testimony regarding the single most important piece of evidence that supports his claim of self-defense. It is undisputed that Colton Matthews was working at his father's business when Joseph Williams entered. Williams was hostile and argumentative, Mr. Matthews attempted to diffuse the situation and when this was unsuccessful, he escorted Williams out of the business and to his car. It is also undisputed that Williams threatened to kill Mr. Matthews, reached into his car, opened the middle console and then quickly turned toward Mr. Matthews. Believing Williams had retrieved a gun and was about to make good on his threat to kill him, Mr. Matthews shot Williams one time. Mr. Matthews has consistently maintained that he shot Williams in self-defense. When law enforcement arrived, they observed that the middle console in Williams' vehicle was open and when they searched the vehicle, they found a gun in the middle console.

Over Mr. Matthews' objection, the State successfully moved to exclude "all evidence" of the gun found in the middle console of Williams' vehicle. Ignoring *Chambers v. Mississippi* and its progeny, the Louisiana Supreme Court affirmed the district court's ruling excluding all evidence of the gun.

The following question arises:

1) Under the unique facts and circumstances of this self-defense case, does exclusion of any evidence regarding

the gun found in the open center console of Williams' vehicle create a false and misleading impression to the jury, violate due process, violate the right to a fair trial and violate the constitutional right to present a defense?

PARTIES TO THE PROCEEDING

Colton Matthews is the Petitioner herein and was the Defendant and Defendant-Appellant in the courts below.

The State of Louisiana is the Respondent here and was Appellee in the courts below.

RELATED CASES

State v. Matthews, No. 23-1693 (La. 02/14/24) __ So.3d __.

State v. Matthews, No. 23-55593 (La. App. 2 Cir. 10/06/23) __ So.3d __.

State v. Matthews, 26th Judicial District Court, Bossier Parish, State of Louisiana, Docket # 222,297, Judgment Rendered September 19, 2023.

TABLE OF CONTENTS

TABLE OF APPENDICES

Page

Table of Appendices

Page

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

Cited Authorities

Page

CONSTITUTIONAL PROVISIONS

STATUTES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Colton Matthews respectfully petitions for a writ of certiorari to the Louisiana Supreme Court in *State v. Matthews*, No. 23-1693, (La. 02/14/24), __ So.3d __.

OPINIONS BELOW

The judgment and opinion of the Louisiana Supreme Court is reported at *State v. Matthews*, No. 23-1693 (La. 02/14/24) __ So.3d __, and is reprinted in the Appendix as Appendix A.

The judgment and opinion of the Louisiana Second Circuit Court of Appeal granting relief is reported at *State v. Matthews*, No. 23-55593 (La. App. 2 Cir. 10/06/23) __ So.3d __, and is reprinted in the Appendix as Appendix B.

The 26th Judicial District Court of the State of Louisiana's ruling is reprinted in the Appendix as Appendix C at 17-18a.

JURISDICTION

The judgment and opinion of the Louisiana Supreme Court were entered on February 14, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI to the U.S. Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury; . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV to the U.S. Constitution provides in relevant part:

> No State shall . . . deprive any person of life, liberty or property without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 24, 2020, Colton Matthews was working at the Cash N-A Flash Pawn Shop, a business owned by his father, Randy Matthews. Appendix F at 34a. Joseph Williams entered the business with a complaint about a watermelon that he had previously purchased at that location. Williams claimed the watermelon was no good and demanded another one. App. F at 35a, 39a. Employees advised Williams that he could not return the watermelon due to the COVID-19 pandemic and Williams became irate. In an attempt to diffuse the situation, Colton Matthews approached Williams and told "the customer he could have a new watermelon." App. F at 39a. Williams was disgruntled, refused to take the watermelon he had previously purchased, and was asked to leave the store. App. F at 35a, 44a. As Williams left the store, Colton Matthews escorted him and two other employees (Kelvin

Taylor and Christopher Tubbs) followed close behind. Williams continued to argue and remain belligerent as he exited the store. App. F at 40a, 44a.

Kelvin Taylor heard Williams tell Colton Matthews he was going to kill him. App. F at 44a. Christopher Tubbs described Williams as rude from the time he entered the store and, once outside, according to Tubbs, Williams told Colton Matthews to get back inside "before I hurt you." App. F at 41a. When they approached Williams' vehicle, Tubbs observed Williams reach into his vehicle, and open the center console. "Tubbs stated that the customer had his hand in the console and turned quickly." App. F at 41a. Both Kelvin Taylor and Christopher Tubbs told officers they believed Williams was arming himself with a weapon to carry through on his threats against Mr. Matthews. App. F pp. 41a. Though both men were armed, Taylor fled (App. F at 44a) and Tubbs froze. Mr. Matthews told officers that Williams threatened to kill him before reaching toward his center console. App. F at 35a. Believing Williams was reaching for a gun, Mr. Matthews warned him to stop. App. F at 35a, 36a. Instead, Williams "quickly" turned toward Mr. Matthews. App. F at 41a. Believing Williams was going to kill him, Mr. Matthews shot Williams one time. App. F at 35a.

When law enforcement officers arrived on the scene, they observed that the center console in Williams' vehicle was open and noted a pair of sunglasses sitting in a tray that was in the console. App. F at 46a. When officers later searched William's vehicle, they located a handgun in the center console underneath the tray containing sunglasses. App. F at 46a. In addition, officers "observed a Sharpie pen/marker (grayish body with a black cap) lying on the ground near Williams' feet." App. F at 43a.

Law enforcement officers who interviewed Colton Matthews described him as "[visibly] upset" and noted that he "appeared physically distraught." App. F at 45a. Mr. Matthews asked his father "Why would he reach? and Why would he do that?" App. F at 42a. Christopher Tubbs "stated that Colton appeared as if he could barely walk, and was in shock." App. F at 42a. Ultimately, Mr. Matthews was arrested and charged with violation of La. R.S. 14:30.1; second degree murder. If convicted, he will receive a mandatory sentence of life in prison without the possibility of probation, parole or suspension of sentence. *Id*.

On September 6, 2023, the State filed a Motion in Limine "to exclude all evidence of a gun being in the victim's vehicle at the time of the incident." App. D at 21a. In its motion, the state argued first that the handgun was not relevant because Mr. Matthews did not know it was there and second that any probative value was outweighed by the prejudicial effect it would have on the jury. Id. Specifically, the state argued that even "[i]f this fact was deemed relevant it should be barred because it has zero probative value to the defendant's belief and it would greatly prejudice a jury to know there was a gun in the victim's car." App. D at 24a.

In his opposition to this motion, Mr. Matthews argued the gun was relevant to his self-defense claim, to law enforcement's investigation and that its exclusion would violate his constitutional rights to due process, a fair trial and to present a defense. App. E at 25a. The district court granted the state's motion; finding that "[u]nless it's known before it took place then that couldn't have entered into Mr. Matthews' thinking . . . " App. C p. 13.

The Louisiana Second Circuit Court of Appeals reversed the ruling of the district court; finding that "[t]he gun at issue is relevant and admissible to bolster the defendant's claim of justification in the shooting." App.B at 3a.

At the Louisiana Supreme Court, the state again argued that the gun should be excluded on relevance grounds. App. H at 66a. The state argued that "[i]t was determined that Williams was holding a sharpie marker at the time he was shot." App. H at 73a. That is incorrect. In fact, not a single witness saw Williams with a sharpie marker, it was found on the ground near his feet, and there is no indication of how long it had been there. The state further argued that "the probative value of the gun at issue is substantially outweighed by the danger of unfair prejudice as to the decedent, danger of confusing the jury on the relevant issue of what the defendant knew at the time of the shooting, and danger of misleading the jury into considering the gun at issue when determining whether the defendant acted reasonably." App. H at 80a.

Mr. Matthews argued that exclusion of the gun (and any mention of it) would mislead the jury and deny him his constitutional rights to due process, a fair trial and to present a defense. App. I at 85a-96a. The Louisiana Supreme Court reversed the Second Circuit and reinstated the district court's ruling that all evidence of the gun found in Williams' center console was inadmissible. App. A at 1a.

This petition arises from the Supreme Court of Louisiana's decision violating Colton Matthews' rights to due process, a fair trial and to present a defense. Allowed to stand, it will preclude Mr. Matthews from

cross-examining law enforcement related to their investigation, including their discovery of the gun and its location—a location that eyewitnesses will describe as precisely the location where Williams was reaching when Mr. Matthews and both eyewitnesses thought he was reaching for a gun.

The state will argue, as they did before the Louisiana Supreme Court, that Williams was holding a Sharpie marker in his hand when he was shot. App. H at 73a. Conversely, Mr. Matthews will be precluded from any mention of the single most important piece of evidence that counters the state's argument: the gun found in the center console that Williams opened and was reaching into seconds before Mr. Matthews shot him. Under "these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the [relevance] rule may not be applied mechanistically to defeat the ends of justice. *Chambers v. Mississippi*, 410 U.S. 284, 302; 93 S.Ct. 1038, 1049; 25 L.Ed.2d 297, 313 (1973). The gun is relevant to Mr. Matthews claim of self-defense, it is admissible and supports his argument that Williams was, in fact, reaching for a gun when he shot him.

SUMMARY OF THE ARGUMENT

The law is clear: "[t]he right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294; 93 S.Ct. 1038, 1045; 35 L.Ed.2d 297, 308 (1973).

> Whether rooted directly in the Due Process Clause of the Fourteenth Amendment,

> *Chambers v. Mississippi*, *supra*, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, *Washington v. Texas*, 388 U.S. 14, 23 (1967); *Davis v. Alaska*, 415 U.S. 308 (1974), the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' *California v. Trombetta*, 467 U.S., at 485; cf. *Strickland v. Washington*, 466 U.S. 668, 684-685 (1984) ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment").

Crane v. Kentucky, 476 U.S. 683, 690; 106 S.Ct. 2142, 2146; 90 L.Ed.2d 636, 645 (1986). What is equally clear is that Colton Matthews is being denied "a fair opportunity to defend against the state's accusations." And, as in *Crane*, this Court need "break no new ground [here] in observing that an essential component of procedural fairness is an opportunity to be heard." *Id*. However, "[t]hat opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of [statements made by Mr. Matthews and both eyewitnesses] when such evidence is central to the defendant's claim of [self-defense]." *Id*.

Without intervention from this Court, jurors will hear that Williams threatened to kill Mr. Matthews. Jurors will hear that Williams then reached into his car, opened his center console, "had his hand in the console, and turned quickly." App. F at 41a. Jurors will further hear that Mr. Matthews and both eyewitnesses believed Williams was reaching for a gun and when he quickly turned around,

Mr. Matthews shot him one time. And then jurors will be precluded from hearing any evidence about what law enforcement actually discovered in that center console: a gun. The state will argue, as they did before the Louisiana Supreme Court, that Williams "was holding a sharpie marker" (App. H at 73a) because law enforcement found one "lying on the ground near Williams' feet." App. F at 43a. And Mr. Matthews will be precluded from countering this argument with the very evidence that contradicts it and supports his claim of self-defense: that Williams opened his center console and was reaching for his gun in order to carry through on his threat to kill Mr. Matthews.

Thus, when evaluating the credibility of the witnesses and the strength of the evidence, the jury will have the benefit of seeing the sharpie marker, viewing photographs of its location and hearing testimony from witnesses in support of the state's argument that Williams was unarmed and holding a sharpie marker when he was shot. The jury will not have the benefit of seeing the gun, viewing photographs of its location and hearing testimony from witnesses in support of Mr. Matthews argument that he reasonably believed that Williams was reaching for his gun and planned to kill him because Williams was, in fact, reaching into the exact location where he had stored his gun. The constitutional rights to due process, a fair trial and to present a complete defense mandate that Mr. Matthews be afforded the opportunity to introduce this material, relevant evidence in support of his claim of self-defense.

REASONS FOR GRANTING THE WRIT

I. Absent This Court's Intervention, Colton Matthews Will Be Denied His Constitutional Rights to a Fair Trial, to Due Process and to Present a Defense.

Colton Matthews has consistently maintained that he shot Williams one time in self-defense. Mr. Matthews was working at a business owned by his father when Joe Williams entered. Williams claimed a watermelon he had previously purchased was bad and he demanded a new one. When Williams was told he could not return the watermelon because of the COVID-19 pandemic, he became irate. Colton Matthews attempted to diffuse the situation by telling Williams he could pick another watermelon. Nonetheless, Williams remained hostile and argumentative with Mr. Matthews and other employees and refused to take the watermelon he originally purchased with him. Eventually, Mr. Matthews picked up the watermelon Williams originally purchased and escorted Williams out of the business and toward his car. Because Williams remained belligerent, Kelvin Taylor and Christopher Tubbs, employees who were also working, followed close behind.

As they exited the business, Kelvin Taylor heard Williams threaten to kill Mr. Matthews. App. F at 44a. Christopher Tubbs heard Williams tell Mr. Matthews to go back inside "before I hurt you." App. F at 41a. And Mr. Matthews told officers that Williams said "I'm going to kill you and reached inside the vehicle console." App. F at 35a. When Williams reached into his car and opened the center console, Mr. Matthews and both eyewitnesses believed he was reaching for a gun. Kelvin Taylor ran away and

did not see anything further. Christopher Tubbs stated that Williams "had his hand in the console, and turned quickly." App. F at 41a. At that moment, Colton Matthews reasonably believed Williams was about to make good on his threat to kill him and he shot Williams one time.

When law enforcement officers arrived on the scene, they observed that the "[t]he center console located between the driver's seat and the passenger's seat was open, and a tray containing a pair of sunglasses was visible. It was later discovered that a handgun was under the tray." App. F at 46a. Law enforcement also observed a "Sharpie pen/marker (grayish body with a black cap) lying on the ground near Williams' feet." App. F at 43a.

When taken in its entirety, the evidence supports Colton Matthews' reasonable belief that he was in imminent danger of being killed by Williams. Forced to make a split-second decision, Matthews shot Williams one time to save himself. Thus, the homicide was justifiable because it was committed in self-defense. In Louisiana,

> The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct . . . (7) [w]hen the offender's conduct is in defense of persons or property under any of the circumstances described in Articles 19 through 22.

La.R.S. 14:18.

> A homicide is justifiable: (1) [w]hen committed in self-defense by one who reasonably believes

> that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.
>
> . . .
>
> A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.
>
> No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent unlawful entry.

La.R.S. 14:20.

However, as a result of the Louisiana Supreme Court's complete disregard of Colton Matthews' constitutional rights to due process, a fair trial and to present a defense, absent this Court's intervention, Mr. Matthews will be precluded from examining witnesses and introducing the most important piece of evidence supporting his contention that the homicide was justifiable under Louisiana law. When Williams opened his center console and reached inside it, Mr. Matthews' argument is that he was in fact reaching for his gun and intended to follow through on his

threat to kill Colton Matthews. Therefore, Mr. Matthews' belief that Williams was going to kill him was reasonable and he was justified in shooting him. The state, of course, can and will argue that Williams was holding a Sharpie pen. However, the jury, as factfinder, must ultimately determine whether Colton Matthews reasonably believed that deadly force was necessary to prevent Williams from killing him. In this context, exclusion of all evidence regarding the gun found in in the center console Williams opened and reached into seconds before Mr. Matthews shot him one time will mislead the jury and deny Colton Matthews his constitutional rights to due process, a fair trial and to present a defense.

Evidence of the gun located in the center console of Williams' vehicle is clearly relevant. Under Louisiana law, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." La.C.Ev. art. 401. In this case, evidence regarding the gun and its location makes it "more probable" that Williams was, in fact, reaching for a gun as Colton Matthews, Christophe Tubbs and Kelvin Taylor believed and not a Sharpie marker as the state has argued. It also makes Colton Matthews belief that Williams was going to kill him more reasonable.

In addition, while "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials, . . . [t]his latitude . . . has limits." *Holmes v. South Carolina*, 547 U.S. 319, 324; 126 S.Ct. 1727,1731; 164 L.Ed.2d 503, 508 (2006). Certainly, the district court was authorized to

exclude evidence "if its probative value [w]as substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . " La.C.Ev. art. 403. That, however, is not the case here.

The state will argue, as they have below, that Williams was holding a sharpie marker when he was shot. To support this, they will rely on the sharpie marker located near his feet. Thus, when evaluating the credibility of the witnesses and the strength of the evidence, the jury will have the benefit of seeing the sharpie marker, viewing photographs of its location and hearing testimony from witnesses in support of the state's argument.

Mr. Matthews will argue that he believed Williams was reaching for a gun when he opened his center console and was about to kill him. However, the jury will not have the benefit of seeing the gun, viewing photographs of its location and hearing testimony from witnesses in support of Mr. Matthews argument. In fact, jurors will never know that Williams' gun was found in the center console. As a result, in evaluating Mr. Matthews claim that he reasonably believed that Williams was reaching for his gun and about to kill him, the jury will be precluded from hearing the single most important piece of evidence that supports his claim: Williams' gun was stored in the center console that he reached into seconds before being shot.

Under these unique facts and circumstances, exclusion of all evidence of the gun will cause unfair prejudice to Mr. Matthews, will mislead the jury and, most importantly, will deprive Mr. Matthews of his constitutional rights to due process, a fair trial and to present a complete defense. For this reason, the rule of relevancy as interpreted by the

Louisiana Supreme Court in this case "does not rationally serve the end that [Rule 403] and its analogues in other jurisdictions were designed to promote . . . " *Holmes* at 330.[1] "It follows that the rule applied in this case by the State Supreme Court violates a criminal defendant's right to have 'a meaningful opportunity to present a complete defense.'" *Holmes* at 331; *citing Crane v. Kentucky*, 476 U.S., at 690, 106 S.Ct. 2142, 90 L.Ed. 2d 636 (*quoting California v. Trombetta*, 467 U.S., at 485, 104 S.Ct. 2528, 81 L.Ed.2d 413. "[E]xclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.'" *Crane* at 691; *quoting United States v. Chronic*, 466 U.S. 648, 656 (1984).

It is appropriate and necessary for this Court to intervene at this point. The Louisiana Supreme Court has made a final ruling that will deprive Colton Matthews of his federal constitutional rights to due process, a fair trial and to present a defense. This Court "has recurringly encountered situations in which the highest court of a

---

1. In fact, in other cases, Louisiana courts have found that evidence that the victim may have had a gun is relevant to a claim of self-defense. In *State v. Simmons*, the Louisiana Supreme Court noted that "Deputy Compton testified that a pistol was found in Mrs. Ignont's car halfway down in the basket of laundry, which was in the same spot as the items taken from the victim's pocket, indicating that in fact there was another gun at the scene of the crime." *State v. Simmons*, 349 So.2d 273, 275 (La. 1977) (conviction reversed and case remanded for new trial); *see also State v. Washington*, No. 98-30043, 706 So.2d 203 (La. App. 2 Cir. 01/23/98) (conflicting testimony and evidence about whether victim possessed a gun was admitted in self-defense case; however, it was error to exclude the shotgun alleged to belong to victim).

State has finally determined the federal issue present in a particular case but in which there are further proceedings in the lower state courts to come." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477; 95 S.Ct. 1029, 1038; 43 L.Ed.2d 328, 339 (1975). Because finality "is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments, . . . this Court has held that the requirement of finality is to be given a 'practical rather than a technical construction.'" *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152; 85 S.Ct. 308, 311; 13 L.Ed.2d 199, 203 (1964); *quoting Cohen v. Beneficial Industrial Loan Corp.* 337 U.S. 541, 545, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). "[I]n deciding the question of finality the most important competing considerations are 'the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.'" *Gillespie* at 152-153. Here, it is not simply the danger of denying justice, it is the actual denial of justice that is at stake because Mr. Matthews will be precluded from introducing the single most important piece of evidence that supports his claim of self-defense. This Court's intervention is appropriate, it is necessary and it is required to ensure that Colton Matthews' federal constitutional rights to due process, a fair trial and to present a complete defense are preserved.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

KATHERINE E. GILMER
GILMER & GIGLIO LLC
3541 Youree Drive
Shreveport, LA 71105

CAROL A. KOLINCHAK
2563 Bayou Road, 2nd Floor
New Orleans, LA 70119

JAMES E. BOREN
Counsel of Record
830 Main Street
Baton Rouge, LA 70802
(225) 387-5787
jim@jamesboren.com

Attorneys for Petitioner

APPENDIX

TABLE OF APPENDICES

Table of Appendices

APPENDIX A — OPINION OF THE SUPREME COURT OF LOUISIANA, DATED FEBRUARY 14, 2024

SUPREME COURT OF LOUISIANA

No. 2023-KK-01693

STATE OF LOUISIANA,

VS.

COLTON THOMAS MATTHEWS.

On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Bossier

PER CURIAM

Granted. The district court did not abuse its discretion in granting the State's motion *in limine* to exclude evidence of a firearm found in decedent's vehicle on grounds of relevance. See, La. C.E. arts. 401, 402, 403. The district court's ruling declaring the evidence inadmissible is reinstated.

REVERSED AND REMANDED

APPENDIX B — SUPERVISORY REVIEW OF THE STATE OF LOUISIANA COURT OF APPEAL, SECOND CIRCUIT, FILED OCTOBER 6, 2023

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700

No. 55,593-KW

STATE OF LOUISIANA

VERSUS

COLTON THOMAS MATTHEWS

FILED: 10/03/23
RECEIVED: BY HAND 10/03/23

On application of Colton Thomas Matthews for SUPERVISORY WRIT AND STAY in No. 222,297 on the docket of the Twenty-Sixth Judicial District, Parish of BOSSIER, Judge Charles A. Smith.

Before STONE, THOMPSON and HUNTER, JJ.

WRIT GRANTED; MADE PEREMPTORY

The applicant, Colton Matthews, seeks supervisory review of the trial court's September 19, 2023, ruling granting the State's motion *in limine* to exclude evidence of a firearm found in the decedent's vehicle.

Appendix B

Relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401. All relevant evidence is generally admissible. La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.

The gun at issue is relevant and admissible to bolster the defendant's claim of justification in the shooting. The trial court abused its discretion in granting the motion to exclude the gun. The relevant inquiry is what the defendant knew at the time of the shooting and whether he acted reasonably. According to eyewitnesses, the decedent threatened to kill the defendant and/or to "fu*k him up" immediately prior to the shooting. The victim then reached into his vehicle and retrieved a black item and turned toward the defendant. Given these facts and the exigency of the circumstances, the defendant could have reasonably believed the decedent was armed and reaching inside the vehicle for his weapon when the defendant shot him.

Further, in cases involving a police officer's use of excessive/deadly force, courts evaluate the record "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Smith v. Sawyer*, 435 F. Supp. 3d 417, 432 (N.D.N.Y. 2020); *Jones v. Parmley*, 465 F. 3d 46 (2nd Cir. 2006). The same standard applied to officer-involved shootings should apply in all cases.

Appendix B

Accordingly, the writ is granted and made peremptory. The trial court's ruling is reversed and the matter is remanded to the trial court for further proceedings.

Shreveport, Louisiana, this 6th day of October, 2023.

/s/ MLH /s/ SDS

/s/ JRT THOMPSON, J., dissents and would deny the writ.

FILED: October 6, 2023

/s/ Brian J. Walls
CHIEF DEPUTY CLERK

SECOND CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

Endorsed Filed Oct. 6, 2023

/s/ Robin N. Jones
ROBIN N. JONES, CLERK OF COURT
A TRUE COPY – Attest

APPENDIX C — TRANSCRIPT OF THE TWENTY-SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF BOSSIER STATE OF LOUISIANA, DATED SEPTEMBER 19, 2023

[1]IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF BOSSIER STATE OF LOUISIANA

DOCKET NUMBER: 222,297

STATE OF LOUISIANA

VERSUS

COLTON THOMAS MATTHEWS

EVIDENCE ADDUCED in the above entitled and numbered cause, before His Honor, Charles A. Smith, Judge of the Twenty-Sixth Judicial District Court in and for the Parish of Bossier, State of Louisiana, on the 19th day of September, 2023, at Benton, Bossier Parish, Louisiana.

[2]SEPTEMBER 19, 2023

MR NERREN:

Good afternoon, Your Honor, this is Chance Nerren on behalf of the State. I'm trying to find the page number.

MR. BAILIFF:

Twelve.

Appendix C

MR. NERREN:

Twelve, thank you. We are on page, the bottom of page 12, this is Colton Thomas Matthews, docket number 222,297. Your Honor, the State filed -- Mr. Matthews is present. The State filed a motion in limine dealing with whether or not the fact that there was a gun in the victim's car would be admissible. I believe, although I'll defer to Ms. Gilmer, I believe that we are ready to proceed on that motion.

MS. GILMER:

Good afternoon, Your Honor, Katherine Gilmer present on behalf of and with Mr. Matthews, yes, we are ready to proceed.

THE COURT:

Okay.

MR. NERREN:

There are a few stipulations that we'll put on the record prior to the argument. In defense's opposition they attached a number of police reports and attempted to subpoena some witnesses. My understanding is none of the witnesses are present today. Defense wishes to proceed forward. The State is fine stipulating that any witnesses that were called would testify --

Appendix C

[3]MS. GILMER:

Consistently.

MR. NERREN:

Consistently, thank you, consistently with what was in the police reports. So, with that I think we're ready to proceed.

MS. GILMER:

That's the agreed upon stipulation, Your Honor. And I would ask that pursuant to that stipulation that the exhibits be offered and admitted into evidence.

MR NERREN:

Without --

THE COURT:

Okay.

MR. NERREN:

-- objection.

THE COURT:

Well, good. I'm glad because I read them anyway. Too late, I wouldn't have been able to unsee it. Now, do one of y'all have an officer here? I'm asking.

MR. NERREN:

Do we?

THE COURT:

I don't know -- yeah.

MS. GILMER:

Are the --

MR. MONTGOMERY:

Judge, --

MS. GILMER:

May I sound the courtroom, Your Honor?

[4]MR. MONTGOMERY:

That's my case, Your Honor.

MS. GILMER:

Oh.

THE COURT:

Okay. That --

Appendix C

MS. GILMER:

Thank you.

MR NERREN:

Yeah, the State did not have any witnesses, Your Honor.

THE COURT:

Okay.

MR. NERREN:

So as we laid out prior to this argument this is a question as to whether or not the gun that was located in the victim's vehicle should be admitted into evidence. So just a factual background, as you are aware, Your Honor, I believe the argument from the defense is gonna be that this is a self-defense case and there was a gun found in the victim's car. The gun was found in a center console underneath the tray consistent with the pictures that the State presented. So with that being said, I would like to start out with reading just some snippets out of Louisiana Revised Statute 14:20 which is the justifiable homicide statute. A homicide is justifiable when committed in self-defense by one who reasonably believes. The second paragraph, a justifiable homicide is when committed for the purpose of preventing a violent or forcible felony involving danger to life or great bodily harm by one [5] who reasonably believes. The question in a justifiable

homicide case is what the defendant reasonably believed and having tried some of these cases what the defense always likes to point out is that before a jury can make a determination as to what an individual reasonably believed or whether or not their belief was reasonable is you have to place yourself in the shoes of the defendant. So if that's the case, Your Honor, the question here is, is you have to take a look at exactly what the defendant knew in order to put yourself in his shoes. There is zero indication from the defendant in all of his statements, from any of the witnesses that were subpoenaed that aren't here but you'll see in the police report, or you already saw in the police reports that you read, there is zero indication at any point in time that any witness or the defendant was aware that there was a gun in the victim's car. Period. Which makes this evidence completely irrelevant, Your Honor. It does not go to prove any fact whatsoever that is – is significant in this case because what we know is, is that Mr. Williams did not come out, and Mr. Williams is the victim here, that Mr. Williams did not come out of the car with that gun. He was not shot while he was holding that gun. And the gun was found underneath a tray in a center console. There's no indication that he really ever reached for it and nobody that was there at the time can say that Mr. Williams had a gun when this incident happened. They can't say that a gun was in the car so therefore it's irrelevant. It doesn't go to prove [6]any fact, however, if the Court were to determine that it was relevant the prejudicial value substantially outweighs any probative value. As we've already discussed, there's very, very little probative value, it adds nothing to this case whatsoever. The question is whether or not the threats that were allegedly made and

the response that the defendant had and the response that the victim had to their argument is enough to where one would have a reasonable belief that their life was in imminent danger. That's the question. The question isn't whether or not he actually had a gun. The question is, is what - what the defendant believed and whether or not the belief was reasonable. There's no indication that he believed there was a gun. So the probative value of this evidence is miniscule at best, however, the prejudicial nature of putting the fact that there was a gun in front of a jury runs a significant risk that the jury would get caught up trying to weigh this issue on the fact that whether or not Mr. - Mr. Matthews's belief that there was a weapon in the car was correct when in reality that's completely irrelevant. Whether or not he believed there was a weapon in the car was ultimately proven right has nothing to do with whether or not the belief was reasonable considering everything that led up to the point that the bullet was fired out of that gun, period. And so the prejudicial nature that you would place in front of a jury the fact that a firearm was present but never used, was present but never reached for, was present but was never seen is [7]significant and it substantially outweighs any probative value. The question in these cases, the question in self-defense cases is what the defendant believed and whether or not that belief was reasonable. The only way to determine what he believed is to look at what he knew at the time. Period. And he did not know, neither did any of the witnesses know, that there was a gun in that car. And just for the sake of clarity, this motion is not to sit there and to say that Mr. Matthews can't take that stand and say that he believed there was weapon in that car. He's certainly allowed to do that. That's

his belief and he has the right to tell his story in front of twelve random people. That's not what this motion is about. This motion is about putting evidence forth that there was actually a gun in there. If Mr. Matthews wants to take the stand and say after everything that he knew, which we know he didn't know there was a gun in there but, after everything he knew that he believed there was a weapon so be it he has a right to tell his story. That's not what this motion's for. What this motion is for is to remove all the evidence that there actually was a gun in there because there's no indication that Mr. Matthews knew, there's no indication anybody else knew, so therefore it doesn't factor into his belief at all and it doesn't factor into whether or not that belief was reasonable at all. So, with that, Your Honor, I will tender to defense.

THE COURT:

All right.

[8]MS. GILMER:

Good afternoon, Your Honor. The State wants to make this case solely about what Colton Matthews and the other two eyewitnesses to this shooting knew. The problem for the State is that there was a fourth person at this shooting. Joe Williams. The allegations as the Court knows from reading the police reports by all three witnesses to the shooting are that Mr. Williams made threats to Colton before Colton shot him. Louisiana Code of Evidence Article 401 defines relevant evidence as evidence having any tendency to make the existence

of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. So, the State is right. What's in Colton Matthews' head is the ultimate question, what did he reasonably believe, but relevant to the question of what Colton reasonably believed was whether or not Mr. Williams made threats to Colton. Colton told the police that Williams threatened to kill him. Kelvin Taylor said the same thing. Christopher Tubbs said he made threats; I saw him reaching in the vehicle. The fact of a firearm existing in the vehicle, whether or not any of those three people knew it was there, is a fact that makes it more probable that the fact that Mr. Williams threatened Colton happened. That's a little bit of a confusing way to phrase that, I've been thinking about it for many days trying to figure out a way to phrase it better and I haven't come up with one so I apologize, Your Honor. But the issue really comes down to Joe Williams is [9]alleged to have threatened Colton Matthews. Colton Matthews believed those threats and shot Joe Williams. The fact that Joe Williams knew he had a gun in his vehicle makes the fact that he threatened Colton Matthews more likely to have happened. It makes that fact more believable and that is the question before the Court. Not the question of whether Colton knew there was a gun at all but the question of whether or not Joe Williams threatened Colton. And that's a question before the jury too. It's not the ultimate question, but it is a question the jury has to decide. Because they have to decide did Joe Williams threaten Colton Matthews, did Colton Matthews reasonably believe those threats. The State wants to focus and focus and focus on the defendant's knowledge and they're right,

he's right to, but it's not the only question. The State in its motion to the Court only cited one case. It focused on the defendant's knowledge but left out the end of that sentence which is the defendant's knowledge of the assailant's bad character and then proceeds to try to argue that essentially gun ownership, I suppose in and of itself, is evidence of bad character. I suspect there's several people in this courtroom who would disagree with that. There's no other law in support of the State's argument. Your Honor, the defendant is entitled to present a defense. The defendant is titled, entitled to all of the evidence being presented to the jury, especially when it is as relevant as this is. We're asking the Court to deny the State's motion in limine. Thank you.

[10]THE COURT:

Okay.

MR. NERREN:

Brief response, Your Honor. Before we get into summarizing the defendant's argument I do want to point out that the State did not leave out anything, in fact if you -- if you read the motion it -- the last sentence says defendant's knowledge of the assailant's bad character so the State didn't leave out any part of that sentence, I - I think that's important. And second, the analogy to defendant's bad character is one that the State made because quite frankly there is no case law on this issue and the State -- the defendant likes to point out that we didn't cite any cases to support our position. They didn't

cite any case that says our position is wrong either and so the analogy about the bad character is one that factors in and it's an analogy because in that circumstance you take into account what the defendant knew and you talk about the bad character of a victim because it would factor into what somebody reasonably believed. So, the analogy that's drawn from a victim's bad character to apply it to the fact that there was a gun in the car but the defendant didn't know is the same exact logic. The question is, is what the defendant knew. Did he know that the victim had bad character? That would factor in. Did he know that there was a gun in the car? That would factor in, but the point here is, is that the defendant didn't know any of that and none of the witnesses did either and so therefore it shouldn't factor in at all. But to say that the [11]State left something out or to try to draw some analogy that's not in case law is incorrect because that's not what happened. But I would like to also pick up on a few statements that the defense made. They said that the State does not want or does want this case -- let me rephrase that. The State wants this case to be made about what Colton Matthews knew. The State doesn't necessarily want that, that's what the law requires. And they say there's a fourth person to this shooting well guess what he's dead. It would be fantastic if we knew exactly what Joe Williams is thinking, but Mr. Matthews shot and killed him. Period. And to sit there and say that Joe Williams knew there was a gun in there therefore he threatened is -- is trying to get into the mindset of a victim that's not here. That is speculation at the utmost level, Your Honor. To sit here and -- and to support an argument with speculation of a victim that their defendant

killed in order to support their argument is ludicrous. It has no basis and logic whatsoever. There was a fourth person in the shooting. He's not here because Colton Matthews killed him and to sit there and try to pervert or speculate what was going through Joe Williams's head in order to support their defense is ludicrous. They can't do it. They're not gonna be able to sit there and - and talk about what was going on in Joe Williams's head in front of a jury because that's speculation. They've got no evidence of it whatsoever because, again, that would be speculation and to sit here in a motion argument to try to backdoor speculation in, [12]in support is -- it has no basis in the law and it has no basis in logic either. They talk about facts of consequence. That's the question in- in a relevancy argument; right? Something that goes on to prove a fact of consequence. How is the fact that there was a gun in the car that was never reached for that nobody ever knew a fact of consequence? It's not relevant at all. It didn't factor into the one thing that the law requires you to consider when it comes to self-defense and that consideration is what the defendant knew. Nothing more and nothing less. Period. What he knew and whether or not what he knew rose to a reasonable belief that his life was in imminent danger. Period. And so a fact of consequence there isn't one here because the defendant never knew that there was a gun in Joe Willimas's car. Period. And so it's not a fact of consequence. It's completely irrelevant. Completely irrelevant. And for that reason, Your Honor, and for the sake of avoiding any prejudicial or any prejudice the jury may have in actually knowing that there was a gun in the car, this Court needs to exclude any mention, any reference, any evidence whatsoever from going in front

of the jury that there is actually a gun in the car. And with that, Your Honor, I'll answer any questions that you may have.

THE COURT:

I don't have any.

MR. NERREN:

Okay. At this time the State will submit, Your Honor.

[13]THE COURT:

All right. Well, I read everything both of you wrote and I think y'all are both kind of right. I mean, it comes down to what Mr. Matthews believes, but it's what he believed at the time it took place, not facts you may have found out later. It's kind of like whether the defendant had or the victim had a bad character. Unless it's known before it took place then that couldn't have entered into Mr. Matthews' thinking no more than the fact that the defendant (sic) had a gun in his car. That to me offers nothing as far as I can see with regard to whether the defendant made threats. I don't know whether he did or not. The jury will hear the testimony -- well, I won't say the testimony of Mr. Matthews. The jury will hear the testimony that the defense puts forth showing what, if any, threats were made. So, like I say, with - with regard to the gun to me that's a fact that came out after and was not known. If you can show somehow that it was known beforehand okay maybe that becomes different, but just

the fact that he made threats to me does not -- I - I - I don't believe any reference to the gun comes in at the trial. That's the Court's feeling on that so therefore Court would grant the motion in limine. And I would note your objection to the Court's ruling and I would expect you to take writs.

(OBJECTION NOTED FOR THE RECORD)

THE COURT:

Now, --

MS. GILMER:

[14]I have nothing --

THE COURT:

-- let - let --

MS. GILMER:

-- left to say, Your Honor. Um, I --

THE COURT:

Let's be -- let's not be surprised by that.

MS. GILMER:

I do think for purposes of scheduling because we are so close to the trial, yes, I would ask my objection be noted

for the record as the Court has already said. I do believe we intend to take writs. We are three weeks-ish away from the trial in this matter. The typical return date is thirty days from the date of the ruling, we would also need time for the clerk to transcribe today's proceeding so I will file the motions as quickly as I possibly can, notice of intent, but I do want to advise the Court we intend to seek a stay because we think that this is -- the ruling on this from the Court of Appeal is important for either one of us I think. The State may disagree with me however.

THE COURT:

Do you have an opinion with regard to that, Mr. Nerren?

MR. NERREN:

I mean, I understand that the motion may be coming but the State's not in any position to agree to any stay at this point in time. So if she wishes to file her motion then the State will oppose it and we can argue that as soon as possible. But there have been situations throughout all kind of trials [15]that have popped up in the middle of trial where appellate courts have been able to get responses back in much shorter time than three weeks so --

THE COURT:

Well, if they do we'll --well, we'll cross that bridge when we get to it depending on whether they do or they don't rule on it. I'm sure you're gonna ask for an expedited hearing on it --

MS. GILMER:

Yes, Your Honor.

THE COURT:

-- and I would think they would give it to you. But, okay. Anything else?

MS. GILMER:

No, Your Honor, thank you.

THE COURT:

All right. Thank you.

MR. NERREN:

Thank you, Your Honor.

(END OF TRANSCRIPT)

****

APPENDIX D — STATE'S MOTION IN LIMINE TO THE 26TH JUDICIAL DISTRICT COURT OF THE STATE OF LOUISIANA, DATED SEPTEMBER 6, 2023

DOCKET NUMBER: 222297
SECTION: B

26TH JUDICIAL DISTRICT COURT
BOSSIER PARISH, LOUISIANA

STATE OF LOUISIANA

VERSUS

COLTON MATTHEWS

MOTION IN LIMINE

By way of this motion, the State moves to exclude all evidence of a gun being in the victim's vehicle at the time of the incident. The fact that a gun was in victim's vehicle is irrelevant.[1] Even if it was relevant, this evidence should be excluded because the prejudicial effect on the jury would substantially outweigh the probative value.[2]

This case is set for trial on October 9, 2023. The next Jury Status Conference is date is September 19, 2023.

1. La. Code of Evidence Art. 401 & 402.

2. La. Code of Evidence Art. 403

Appendix D

FACTS

On July 24,2020, Colton Matthews shot and killed Joe Williams Jr. in the parking lot of Cash N-A Flash Pawn Shop. Prior to Matthews killing Williams, Williams reached into his vehicle and turned toward Matthews. It was at this time Matthews shot and killed Williams.

It is anticipated that Matthews defense will be that he killed Williams in self defense and therefore the homicide was justified.

Located inside Williams' vehicle was a firearm. The firearm was in the center console under a tray that held miscellaneous items.[3]

There is no evidence Matthews was aware of the gun in Williams' car. There is no evidence any of the witnesses were aware of the gun in Williams' car.

LAW

Elements of self-defense

Louisiana Second Circuit Court of Appeal held:

> "Self-defense is justification for a killing only if the person committing the homicide reasonably believes he is in imminent danger of losing his

3. See photos attached as Exhibit "A".

> life or receiving great bodily harm and that deadly force is necessary to save his life."[4]

and,

> "Factors to consider in determining whether a defendant had a reasonable belief the killing was necessary are the excitement and confusion of the situation, the possibility of using force or violence short of killing and the **defendant's knowledge** of the assailant's bad character."[5]

ARGUMENT

The main element of a self-defense claim is the defendant's belief.[6] In order to attempt to determine what a defendant's belief was one must consider what the defendant knew. What the defendant did not know cannot factor into his belief.

In the present case there is no evidence to indicate the defendant knew there was a firearm in Williams' vehicle.

Following the logic handed down by the Second Circuit Court of Appeal[7], if possession of a firearm was

---

4. *State v. Murray*. 36,137 (La. APP. 2 Cir. 8/29/02). 827 So. 2d 488, 496, writ denied 2002-2634 (La. 9/5/03), 852 So. 2d 1020

5. *Id.*

6. *Id.*

7. *Id.*

considered bad character it would be excluded on the basis that the defendant was unaware of that character. What the defendant did not know cannot factor into his belief.

The fact there was a gun in Williams' car is irrelevant. The defendant had no knowledge of the firearm. Therefore, the fact of the gun being in the car is of no consequence to the defendant's belief. The evidence should be excluded.

If this fact was deemed relevant it should be barred because it has zero probative value to the defendant's belief and it would greatly prejudice a jury to know there was a gun in the victim's car.

CONCLUSION

For the above stated reasons all evidence of a gun being in the victim's vehicle at the time of the incident should be excluded.

RESPECTFULLY SUBMITTED:

/s/ J. Chancellor Nerren
J. Chancellor Nerren #37817
ASSISTANT DISTRICT ATTORNEY
26TH Judicial District, Bossier Parish
PO Box 69
Benton, LA 71006

[CERTIFICATE OF SERVICE OMITTED]

[EXHIBIT A OMITTED]

APPENDIX E — MEMORANDUM IN OPPOSITION TO THE STATE'S MOTION IN LIMINE, 26TH JUDICIAL DISTRICT COURT, BOSSIER PARISH, LOUISIANA, FILED SEPTEMBER 14, 2023

DOCKET NUMBER: 222,297; Div.: B

26TH JUDICIAL DISTRICT COURI'

BOSSIER PARISH, LOUISIANA

STATE OF LOUISIANA

V.

COLTON MATTHEWS

MEMORANDUM IN OPPOSITION TO THE STATE'S MOTION IN LIMINE

NOW INTO COURT, through undersigned counsel, comes Colton Matthews, who opposes the State's Motion in Limine filed on September 6, 2023.

Facts

Although the State's recitation of the facts in its Motion in Limine are correct, of special relevance to its Motion are some additional facts included here:

On July 24, 2020, Joseph Williams, the deceased, entered the Cash N-A-Flash Pawn Shop where Colton Matthews was employed, with a complaint about a watermelon he had purchased from a fruit stand at that

location at some point earlier.[1] Because this altercation was in the midst of the COVID-19 pandemic, the employees of the store advised Mr. Williams that they could not take the watermelon back, but that he could pick out a new watermelon.[2] Mr. Williams continued to be disgruntled and refused to take the original watermelon with him. Colton exited the store with Mr. Williams' watermelon, and while Mr. Williams continued to argue, Colton placed it inside Williams' vehicle.[3]

Three eyewitnesses were interviewed by law enforcement immediately following the shooting: Kelvin Taylor, Christopher Tubbs, and Colton. Kelvin (also referred to as "Kevin" in the reports) Taylor said that Mr. Williams told Colton that Williams was going to kill Colton as he exited the store and that Colton and Williams were arguing at Williams' vehicle and Kelvin ran when Williams reached into his vehicle before hearing the gunshot.[4] Christopher Tubbs said that Williams was rude when he entered the store and once outside, Williams told Colton to get back inside the business "before I hurt you" and then reached into his vehicle, at which time Tubbs believed that Williams was arming himself with a weapon to kill or injure Colton.[5] Finally, Colton, himself told officers

1. Defendant's Exhibit 1
2. Defendant's Exhibit 2
3. Defendant's Exhibit 2
4. Defendant's Exhibit 3
5. Defendant's Exhibit 2

that Williams told him that he (Williams) was "going to fuck [Colton] up," and then said, "I'm going to kill you," before reaching into his center console,[6] Colton also told officers that Williams pulled out something black and Colton shot him.[7, 8]

The officers indicated in their report that Williams was "unarmed" and it is expected that they will testify consistent with this statement at the trial of this matter.

The firearm was located inside the center console of Mr. Williams' truck after it was transported from the scene of the shooting.[9] "The center console located between the driver's seat and passenger's seat was open, and a tray containing a pair of sunglasses was visible. It was later discovered that a handgun was under the tray," according to Detective Parker's report.[10] There is

---

6. Defendant's Exhibit 1

7. Defendant's Exhibit 1

8. A "sharpie pen/marker (grayish body with a black cap)" was found "lying on the ground near Williams' feet." Defendant's Exhibit 3

9. by tow truck. Defendant's Exhibit 4

10. Defendant's Exhibit 3

At some point between when Detective Parker observed the center console open and when it was photographed by Officer Bryan Payne at the property room, the center console was closed, because Payne reported:

> "Detectives then opened the center console of the vehicle. To open the center console detectives had

no evidence regarding where in the console the firearm was located at the time of the shooting.[11]

Law & Argument

Defendant's right to a contradictory hearing

The State of Louisiana filed its Motion in Limine on September 6, 2023, and e-mailed a copy to Undersigned at 3:14 p.m. that afternoon; 13 days before this matter was next set for jury status conference. See Court Minutes. Undersigned received the signed order via U.S. Mail on September 11, 2023, which set this matter for contradictory hearing on September 19, 2023; 8 days before the court appearance.

The argument in support of and opposition to the State's Motion requires not simply a review of the relevant law, but also scrutiny of the facts surrounding law enforcement's handling of the vehicle, their search of it, and when, how, and by whom the firearm in Williams' vehicle was located.

---

to first raise up an armrest. After the armrest was lifted up it opened to a black tray that fit the entire area of the console. Next, detectives had to lift the center tray up and move it out of the way to get to the bottom of the center console. After the center tray was lifted out of the way detectives could see a shiny chrome hand gun."

Defendant's Exhibit 5

11. Defendant's Exhibit 5

Appendix E

Based on the State's statement of facts and the statement of facts above, it is clear that the State and Defense do not agree as to the specifics, therefore. a contradictory hearing at which testimony is presented is necessary.[12] This is a contention to which the State clearly agrees as in its Order to the Court, it requested that this matter be set for "a hearing on the [blank] day of [blank] 2023, at [blank] a.m. for defendant to show cause why the State's motion to exclude evidence should not be granted." State's Motion in Limine, page 4.

Undersigned, by separate motion, has filed a request for leave to issue subpoenas, however, there is simply insufficient time to have those subpoenas issued by the Clerk of Court and served by the Bossier Parish Sheriffs Office, even though the majority of the witnesses will likely be law enforcement officers, prior to the currently scheduled September 19 hearing date.

Further, Co-Counsel Jim Boren is unable to appear at the September 19, 2023, court date, as that matter was merely set for jury status conference when scheduled. Both he and Undersigned will be out of town for the

12. "...An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, *to present a defense*, and to testify in his own behalf ..." La. Const. Ann. art. I, § 16 (emphasis added).

Louisiana Code of Civil Procedure Article 963(8) also states, in the context of civil proceedings: "If the order applied for by written motion is one to which the mover is not clearly entitled, or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party." La CCP Art. 963(8).

following week(s) and, due to other scheduling conflicts, are unable to appear at a contradictory hearing at which testimony will be taken prior to the currently scheduled trial date of October 9, 2023.

Undersigned hereby requests that this matter be set for contradictory hearing on the morning of October 9, 2023, for contradictory hearing on the State's Motion in Limine, or, in the alternative, that this matter be set for contradictory hearing at a date more convenient to the Court subsequent to October 9, 2023, and that the trial of this matter, currently set on the October 9, 2023[13], docket, be continued to a date after the contradictory hearing on the State's Motion in Limine.

Presence of a firearm in Williams' vehicle:

The State cites to Louisiana Code of Evidence Articles 401 through 403 in support of its argument that Mr. Williams' gun is not relevant and is prejudicial to the State's case. Louisiana Code of Evidence Article 401 states: "Relevant evidence' means evidence having *any tendency* to make the existence of *any fact* that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." One of the facts of consequence in this matter is whether or not Williams made threats toward Colton prior to the shooting. The gun in Mr. Williams' center console is evidence which makes the existence of Mr. Williams'

13. On which docket, Undersigned has been advised by the Stale, this matter is likely to be first priority.

threats to Colton, which placed Colton in reasonable fear of great bodily harm or death, relevant evidence. The existence of the firearm in Williams' center console makes it more probable that Mr. Williams would threaten to kill Colton. An unarmed man might threaten to kill someone in anger, but a man who knows he has a gun within his reach in his vehicle is certainly more likely to threaten to kill someone.

The State has argued that because Colton didn't know about the gun in the center console, it is irrelevant. This argument should fail for two reasons: (1) the State can cite to *no law* to support this argument. It cites to *State v. Murray,* 36,137 (La. App. 2 Cir. 8/29/02), 827 So.2d 488, *writ denied,* 2002-2634 (La. 9/5/03), 852 So.2d 1020, for the argument that self-defense is a justification for killing "only if the person committing the homicide reasonably believes he is in imminent danger of losing his life or receiving great bodily harm and that deadly force is necessary to save his life." *Id* at 496. The State then quotes and highlights the Court's statement regarding "**defendant's knowledge** of the assailant's bad character." *Id.* at 496 and State's Motion in Limine, page 2, emphasis added by the State. The State attempts to highlight simply the "defendant's knowledge" section of that quotation, and is conveniently excluding the rest of the sentence which *actually* states that the factor for the Court to consider is the defendant's knowledge *of the assailant's bad character.* Unless the State is attempting to argue that gun ownership is, in and of itself, evidence of bad character, then *Murray* is *irrelevant* to the State's motion. If *Murray* is irrelevant to the State's motion, then

the State has failed to cite to *any other* law in support of its contention that the firearm should be excluded from evidence in the present case.

The State then attempts to argue that even if Mr. Williams' gun possession is relevant, it should be excluded because its probative value is outweighed by the prejudicial effect on the jury. Louisiana Code of Evidence Article 403 states: "Although 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." Louisiana CE Art. 403 (emphasis added). The State argues merely that the presence of the firearm has zero probative value to the defendant's belief that he was facing serious bodily harm or death, and that it would prejudice the jury to know that Williams possessed a firearm while threatening to kill Colton. The State appears to be arguing that, because this evidence has no probative value *to the State* (i.e.: it does not support the State's argument that Mr. Williams was murdered), it has no probative value *at all.* A defendant in a criminal case has a constitutional right to present a defense. *Chambers v. Mississippi,* 410 U.S. 284, 294, 93 S. Ct. 1038, 1045, 35 L. Ed. 2d 297 (1973). As argued above, the question of whether or not Mr. Williams threatened Colton is absolutely relevant to Colton's claim of self-defense. The question, therefore, of whether or not *Mr. Williams* believed he had the actual ability to act on his threats is relevant. Mr Williams' knowledge of the firearm in his vehicle is a fact which has a tendency to make the statements by the. three witnesses that Mr. Williams' threatened to kill Colton more probable than they might otherwise be without that evidence.

Appendix E

The fact that there was a gun located in the center console of Mr. Williams' truck, where Colton Christopher Tubbs, and Kelvin Taylor, all saw Mr. Williams reaching prior to his turning back towards Colton and being shot is absolutely relevant evidence pursuant to Louisiana Code of Evidence Article 401 and its probative value is not substantially outweighed by the fact that the State doesn't like it.

WHEREFORE, for the reasons set forth herein, and after contradictory hearing be had, Defendant hereby requests that this Court deny the State's Motion in Limine.

Respectfully submitted.

James E. Boren
Louisiana Bar Number 03252
830 Main Street
Baton Rouge, Louisiana 70802
225-387-5786 (Tel)/225-336-4667 (Fax)
jim@jamesboren.com

Katherine E. Gilmer
Louisiana Bar Number 31742
3541 Youree Drive
Shreveport, Louisiana 71105
(318) 459-9111 (Tel)/(318) 602-4716 (Fax)
KATHERINE@GILMERGIGLIO.COM

APPENDIX F — BOSSIER PARISH POLICE DEPARTMENT REPORTS, DATED JULY 24, 2020

REPORTING OFFICER NARRATIVE

		OCA
Bossier City Police Department		*2020-008314*
Victim *WILLIAMS, JOSEPH JR*	Offense *MANSLAUGHTER*	Date/Time Reported *Fri 07/24/2020 15:19*

1. ON 07/24/2020 I, OFFICER JENKINS WAS DISPATCHED TO CASH N-A FLASH PAWN SHOP AT 4601 E. TEXAS ST. IN REFERENCE TO A SHOTS FIRED CALL.

2. DISPATCH ADVISED OF A BLACK MALE LAYING IN THE PARKING LOT WITH A GUN SHOT WOUND UNRESPONSIVE.

3. UPON ARRIVAL I, OFFICER JENKINS OBSERVED AN UNKNOWN BLACK MALE LAYING IN THE PARKING LOT WITH A GUNSHOT WOUND TO THE HEAD AND UNRESPONSIVE.

4. I, OFFICER JENKINS WENT INSIDE THE PAWN SHOP.

5. RANDY MATTHEWS, THE OWNER, STATED HIS SON COLTON MATTHEWS SHOT THE UNKNOWN BLACK MALE.

6. COLTON MATTHEWS WAS ADVISED OF HIS RIGHTS AS PER MIRANDA.

7. COLTON MATTHEWS STATED:

8. AN UNKNOWN BLACK MALE CAME TO THE PAWN SHOP TO RETURN A WATERMELON.

9. HE TOLD THE UNKNOWN BLACK MALE THAT HE COULD NOT REFUND OR TAKE BACK THE WATERMELON DUE TO COVID.

10. THE UNKNOWN BLACK MALE BECAME IRATE.

11. THE UNKNOWN BLACK MALE SAID HE WAS GONNA FUCK COLTON MATTHEWS UP.

12. HE ASKED THE UNKNOWN BLACK MALE TO LEAVE AND BACKED UP.

13. THE UNKNOWN BLACK MALE SAID IM GOING TO KILL YOU AND REACHED INSIDE THE VEHICLE CONSOLE.

14. HE YELLED FOR THE UNKNOWN BLACK MALE TO STOP.

15. THE UNKNOWN BLACK MALE PULLED SOMETHING BLACK OUT AND I SHOT HIM.

Appendix F

16. HE DID NOT KNOW WHAT THE BLACK OBJECT WAS THAT THE UNKNOWN BLACK MALE GRABBED. END OF STATEMENT.

OBSERVATIONS/ACTION

17. BOSSIER CITY FIRE DEPARTMENT RESPONDED. ENGINE 7: SANDERS, WYNN, HUGHES. TRAUMA 1: D. ELLIOT, MARKIEL. 33: THOMPSON. D-1: GRANTHAM.

18. RANDY MATHEWS STATED:

19. HE WALKED OUTSIDE DURING THE ARGUMENT AND HEARD COLTON MATTHEWS SAY STOP AND HEARD ONE SHOT, BUT DID NOT SEE THE SHOOTING. END OF STATEMENT.

Appendix F

CASE SUPPLEMENTAL REPORT

Printed: 11/03/2020 07:59

Bossier City Police Department	OCA: 2020008314
THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY	
Case Status: *ACTIVE*	**Case Mag Status:** *CLEARED BY ARREST/ADULT*
Offense: *MANSLAUGHTER*	**Occurred:** 07/24/2020
Investigator: *PARKER, SHAWN WAYNE (4168)*	**Date/Time:** *08/05/2020 07:58:07, Wednesday*
Supervisor: *LITTLE, KEVIN PAUL (0573)*	**Supervisor Review Date/Time:** *09/21/2020 15:06:12, Monday*
Contact:	**Reference:** *Supplement*

-Moreno he was riding as a passenger in a vehicle headed west on E. Texas St.

-Moreno stated that he heard a "pop", and thought that the tire blew out

-Moreno stated that he looked over and saw a man lying on the ground, and a man with a gun walking back.

-Moreno stated that he told the driver of the vehicle is he was in to call the police.

-Moreno stated that they stopped and flagged down a Trooper.

-Moreno stated that he saw the victim (Williams) fall.

-Moreno stated again that the man with the gun was "walking back".

-Moreno stated that there was another male, and a black male that was there.

-Moreno stated that the black male had his hands on his head like he was shocked or surprised (Moreno demonstrated).

-Moreno stated that the man with the gun was wearing a black hat and jeans, and was a white male.

-Moreno stated that he did not actually see the shooting.

The interview was concluded. For exact statements made during the interview with Moreno, refer to the recording of the interview.

I noted that Moreno stated that a black male was standing near the shooting with his hands on his head, witnessing the shooting. The only black male that was mentioned as being present was Taylor, but Taylor stated that he was running away and did not actually see the shooting.

Appendix F

Det. B. Hampson spoke to the driver of the vehicle that Moreno was in, Eloy Payan. Refer to Det. Hampson's report for statements made during that interview.

At approximately 17:22 hours, I conducted a recorded interview with Christopher Tubbs. He following is a summary of the statements made during the interview with Tubbs:

-Tubbs stated that he was in the business when a customer who had obviously purchased a watermelon returned saying that the watermelon was no good and demanded another.

-Tubbs stated that the customer was told that they could not take the watermelon back due to the Covid issues.

-Tubbs stated that Colton walked up and told the customer that he could have another watermelon.

-Tubbs stated that the customer picked up a new watermelon and walked out, and Colton picked up the old watermelon and followed the customer out with the old watermelon they could not take it back.

-Tubbs stated that he looked at another employee (who he referred to as Angela), and a comment was made about the customer being rude.

-Tubbs stated that he heard screaming and went outside to see what was going on.

-Tubbs stated that Colton and the customer were arguing next to a vehicle.

-Tubbs stated that the customer was telling Colton to no throw the watermelon inside his truck.

-Tubbs stated that Colton was telling the customer that he could not bring the watermelon back.

-Tubbs stated that Colton and the customer continued arguing.

-Tubbs stated that he put his hand on Colton's shoulder and tried to tell Colton to just come back inside the business.

-Tubbs stated that Colton would not listen to him.

-Tubbs stated that Colton was yelling at the customer to leave.

-Tubbs stated that the customer was yelling back at Colton.

-Tubbs was asked if any threats were made.

-Tubbs stated that the customer stated, "before I get you" or "before I hurt you".

-Tubbs stated that the customer took a fighting stance and Colton took a fighting stance.

-Tubbs stated that the customer opened the door to the vehicle, leaned in, and opened the center console.

-Tubbs stated that he thought the customer was reaching for a gun, or something to use maybe as a weapon.

-Tubbs stated that the customer had his hand in the console, and turned quickly.

-Tubbs stated that he was focused on the customer, and heard a gunshot.

-Tubbs stated that he actually saw the customer (Williams) shot, and then turned and saw Colton standing there with a gun.

-Tubbs stated that he just walked inside, in shock.

-Tubbs stated that Colton made no threats that he heard.

-Tubbs stated that the customer threatened Colton, again repeating the statements “before I hurt you” or “before I get you”.

-Tubbs stated that Colton was outside when he walked inside.

-Tubbs stated he walked inside and set on the floor by the counter in front.

-Tubbs stated that Colton came in a short time later and the police arrived around 3 minutes after that.

-Tubbs stated that Colton was asking his father (Randal Matthews), "Why would he reach?" and "Why would he do that?"

-Tubbs stated that Colton appeared as if he could barely walk, and was in shock.

-Tubbs stated that he (Tubbs) only saw the customer (Williams) reach into the vehicle, but saw nothing in the customer's hand.

-Tubbs stated that no threats were made inside the business, and that all the threats were made outside the business.

-Tubbs stated that he was standing next to Colton during the whole he was outside, and he never saw "KK" (Taylor).

-Tubbs stated that he had no conversation with anyone about the shooting, and that the first person he spoke to after the shooting was a police officer.

-Tubbs stated that he was armed at the time of the shooting with a Glock 23 (.40 caliber) which he had in an outside the waistband holster.

-Tubbs stated that he placed the gun and holster in on a table in the back of the business.

-Tubbs was short time later questioned about statements about just sitting on the floor, then saying that he went to the back and left his gun there.

-Tubbs stated that his father has a history with the Bossier City Police Department, and he did not want to be carrying a gun when the police arrived.

This is a supplement to report number 2020-008314 which was written on 7-24-20.

On 7-24-20, at approximately 15:20 hours, I (Det. Shawn Parker) was advised of a shooting at 4601 E. Texas Street (Cash-N-A-Flash Pawn Shop). I was advised that Officers were in route and there was a black male in the parking lot that was unresponsive. I responded to that location.

Upon arrival I observed members of the Bossier City Fire Department around a blue Chevrolet Blazer (LA tag #734BVU). I observed a black male lying on the ground next to the Blazer, wearing shorts and a t-shirt. I observed that the black male had a gunshot wound to the head, just above the area of the left temple. I observed that the window of the driver's door of the Blazer was down. I observed a Sharpie pen/marker (grayish body with a black cap) lying on the ground near Williams' feet.

The black male victim was later identified as Joe Williams Jr.

I made contact with BCPD Officer Jenkins. Officer Jenkins advised that upon arrival officer were advised that there was an altercation inside the business and outside where Williams was shot. I was advised that the suspect in this case was Colton Matthews. Officer Jenkins advised

that Matthews made statements to him, post Miranda, that he shot Williams after Williams reached into the Blazer. This interview by Officer Jenkins with Colton Matthews was recorded by his body worn camera.

I then spoke to business employee, Kevin Taylor. Taylor stated that that Williams brought back a watermelon that he purchased from the business earlier. Taylor stated that Williams was mad about a "soft spot" in the watermelon. Taylor stated that Williams got into an argument with Colton Matthews over the watermelon, and Colton told Williams to leave. Taylor stated that as Williams was walking out of the business, he (Williams) said that he was "going to kill Colton". Taylor stated that he heard yelling outside and walked out to check on Colton who had followed Williams out.

Taylor stated that outside in the parking lot was Williams, Colton Matthews, Chris Tubbs, and himself. Taylor stated that Colton and William were arguing, and Williams reached inside his (Williams') vehicle (the Blazer). Taylor stated he turned and ran inside the business when Williams reached into the Blazer. Taylor stated that he heard one (1) shot. Taylor stated that stepped back outside the business and saw Williams down on the ground. Taylor stated that Colton shot Williams. Taylor stated that he did not see Colton actually shoot Williams, and he did not see a gun.

This interview with Taylor was conducted in vehicle #2701.

Appendix F

I then made contact with Colton Matthews who was being treated by BCFD personnel. I had been advised by Officer Jenkins that he had already advised Colton of his rights. Colton was vehicle upset and appeared physically distraught. Colton stated that Williams came in the business arguing about a watermelon. Colton stated that they were in the parking lot arguing, and Williams reached into his vehicle. Colton stated that he thought Williams was grabbing a gun. Colton stated that he shot Williams. Colton stated that he shot Williams with a Glock 43, and that the Glock 43 was in the rear of the business on a table.

I then spoke to Colton's father (business owner), Randal Matthews. R. Matthews stated that he was in the back of the business, and came up front to cool off. R. Matthews stated that he noticed the no employees were behind the counters, and heard yelling and arguing outside. R. Matthews stated that walked to the front door and pushed it open. R. Matthews stated that he saw people over to the left in the parking lot by a vehicle. R. Matthews stated that he saw "KK" (Kevin Taylor), running toward him. R. Matthews stated that he heard "Stop!", and then a "Bam" (reference to a gunshot). R. Matthews stated that it was about a half second before he cleared the door and completely exited the business. R. Matthews stated that he saw the guy (Williams) on the ground and Colton hold a gun. R. Matthews stated that he saw Chris Tubbs outside also by Colton. R. Matthews stated that he did not actually see or witness the shooting. R. Matthews stated that Colton's gun (a Glock 43) was inside the business, and his personal gun (Glock 43) was somewhere inside the

business also. R. Matthews stated that Colton told him that the "guy was going for a gun", and the guy said he was going to kill him (Colton). R. Matthews stated that Colton said that the guy (Williams) leaned in the vehicle, and he (Colton) thought he (Williams) had something and shot.

The interview with Randal Matthews was conducted in vehicle #2703.

Bossier City Police Department's Crime Scene Unit responded to the scene. The Crime Scene Unit photographed, videoed, processed the scene for evidence, and collected evidence. Refer to Crime Scene Unit supplement in reference to their actions.

Search warrants were obtained for 4601 E. Texas Street and Williams' Chevrolet Blazer.

The blazer was towed to 1549 E. Texas Street (Bossier City Police Crime Scene and Evidence building). It should be noted that there was blood on the lower portion of the side of the driver's door. The center console located between the driver's seat and the passenger's seat was open, and a tray containing a pair of sunglasses was visible. It was later discovered that a handgun was under the tray.

I was advised that two (2) witnesses that flagged down a Louisiana State Trooper following the shooting were on scene. Both witnesses were requested to the Bossier City Police Department for questioning.

Appendix F

At approximately 17:08 hours, I conducted a recorded interview in the detectives' office with Gabriel Moreno. Det. K. Sosa was present during the interview as an interpreter to assist as Moreno did not speak English very well. The following is a summary of the statements made during the interview with Moreno as translated by Det. Sosa:

scene vehicle.

I then returned to the Bossier City Police Department Evidence Building and secured all collected evidence in a locked room.

I went to the Bossier City Police Department and took still photographs of the white male suspect. This process was started at 2221 hours (10:21 p.m.) and concluded at 2222 hours (10:22 p.m.). I then collected the clothing that the suspect was wearing at the time of the incident and logged the items into evidence.

On July 25,2020 I then returned to the crime scene in an attempt to locate any further evidence with Det. Tuttle. While in the rear of the building on the very north side wall, Det. Tuttle located what appeared to be a makeshift target and bullet trap. The target was a piece of paper with what appeared to be a head that was drawn on the paper with seven what appeared to be bullet holes in the paper.

A close distance to this homemade bullet trap/target was a single .9mm casing. This spent shell casing was marked with evidence marker #2. Still photographs were

taken with and without evidence marker #2 and was then collected as evidence. No other evidence was collected from the scene at this point.

On July 27, 2020, I was contacted by Det. Tuttle and Det. Parker who obtained a search warrant of the deceased victims vehicle. The detectives wished to conduct a search of the vehicle for any evidence. I started out by taking still photographs of the vehicle bearing Louisiana License plate 734 BVU. I photographed the exterior and the interior of the vehicle. On the front passenger, side seat a watermelon was located. Detectives advised that they wished to seize the watermelon as evidence. I then marked the watermelon with evidence marker #48. The watermelon was then photographed with and without evidence marker and collected as evidence. Detectives then opened the center console of the vehicle. To open the center console detectives had to first raise up an armrest. After the armrest was lifted up it opened to a black tray that fit the entire area of the console. Next, detectives had to lift the center tray up and move it out of the way to get to the bottom of the center console. After the center tray was lifted out of the way detectives could see a shiny chrome hand gun. The handgun was marked with evidence marker # 42. The handgun was then photographed with and without evidence a marker and collected.

The collected chrome handgun was then photographed and rendered safe. During the unloading process it should be noted that the chrome hand gun did not have a round chambered in the gun.

Appendix F

On July 28,2020 the collected handguns that were collected from the crime scene where photographed and rendered safe. I photographed every step of this process. The Glock that was labeled #47 was a Glock model 43 in a .9mm caliber. The handgun contained a live round in the chamber. The magazine that was in the handgun was loaded with 7 live rounds of .9mm ammo. The magazine was a 6 round magazine with a round extender on the magazine to

APPENDIX G — OPINION OF THE LOUISIANA COURT OF APPEAL – SECOND CIRCUIT

LOUISIANA COURT OF APPEAL –
SECOND CIRCUIT

DOCKET NUMBER 222,297; §B

STATE OF LOUISIANA,

V.

COLTON THOMAS MATTHEWS

APPLICATION FOR WRIT

BY DEFENDANT, COLTON THOMAS MATTHEWS

FROM JUDGMENT GRANTING STATE OF
LOUISIANA'S MOTION IN LIMINE IN THE FIRST
JUDICIAL DISTRICT COURT
PARISH OF CADDO
STATE OF LOUISIANA

THE HONORABLE CHARLES SMITH,
DISTRICT JUDGE

Appendix G

GILMER & GIGLIO, LLC
KATHERINE E. GILMER
LOUISIANA BAR ROLL NO. 31742
3541 YOUREE DRIVE
SHREVEPORT, LOUISIANA 71105
TELEPHONE (318) 459-9111
FACSIMILE (318) 602-4716
KATHERINE@GILMERGIGLIO.COM
COUNSEL FOR DEFENDANT
COLTON THOMAS MATTHEWS

REQUEST FOR EXPEDITED CONSIDERATION

OR IN THE ALTERNATIVE, STAY OF TRIAL COURT PROCEEDINGS

[TABLES INTENTIONALLY OMITTED]

STATEMENT OF JURISDICTION

Pursuant to Article V, Section 5 of the Louisiana Constitution of 1974 and Louisiana Code of Criminal Procedure Article 343, this Court has supervisory jurisdiction over this matter, a judgment granting the State's motion in limine.

STATEMENT OF THE CASE

Defendant, Colton Thomas Matthews, seeks supervisory review of the District Court's granting of the State's Motion in Limine prohibiting any testimony regarding the presence of a firearm in the decedent's vehicle at trial of this matter.

Appendix G

I. Factual Background & Procedural History

On or about July 24, 2020, Defendant shot Joseph Williams, Jr., during an altercation at Defendant's place of employment. Defendant has asserted that this shooting was justifiable and in self-defense, pursuant to Louisiana Revised Statutes §14:18, 19, & 20. On November 9, 2020, Defendant was indicted for one count of Second Degree Murder, in violation of Louisiana Revised Statutes 14:30.1, as a result of this incident. Appendix, p. 16.

This matter is currently set for jury trial in the Twenty-Sixth Judicial District Court on October 9, 2023, at 9:30 a.m. The Motion in Limine forming the basis of this Writ Application was filed by the State of Louisiana on September 6, 2023, and set for hearing on September 19, 2023, 20 days before the trial date. Appendix, p. 17. It was filed 19 months after the deadline for motions[1] and its late filing has caused this major, unique and novel issue to be addressed at very rapid pace; the need for haste, created by the State, should not interfere with careful consideration of this issue. While we have asked for expedited hearing, what is really needed, is a stay, to allow briefing and further review whoever does not prevail.

In its Motion in Limine, the State sought to prohibit any mention of the firearm that was located in the center console of Williams' truck at the time of the shooting. Of relevance to this question are the statements of the witnesses taken by law enforcement shortly after the shooting.

---

1. Appendix, p. 68, December 15, 2021 Minute Entry

Appendix G

Colton Matthews, Defendant, was interviewed at the scene, within minutes of the shooting, by Officer Jenkins. Appendix, p. 29. Colton told Officer Jenkins that Mr. Williams entered the pawn shop to return a watermelon. Appendix, p. 29. Colton told Mr. Williams that he could not take back the watermelon because of COVID. Appendix, p. 29. Mr. Williams then told Colton "he was gonna fuck Colton Matthews up." Appendix, p. 29. Colton and the other employees were openly carrying firearms. Appendix, p. 33. Mr. Williams "said I'm going to kill you and reached inside the vehicle console." Appendix, p. 29. Mr. Williams then "pulled something black out and [Colton] shot him." Appendix, p. 29. Colton said he did not know what the black object was. Appendix, p. 29.

Detective Parker interviewed Christopher Tubbs, who said that Mr. Williams entered the store demanding another watermelon because his previous purchase was no good. Appendix, p. 30. Tubbs said that Colton told Mr. Williams he could have another watermelon, but that they could not take the old watermelon back. Appendix, p. 30. Tubbs then heard Colton and Mr. Williams arguing outside, so he went outside to see what was going on. Appendix, p. 30. Tubbs, to Williams' knowledge, was armed. Appendix, p. 33. Tubbs heard Mr. Williams say, "'before I get you' or 'before I hurt you'." Appendix, p. 31. Tubbs said Mr. Williams then opened the door to his vehicle, leaned in, and opened the center console. Appendix, p. 31. Tubbs believed Mr. Williams was reaching for a firearm, and that Mr. Williams had his hand in the console, turned quickly, and Tubbs heard a gunshot. Appendix, p. 31.

Appendix G

Kelvin[2] "K.K." Taylor was also interviewed by law enforcement shortly following the shooting. Appendix, p. 32. Taylor stated that "as Williams was walking out of the business, he (Williams) said that he was 'going to kill Colton'." Appendix, p. 32. Williams was aware Taylor was armed. Appendix, p. 33. Taylor was armed and said when he got outside, he saw Mr. Williams reach into his vehicle and Taylor turned and ran back inside the business. Appendix, p. 32.

The officers stated in their reports that Mr. Williams was "unarmed" at the time of the shooting. It is undisputed, however, that a firearm *was* located inside Mr. Williams' vehicle at the time of the shooting.[3] Under Louisiana law, possession of a gun in the console is considered constructive possession.[4]

---

2. Also identified in the reports as "Kevin" Taylor.

3. There is no evidence in the reports where the firearm was actually located at the time of the shooting. Detective Parker wrote in his report that the center console was open at the scene of the shooting. Appendix, p. # (Exhibit 3-Bates 12). When the vehicle and its contents were examined at the evidence lock-up, the console was closed with the armrest lowered above it. Appendix, p. 34.

4.

> Constructive possession of a firearm occurs when the firearm is subject to the defendant's dominion and control. *See State v. Mose,* 412 So.2d 584, 585 (La.1982) (gun located in defendant's bedroom sufficient for constructive possession); *State v. Frank,* 549 So.2d 401, 405 (La.App. 3 Cir.1989) (constructive possession found where gun was in plain view on front seat of a

Appendix G

In its Motion in Limine, the State admits that Williams reached into his vehicle and turned toward Defendant. The State further admits that there was a firearm located inside Mr. Williams' vehicle inside the center console. The State's sole argument in support of the Motion in Limine is that because Defendant did not know there was a firearm in Williams' vehicle, the firearm should not be admissible at trial because it is irrelevant. They then argue that should the court determine that the firearm is relevant, it's probative value is outweighed by its prejudicial nature. The State can argue to the jury that Williams was only going for a pen, and the Defense can argue he was going for a gun. The jury can decide which version is true.

Applicant filed an opposition to the State's Motion in Limine on Thursday, September 14, 2023, and, by separate motion filed the same date, requested leave

---

> car the defendant was driving but did not own); *State v. Lewis,* 535 So.2d 943, 950 (La.App. 2 Cir.1988) (presence of firearm in defendant's home, statement by defendant that gun belonged to his wife, and discovery of shoulder holster in the master bedroom indicated defendant's awareness, dominion and control over the firearm). Louisiana cases hold that a defendant's dominion and control over a weapon constitutes constructive possession even if it is only temporary and even if the control is shared. *State v. Bailey,* 511 So.2d 1248, 1250 (La.App. 2 Cir.1987), *writ denied,* 519 So.2d 132 (La.1988); *State v. Melbert,* 546 So.2d 948, 950 (La.App. 3 Cir.1989).

State v. Johnson, 2003-1228 (La. 4/14/04), 870 So. 2d 995, 998–99.

to seek out-of-time subpoenas for multiple witnesses. Appendix, pp. 23 & 35. That order was granted and subpoenas were issued, although none appear to have been successfully served prior to the hearing the following Monday. Appendix, p. 42. In his opposition, Defendant argued that the presence of the firearm in Mr. Williams' vehicle was relevant to support Defendant's contention that Mr. Williams made threats of physical harm and/or death to Defendant prior to Defendant shooting him. The presence of the firearm made it more likely than not that Mr. Williams did threaten Defendant. Seeing three men with weapons, and threatening to kill them, makes it likely that Williams intended to arm himself with the weapon in the glove compartment, not reach for a pen to write a nasty note. The question of whether Mr. Williams threatened Defendant is relevant to the question of whether Defendant acted in self-defense, Williams' intent, and the natural interpretation of "I'm going to kill you", while reaching into a glove compartment, is relevant.

At the hearing on Monday, September 19, 2023, the State and Defendant agreed to stipulate that, were the witnesses available to testify, they would testify consistently with the reports submitted along with Defendant's Memorandum in Opposition. Appendix, p. 41-42. These report excerpts were also offered and admitted into evidence at the hearing. Appendix, p. 42. At the close of arguments, the Court granted the State's Motion in Limine prohibiting mention of the firearm found in the decedent's vehicle in the prosecution of Defendant for murder, at which proceeding the State has the burden of proving beyond a reasonable doubt that the shooting was not in self-defense. Appendix, p. 52.

The same day, Defendant filed Notice of Intent to seek this writ with a return date of October 3, 2023, and a Motion for Stay of the proceedings at the Trial Court. Appendix, pp. 56 & 59 After a telephone conference with the Court on Monday, September 25, 2023, the Court issued an order denying the Motion for Stay. Appendix, p. 64.

This writ application follows.

Appendix G

ASSIGNMENT OF ERROR

The District Court has erred in granting the State's Motion in Limine prohibiting mention of the firearm found in the decedent's truck at trial of this matter.

Appendix G

SUMMARY OF THE ARGUMENT

The District Court abused its discretion in granting the State's Motion in Limine prohibiting any mention of the firearm in Joseph Williams, Jr.'s, vehicle during the incident in which he, after threatening the Defendant and reaching for a gun to murder Matthews and the other two employees, was shot and killed by the Defendant before Williams was able to murder him. At the trial of this matter, Defendant will assert that the shooting was in self-defense, thus shifting to the State the burden of proof beyond a reasonable doubt that Williams actually did not intend to murder Matthews.

The firearm located in Williams' vehicle is relevant evidence because the question before the court is not, as the State would have it, what Colton Matthews knew at the time of the shooting, but is, in part, whether Colton Matthews reasonably believed he was in imminent danger of death or great bodily harm. The presence of the firearm speaks to the reasonableness of Mr. Matthews' belief that he was in imminent danger and shows the jury exactly what Williams was trying to do. By not allowing the gun that was found in the decedent's car into evidence, the Court is usurping the jury's role as fact-finder and aids the State's case by eliminating evidence that Williams was *in fact* attempting to kill Matthews and others. Whether a gun was in the decedent's possession has a tendency to show that Matthews' life was in imminent danger, and, he was right.

Appendix G

REQUEST FOR EXPEDITED CONSIDERATION, OR IN THE ALTERNATIVE, REQUEST FOR STAY OF TRIAL COURT PROCEEDINGS

Applicant hereby requests expedited consideration of this application by this Court or, in the alternative, a stay of the Trial Court proceedings. In support of this request, Applicant shows the following:

The question before the Court is one of what evidence will be presented at trial of this matter. Allowing the trial to proceed without a ruling on this issue opens the case up for an appeal and costs Defendant the right to present a defense guaranteed to him by the United States Constitution, Louisiana Constitution, and the United States Supreme Court in *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 1045, 35 L.Ed.2d 297 (1973).

In the interest of complete disclosure to the Court of Appeal, should this Court deny Defendant's writ application, Defendant plans to seek further review from the Louisiana Supreme Court. A stay of the trial court proceedings would give Defendant sufficient time to seek additional review of this matter. Without jumping through hoops the day before trial – all of which would have been avoided had the state filed the motion when due, 19 months ago. A definitive ruling would limit the likelihood of this issue being raised on appeal once the case proceeds to trial. The lack of a definitive ruling on this issue makes it highly likely that this issue will be raised on appeal if a conviction is obtained by the State.

Appendix G

ARGUMENT ON ASSIGNMENT OF ERROR

Louisiana Code of Evidence Article 401 defines relevant evidence as "evidence having *any tendency* to make the existence of *any fact* that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." La. C.E. Art. 401 (emphasis added). "Ultimately, questions of relevancy and admissibility of evidence are discretion calls for the trial court and should not be overturned absent a clear abuse of discretion." *State v. St. Romain*, 332 So.3d 114, 121 (La. App. 1st Cir. 10/21/21).

Relevance

"The extrinsic (non-evidentiary) law governing the case determines which facts are of consequence…" *State v. Willis*, 367 So.3d 948 (La. App. 2 Cir. 06/28/23). La. R.S. 14:20(A)(1) defines homicide as justifiable "when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that person." Interpreting the article ab verbum, the *belief* of Matthews is what is at issue, not his actual knowledge. Thus, the State is charged with proving that the homicide was not committed in self-defense. *State v. Russell*, 42,479 (La. App. 2 Cir. 9/26/07), 966 So. 2d 154, 161, writ denied, 2007-2069 (La. 3/7/08), 977 So. 2d 897.

In order to justify a homicide as being in "self-defense", the person who attacked must actually believe that he is in imminent danger of losing his life or of

receiving serious physical injury. Such a belief must also be a reasonable one. La. R.S. 14:20; *State v. St. Geme*, 31 La.Ann. 302 (1879); *State v. Sadler*, 51 La.Ann. 1397, 26 So. 390 (1899); *State v. LeJeune*, 116 La. 193, 40 So. 632 (1906). Matthews' belief that there was a gun in the car and the fact that this belief was later confirmed by the evidence discovered by the investigating officers is necessary to a justification defense as the person who is attacked must believe that he is in imminent danger *and* the belief must be reasonable. Whether this belief was reasonable is 100% proven by what was found – the gun. The reasonableness of Mr. Matthews' belief that he was in imminent danger is confirmed by the fact that the firearm was located in Mr. Williams' vehicle and within the compartment into which he was reaching at the time of the disagreement. By not allowing the gun that was found in the decedent's car into evidence, the Court is usurping the jury's role as fact-finder. Whether a gun was in the decedent's possession has a tendency to make it more or less probable that Matthews believed his life was in imminent danger. It's part of the whole story; Williams became outraged, then enraged as his anger escalated when the pawn shop told him he could replace the watermelon he was returning but had to take the "soft" melon with him. He became increasingly angry until he finally attempted to arm himself with a gun he had. That's the whole story.

In order to prove disprove self-defense, the State must prove that when the decedent reached into his car and his console, he was not intending to kill Matthews, and that Mr. Matthews did not have a reasonable belief that Mr. Matthews's life was in imminent danger. Whether a gun

was actually in the car makes it absolutely certain that Mr. Matthew's belief that his life was in imminent danger was not mistaken and in fact was a reasonable belief. And, it's the truth. The issue is – what was Williams doing. And the answer is – he was going for his gun to kill the men he knew were already armed after saying "I am going to kill you", and after Colton yelled at him to stop.

The States categorization of the rationale and holding of *State v. Murray*, 827 So.2d 488 (La. App. 2 Cir. 8/29/02) is inaccurate as the case does not speak to whether possession of a firearm is considered bad character *or* the exclusion of that evidence.[5]

Right to Present a Defense &
Right to Confront Accusers

The Sixth Amendment to the Constitution affords a defendant in a criminal proceeding the right to present a defense. "Due Process affords the defendant the right to full confrontation and cross-examination of the State's witness" as well. *State v. Van Winkle*, 658 So.2d 198 (La. 1995). "It is difficult to imagine rights more inextricably linked to our concept of a fair trial." Id. Louisiana Constitution Article 1, § 16 "protects only the defendant's right to present a defense and not the state's right to present its case." *State v. Germillion*, 542 So.2d 1074 (La. 1989) (Lemmon concurrence, footnote 3). "Evidentiary

5. *Murray*'s holding relates to whether evidence of another shooting that involving the defendant was admissible pursuant to Louisiana Code of Evidence Article 404(B)

rules may not supersede the fundamental right to present a defense." *State. V. Van Winkle*, supra.

In *State v. Germillion*, the Supreme Court found that although the evidence the defendant was seeking to introduce was inadmissible as hearsay, "its exclusion would interfere with the defendant's constitutional right to present a defense." The Supreme Court later categorized the holding of this case as "normally inadmissible hearsay may be admitted if it is reliable, trustworthy and relevant, and if to exclude it would compromise the defendant's right to present a defense." The hearsay rules of evidence are strict and have limited exceptions. In contrast, the bar for whether evidence meets the definition of L.C.E. art. 403 is judgment based. If the Supreme Court found that the rules of hearsay could be waived in pursuit of protecting the constitutional right to present a defense, then it logically follows that it would be even more warranted to waive a subjective rule of evidence in favor of the Defendant's Constitutional right to present a defense.

CONCLUSION

The investigating officers knew the importance of the gun as they initially said they charged Matthews with murder because (1) Matthews gave no statement (which is not true – he was interviewed for ½ hour at the scene) and (2) no weapon was found. Even law enforcement knew the impact of the gun which they found in the glove compartment several days later during the search. It is not and should not become Louisiana law that a victim, like Matthews, cannot argue self-defense unless his assailant

had a gun in plain view. Police shootings are justified when the dead defendant is found with a gun, whether in plain view or concealed. Juries want to know what a person was doing before he was shot, and here, the answer is he waws going for his gun. No wonder that the District Attorney would hope to conceal that truth from the jury.

This Court should correct the error of the lower court and issue an order reversing the trial court's granting of the State's Motion in Limine and allowing testimony regarding the firearm found in the decedent's vehicle at trial of this matter.

Gilmer & Giglio, LLC
Katherine E. Gilmer
Louisiana Bar Number 31742
3541 Youree Drive
Shreveport, Louisiana 71105
Phone: 318-459-9111
Facsimile: 318-602-4716
Katherine@gilmergiglio.com
Counsel for Colton Matthews

[VERIFICATION AND CERTIFICATE OF SERVICE OMITTED]

APPENDIX H — APPLICATION FOR SUPERVISORY WRITS OF THE SUPREME COURT OF LOUISIANA, DATED OCTOBER 6, 2023

SUPREME COURT OF LOUISIANA

NUMBER

STATE OF LOUISIANA,

Applicant,

vs.

COL TON THOMAS MATTHEWS,

Respondent.

APPLICATION FOR SUPERVISORY WRITS ON BEHALF OF THE STATE OF LOUISIANA FROM THE OCTOBER 6, 2023, RULING BY THE COURT OF APPEAL, SECOND CIRCUIT, DOCKET NO. 55,593-KW

26th Judicial District Court for
Bossier Parish, Louisiana
Criminal Docket Number 222,297

Office of the District Attorney for the 26th Judicial
District J. Schuyler Marvin, District Attorney

Appendix H

Richard R. Ray #26708
rray@26thda.org
J. Chancellor Nerren, #37817
cnerren@26thda.org
Bossier Parish Courthouse
204 Burt Blvd. - P.O. Box 69
Benton, Louisiana 71007
Telephone: (318) 965-2332

Appendix H

SUPREME COURT OF LOUISIANA
CRIMINAL
WRIT APPLICATION FILING SHEET

TO BE COMPLETED BY COUNSEL OR PRO SE LITIGANT FILING APPLICATION

CASE TITLE: State of Louisiana v. Colton Thomas Matthews

APPLICANT PARTY NAME(S): State of Louisiana

Have there been any other filings in this Court in this matter: ■ YES ☐ NO

Are you seeking a Stay Order? ■ YES ☐ NO. If so, you MUST complete a criminal priority form.

Are you seeking Priority Treatment? ☐ YES ■ NO. If so, you MUST complete a criminal priority form.

Does this pleading contain confidential information? ☐ YES ■ NO. If so, please file a motion to seal.

Does any pleading contain a constitutional challenge to any Louisiana codal or statutory provision? ☐ YES ■ NO If yes, which pleading? _____

If yes, has the Office of the Louisiana Attorney General been notified pursuant to La. R.S. 13:4448? ☐ YES ☐ NO

Appendix H

LEAD COUNSEL *I* PROSE LITIGANT INFORMATION

APPLICANT:

Lead Counsel Name: Richard R. Ray Bar Roll No. 26708

Email address: rray@26thda.org Cell No. (318) 426-4241

RESPONDENT:

Lead Counsel Name: Katherine E. Gilmer
Bar Roll No. 31742

Email address: katherine@gilmergiglio.com
Cell No. (318) 840-5511

Is the pleading being filed: ☐ In proper person. ☐ In forma pauperis

Are there any pro se litigants involved in this matter: ☐ YES ■ NO

TYPE OF PLEADING

☐ Felony (death penalty) ■ Felony (non-death penalty) ☐ Misdemeanor ☐ Post-Conviction (death penalty) ☐ Post-Conviction (non-death penalty) ☐ Criminal other

Appendix H

LOWER COURT INFORMATION

Parish and Judicial District Court: 26th JDC - Bossier Parish Docket No: 222297

Judge and Section: Hon. Charles Smith, Div. B Date of Ruling: 9/19/2023

APPELLATE COURT INFORMATION

Circuit: 2nd Docket No.: 55,593-KW Applicant: State of Louisiana Filing date: 9/19/2023

Was this pleading simultaneously filed? ☐ YES ■ NO

Ruling date: 10/6/2023 Action: Writ Granted - Trial Court Reversed on Grant of State's Motion in Limine

Panel of Judges: Hon. Shonda Stone, Hon. Jefferson Thompson, Hon. Marcus Hunter En Banc: ☐

REHEARING INFORMATION

Applicant: State of Louisiana Filing date: 10/20/2023 Ruling date: 11/21/2023

Action: Denied Panel of Judges: Stone, Thompson, Hunter En Banc: ☐

Appendix H

PRESENT STATUS

■ pre-trial

☐ hearing; scheduled date: 2/26/2024

■ trial. Scheduled date: 2/26/2024

☐ trial in progress

Is there a stay now in effect? ☐ YES ■ NO

VERIFICATION

I certify that the above information and all of the information contained in this application is true and correct to the best of my knowledge and that all relevant pleadings and rulings, as required by Supreme Court Rule X, are attached to this filing. I further certify that a copy of this application has been mailed or delivered to the appropriate court of appeal, to the lower court judge, and to all other counsel and unrepresented parties.

Date: 12/20/2023 Signature: Richard R. Ray (Rev. 12/2022)

[TABLES INTENTIONALLY OMITTED]

Appendix H

RULE X WRIT GRANT CONSIDERATIONS

The State of Louisiana respectfully submits that this Court should grant this application for the following reasons:

Significant Unresolved Issues of Law. The Second Circuit Court of Appeal has decided a significant issue of law which has not been, but should be, resolved by this court. The lower court has imposed a new standard on shootings involving unarmed victims that has not been applied by this Court or any of the other Courts of Appeal, namely the application of the standard of reasonableness and the use of deadly force in officer involved shootings in all cases, even those not involving law enforcement.

Erroneous Interpretation or Application of Constitution or Laws. The Second Circuit Court of Appeal has erroneously interpreted or applied the constitution or a law of this state or the United States and the decision will cause material injustice or significantly affect the public interest. By applying the standard of officer-involved shootings to "all cases" in which an unarmed victim is shot, the public interest will be affected creating a new standard that is overly broad in the application of claims use of deadly force in self-defense. Such an over broadening of the standard could cause material injustice or significantly affect the public interest. The ruling of the Second Circuit should be reversed and the evidence of the gun that was located in the victim's car after the shooting should be excluded from evidence and this matter must be remanded for further proceedings consistent

with this Court's decision. In the further alternative, this Court should grant the writ and docket this matter for full briefing and oral argument.

Gross Departure from Proper Judicial Proceedings. The court of appeal has so far departed from proper judicial proceedings and so abused its powers as to call for an exercise of this court's supervisory authority.

For these reasons and as will be shown, the majority of the Second Circuit panel trial court erred by applying a new standard to shootings involving unarmed victims. This Court should grant supervisory writs to correct the error of the Second Circuit Court of Appeal.

CONCISE STATEMENT OF THE CASE

On July 24, 2020, Colton Matthews ("Matthews") shot and killed Joseph Williams Jr. ("Williams") in the parking lot of Cash N-A Flash Pawn Shop in Bossier City, Louisiana. Prior to Matthews killing Williams, Williams reached into his vehicle and turned toward Matthews. It was at this time Matthews shot and killed Williams. It was determined that Williams was holding a sharpie marker at the time he was shot. Williams was not holding a gun.

A gun was later located in the decedent's vehicle. The gun was found pursuant to a search warrant several days later. The gun was found in the center console underneath a removable tray. The Respondent nor any of the witnesses ever told police they saw a gun. According to witnesses, Mathews and Williams got into an argument that started

inside the pawn shop. Witness accounts differed as to what was said between Williams and Matthews while in the pawn shop. No witness can say Williams threatened to shoot Mathews or threated Matthews with a gun while in the pawn shop.[1] Williams left the pawn shop and Matthews, with a gun on his hip, open carrying, followed Williams out. According to witnesses, when the two went outside, the argument continued. Williams reached into his vehicle and turned toward Matthews. It was at this time Matthews shot and killed Williams. It was determined that Williams was holding a sharpie marker at the time he was shot but Williams was not armed with a gun although a gun was found inside the console of the vehicle sometime later pursuant to a search warrant.

The State of Louisiana filed a Motion in Limine seeking to exclude all evidence of the gun located in the Williams vehicle after the time of the shooting arguing that the fact that a gun was found in the victim's vehicle is not relevant to the case. The State further argued that even if relevant, this evidence should be excluded pursuant to La. Code of Evidence Art. 403 as the prejudicial effect the gun could have on the jury would substantially outweigh the probative value.

The matter was set for a hearing before the Honorable Charles Smith on September 19, 2023, at which time the trial court granted the State's Motion in Limine thus precluding the Respondent from introducing any

1. See Appendix 3 - Transcript of September 19, 2023 hearing- Page 44.

evidence related to the gun located in the victim's car. Counsel for the Respondent timely filed the Application for Supervisory Writs with the Louisiana Second Circuit Court of Appeal.[2] Without requesting a response from the State of Louisiana, the Second Circuit issued the opinion[3] granting the Respondent's Writ Application and ruling that the gun at issue is relevant and admissible to bolster the Respondent's claim of justification in the shooting. The Second Circuit ruled that the trial court abused its discretion in granting the motion to exclude the gun reasoning that the relevant inquiry is what the defendant knew at the time of the shooting and whether he acted reasonably. The victim, after allegedly making verbal threats, reached into his vehicle and retrieved an item and turned toward the Respondent. The majority[4] of the three judge panel of the Court of Appeal, relying not on any authority from this Court or the United States Supreme Court but relying exclusively on case law from federal courts in New York, opined that given the facts the Respondent Matthews could have reasonably believed the victim Williams was armed and reaching inside the vehicle for his weapon when the Respondent shot him. The State of Louisiana timely filed an application for rehearing[5] which was denied.[6]

---

2. See attached Appendix 6

3. See attached Appendix 7

4. Hon. Jefferson Thompson dissented indicating that he would deny the writ.

5. See attached Appendix 8.

6. See attached Appendix 9.

Appendix H

ISSUE AND QUESTION OF LAW PRESENTED FOR DETERMINATION

Whether the Louisiana Second Circuit Court of Appeal deviated from the established precedent of this Court by ruling that the standard for police officer involved shootings should apply to all cases of shootings in which a victim is unarmed at the time of the shooting but in which the shooter acted reasonably based on what the shooter knew at the time of the shooting.

ASSIGNMENT OF ERROR

By granting Respondent's Application for Supervisory Writs and reversing the trial court, the Louisiana Second Court of Appeal deviated from the established precedent of this Court by ruling that the same standard in deadly force incidents involving police officers should apply to all persons who use deadly force.

MEMORANDUM IN SUPPORT OF APPLICATION

The State of Louisiana filed a Motion in Limine seeking to exclude all evidence of the gun located in the victim's vehicle after the time of the shooting arguing that the fact that a gun was found in the victim's vehicle is not relevant to the case. The State further argued that even if relevant, this evidence should be excluded pursuant to La. Code of Evidence Art. 403 as the prejudicial effect the gun could have on the jury would substantially outweigh the probative value. The trial court agreed and granted the State's Motion in Limine. In his ruling granting the State's Motion in Limine, the trial court explained:

Appendix H

"THE COURT:

All right. Well, I read everything both of you wrote and I think y'all are both kind of right. mean, it comes down to what Mr. Matthews believes, but it's what he believed at the time it took place, not facts you may have found out later. It's kind of like whether the defendant had or the victim had a bad character. Unless it's known before it took place then that couldn't have entered into Mr. Matthews' thinking no more than the fact that the defendant (sic) had a gun in his car. That to me offers nothing as far as I can see with regard to whether the defendant made threats. I don't know whether he did or not. The jury will hear the testimony - - well, I won't say the testimony of Mr. Matthews. The jury will hear the testimony that the defense puts forth showing what, if any, threats were made. So, like I say, with- with regard to the gun to me that's a fact that came out after and was not known. If you can show somehow that it was known beforehand okay maybe that becomes different, but just the fact that he made threats to me does not -- I - I – I don't believe any reference to the gun comes in at the trial. That's the Court's feeling on that so therefore Court would grant the motion in limine."[7]

---

7. See Appendix 3, Transcript of September 19, 2023 hearing- Page 52

Appendix H

The Second Circuit granted supervisory writs and reversed the trial court and made the writ peremptory issuing the following ruling:

> "Before STONE, THOMPSON and HUNTER, JJ.
>
> WRIT GRANTED; MADE PEREMPTORY
>
> The applicant, Colton Matthews, seeks supervisory review of the trial court's September 19, 2023, ruling granting the State's motion in limine to exclude evidence of a firearm found in the decedent's vehicle. Relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C. E. art. 401.
>
> All relevant evidence is generally admissible. La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.
>
> The gun at issue is relevant and admissible to bolster the defendant's claim of justification in the shooting. The trial court abused its discretion in granting the motion to exclude the gun. The relevant inquiry is what the defendant

knew at the time of the shooting and whether he acted reasonably. According to eyewitnesses, the decedent threatened to kill the defendant and/or to "fu*k him up" immediately prior to the shooting. The victim then reached into his vehicle and retrieved a black item and turned toward the defendant. Given these facts and the exigency of the circumstances, the defendant could have reasonably believed the decedent was armed and reaching inside the vehicle for his weapon when the defendant shot him.

Further, in cases involving a police officer's use of excessive/deadly force, courts evaluate the record "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Smith v. Sawyer,* 435 F. Supp. 3d 417, 432 (N.D.N.Y. 2020); *Jones v. Parmley,* 465 F. 3d 46 (2nd Cir. 2006). The same standard applied to officer-involved shootings should apply in all cases.

Accordingly, the writ is granted and made peremptory. The trial court's ruling is reversed and the matter is remanded to the trial court for further proceedings.

Shreveport, Louisiana, this 6 day of October, 2023.

THOMPSON, J., dissents and would deny the writ."

Appendix H

While the Second Circuit reversed the ruling of the trial court even though the majority of the panel of the Second Circuit seemed to AGREE with the reasoning of the trial court on the issue of what the defendant knew about the existence of a gun at the time of the shooting. If, as the majority of the judges on the writ panel pointed out in the ruling reversing the trial court, "the relevant inquiry is what the defendant knew at the time of the shooting ..." then it is clear that any mention of a gun in the decedent's car should be excluded because it is not relevant to what the defendant knew at the time of the shooting.

Further, if we apply the reasoning of the Second Circuit that, "the same standard applied to officer-involved shooting apply in all cases" then we must evaluate this case from "the perspective of a reasonable [person] on scene, rather than with the 20/20 vision of hindsight." Hindsight in this case would be allowing into evidence a gun that no eyewitness nor the Respondent can testify to being threatened with, seeing, or knowing was in the decedent's car.

If this Honorable Court decides the gun at issue is relevant then the probative value of the gun at issue is substantially outweighed by the danger of unfair prejudice as to the decedent, danger of confusing the jury on the relevant issue of what the defendant knew at the time of the shooting, and danger of misleading the jury into considering the gun at issue when determining whether the defendant acted reasonably. When looking at the law in terms of an abuse of discretion, the trial judge's ruling was not erroneous. The trial judge excluded evidence of something that was not known by the Respondent or any

witnesses at the time of the shooting because allowing that evidence would be hindsight and/or would lead to the danger of unfair prejudice as to the decedent.

There is a history of excluding evidence in a criminal case based on the relevancy articles in the Louisiana Code of Evidence. In *State v. Ludwig,* 423 So. 2d I 073 (La. 1982) this Honorable Court upheld a decision by the lower court to exclude evidence the defendant was trying to present of the decedent's wife shooting him six months prior.[8] In *Ludwig,* the defendant was trying to implicate the wife of the decedent. This Honorable Court found the evidence of the shooting six months prior was inadmissible due to the probative value of that evidence was 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 thus making. The defendant's absolute right to present a defense is still subject to the rules of evidence.

Louisiana sanctions the use of deadly force to prevent commission of a violent or forcible felony carrying the risk of death or of great bodily harm directed against the person. La.Rev.Stat. 14:20(2); *State v. Plumlee,* 177 La. 687, 698-699, 149 So. 425 (1933); *Carmouche v. Bouis,* 6 La.Ann. 95, 97 (1851); *State v. Chandler,* 5 La.Ann. 489, 490-491 (1850). But, as outlined by this Honorable Court in

8. The lower court ruled the evidence irrelevant thus inadmissible, This Honorable Court found the evidence relevant but ruled the probative value of the evidence was 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 thus making it inadmissible.

State v. Deshotel, 96-0778 (La. 5/31196); 674 So.2d 260, the proper standard is that in order for a person to use deadly force, the circumstances must be such that a reasonable person would conclude "that there would be serious danger to his own life or person ...." La.Rev.Stat. 14:20(2). There is no prior decision of this Honorable Court or any of the lower courts that applies the standard of law enforcement officers in use of force situations involving civilians. The Second Circuit relied upon flawed reasoning by utilizing, *Jones v. Parmley,* a case that involved use of force by police officers on non-violent protestors. The facts of *Jones v. Parmley* are exceedingly distinctive from those of the instant matter as the case arises from a 1997 non-violent protest by members of a tribe of Native Americans in New York state in which police officers with the New York State Police were accused of violent acts against protestors such as beating them with riot batons, dragging them by their hair and kicking them. It was alleged that state troopers even threw one man to the ground and chocked him while he was praying. They allegedly manhandled an eleven-year-old girl and an elderly medicine woman and were even accused of tossing an infant in a double leg cast from a stroller. These facts are exceedingly distinguishable from the incident in which Matthews shot Williams.

The other case the Second Circuit applied was *Smith v. Sawyer,* 435 F.Supp.3d 417, 442 (N.D.N.Y.2020) which involved alleged violations of the Fourth Amendment by officers with the New York State Police and the Ulster County, New York Sheriff's Department. It was alleged that the law enforcement officers subjected suspects to excessive force when they apprehended a suspect after a vehicle pursuit and a foot chase. The suspect was beaten

until unconscious while in handcuffs with the force being allegedly delivered due to the fact that an officer thought the suspect had a gun. The facts of *Smith v. Sawyer* are also vastly different and based on totally different theories of law than the instant matter.

It is respectfully requested that this Honorable Court exercise its supervisory authority and grant this writ, reverse the ruling of the Second Circuit and affirm the ruling of the trial court excluding any evidence of the gun that was located some days after the shooting by the Respondent that killed Williams. In the alternative, the State prays for this Court to grant the writ and to docket this matter for full briefing and oral argument.

CONCLUSION

The trial court was correct in granting the State's Motion in Limine to exclude evidence of the gun that was located in the victim's car days after the shooting as any probative value of that evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The majority of the writ panel of the Louisiana Second Circuit Court of Appeal seemed to agree with the reasoning of the trial court on the same issue. Therefore, the State respectfully requests that this writ be granted to resolve the inconsistent and erroneous ruling of the Second Circuit Court of Appeal. This is not an attempt by the State to prevent Matthews or any witness from testifying that they thought the decedent was reaching for a gun. This is a motion to exclude from evidence a gun that no one knew was present at the time of the incident and the probative value of the gun is

substantially outweighed by the danger of unfair prejudice as to the decedent as well as the potential for confusing the jury on the relevant issue of what the defendant knew at the time of the shooting and likelihood of misleading the jury into considering the gun at issue when determining whether the Respondent acted reasonably.

PRAYER FOR RELIEF

For the foregoing reasons, the State of Louisiana prays that the Louisiana Supreme Court will grant writs and order briefing of the issues or make the writ peremptory and reverse the October 6, 2023, ruling of the Louisiana Second Circuit Court of Appeal which reversed the ruling of the trial court on the State's Motion in Limine related to the issue of the gun located in the vehicle of the victim days after he was killed by the Respondent Colton Matthews and remand the matter back to the trial court for further proceedings.

Respectfully submitted,

/s/_____
Richard R Ray # 26708
Emai*:* rray@26thda.org
J. Chancellor Nerren, #37817
Email: cnerren@26thda.org
Bossier Parish Courthouse
204 Burt Blvd.- P.O. Box 69
Benton, Louisiana 71007
Telephone: (318) 965-2332

APPENDIX I — OPPOSITION TO STATE'S WRIT APPLICATION IN THE SUPREME COURT FOR THE STATE OF LOUISIANA

SUPREME COURT FOR THE STATE
OF LOUISIANA

NUMBER: 2023-KK-01693

STATE OF LOUISIANA

v.

COLTON THOMAS MATTHEWS

OPPOSITION TO STATE'S WRIT APPLICATION BY DEFENDANT, COLTON THOMAS MATTHEWS

FROM JUDGMENT GRANTING STATE
OF LOUISIANA'S MOTION IN LIMINE IN THE
FIRST JUDICIAL DISTRICT COURT

PARISH OF CADDO
STATE OF LOUISIANA
DOCKET NUMBER 222,297; §B

THE HONORABLE CHARLES SMITH,
DISTRICT JUDGE AND JUDGMENT GRANTING
MATTHEW'S WRIT APPLICATION IN THE
LOUISIANA SECOND CIRCUIT COURT
OF APPEAL DOCKET#: KW 22-55062

[TABLES INTENTIONALLY OMITTED]

Appendix I

BRIEF IN OPPOSITION TO STATE'S APPLICATION FOR WRITS

The State's Application for Writs should be denied by this Court. In support of this contention, Applicant asserts the following:

Facts:

The State has, once again, in its Application for this writ, left out or misstated crucial information in its factual statements to this Court, specifically: although the State is correct that Mr. Williams did not make threats to Colton Matthews inside the pawn shop, all three eyewitnesses to the shooting stated that they heard Williams threaten to kill Colton Matthews and all three either believed Williams possessed a gun or, in the case of Kelvin Taylor, took off running because he believed Williams' threats to Colton and believed Williams was retrieving his gun from inside Williams' car.[1] The State also alleges that "[i]t was determined that Williams was holding a sharpie marker at the time he was shot, Williams was not holding a gun."[2] No such determination has been made. Law enforcement located a Sharpie marker near Mr. Williams' body after the shooting, and Colton stated that he observed

1. Appendix to 2nd Circuit Writ Application, pp. 29-32. (State Exhibit __ in their writ)

2. State's Application for Writ, p. 3. This gross misstatement was noted by Matthews in his opposition to the State's application for rehearing – and pointed out by Matthews in his oppositions to the rehearing (Appendix 1) which the State conveniently omitted in violation of court rules, from this writ application.

Mr. Williams holding "something black" at the time of the shooting, but the State asserts as fact (twice) that Mr. Williams was holding the Sharpie.[3] No witness stated Williams had a Sharpie and no evidence in discovery supports the allegation Williams even touched the pen. No DNA. No witness. The State would like this to be true but cannot rely on facts made up from whole cloth. The black object could have been a pen, but it could also have been Williams' gun which he dropped back in the opened glove box after he was shot. A jury should determine what was in Williams' hand – his pen, his gun from his immediate reach, or nothing. Finally, the State cites to the transcript of the September 19 hearing for the assertion that, "No witness can say the [sic] Williams threatened to shoot Matthews or threaten Matthews with a gun while outside of the pawn shop."[4] This citation is to the States' own *argument* in the transcript, not to any piece of evidence and it's a matter of fact to be determines by the jury. It is convenient that the State made an argument that supports its subsequent argument, but it can in no way be considered evidence. As discussed above and cited to the reports of the investigating officers, all three eyewitnesses stated that Williams threatened to harm or kill Colton prior to Colton shooting him in self-defense. They did not say an enraged Williams threatened to mark on them with a pen or write down their names to make a report. They

3. Appendix to 2nd Circuit Writ Application, p. 29.

4. State's Application for Writ , p. 3. Exhibit __ at __. (This false statement was also made to the 2nd Circuit and addressed in the opposition to rehearing by Matthews, which document was, again, omitted form the State's appendix.

said they thought Williams had a gun and was grabbing it from his open glove compartment.

Law:

The State relies on *State v. Ludwig*, 423 So.2d 1073 (La. 1982), in support of its contention that even relevant evidence may be inadmissible if its probative value is outweighed by other enumerated factors. *Ludwig* is distinguishable from the present facts as the defendant in that case was attempting to introduce evidence of a shooting that occurred six months before the incident for which he was being tried. In the present case, the State is seeking to exclude evidence of the presence of a firearm *during* an incident in which all three eyewitnesses to the crime allege that William threatened Colton Matthews with physical harm and death and then *reached into his vehicle* into the glove compartment, where the firearm was located, before being immediately shot by Colton Matthews in self-defense. The relevance of Williams' immediate acts prior to the shooting cannot be overstated and is not outweighed by any of the other enumerated factors. It is relevant to show what Williams' state of mind and intentions were and what Colton Matthew's reasonable beliefs were. His state of mind and intentions are relevant to the question of whether he threatened to physically harm or kill Colton Matthews as the witnesses assert. The State's bizarre theory is that Williams, facing a man with a gun who Williams threatened to kill and who was pointing a gun at Williams and yelling "STOP," reached into his glove compartment and grabbed a pen to write something down. They know that is absurd, but if the

officer says he searched the car and glove box but cannot say he found a gun, the State may convince someone by misleading, if not actually false, set of facts, that they are right. Without the trier of fact knowing that a gun was present, Colton is being denied the right to present all of the facts and circumstances surrounding the shooting and if the unique state theory that LCS 403 balancing act keeps the true facts from the jury, Matthews is deprived by a state evidence rule of his constitutional right to present a defense as outlawed by Chambers v. Mississippi, 410 US 284 (1973).He will be denied the right to present a defense. The presence of the gun does not prejudice the State, it does not confuse the issues, or serve to delay proceedings. This relevant evidence is necessary for the jury to consider the totality of the situation involving Matthews and Williams' interaction and Williams' death in order to make their determination about whether this shooting was justified. Whether Williams was reaching for a pen, or a gun is a factual determination the jury must make, especially in view of the State's argument that Williams was unarmed and grabbed, on purpose, his pen, rather than something else in his constructive possession.

Further, the Louisiana Supreme Court in *Ludwig* did find that the evidence was relevant.[5] In that case, as the State asserts, the Court found that "Nevertheless, we think that he properly excluded the evidence because its slight probative value was substantially outweighed by the risk that its admission would consume too much

5. "[W]we conclude that the trial court was in error in finding that the evidence was not relevant." State v. Ludwig, 423 So. 2d 1073, 1078 (La. 1982)

time, unnecessarily confuse the jury concerning the issues to be determined, and tend to excite the emotions of the jury to the undue prejudice of the opponent. See *State v. Moore,* 278 So.2d 781 (1973)." *State v. Ludwig*, 423 So. 2d 1073, 1078 (La. 1982). Additional facts and analysis from *Ludwig* that distinguishes it from the present case:

> In this case in which the contested proposition is whether the defendant is the person who killed Stephen Harr, and the evidence proffered is that six months before the homicide, Harr's wife had shot him in the leg or foot, the inferences which the defendant sought to invite from the jury were that (1) because Harr's wife shot him on the previous occasion and was a beneficiary of his life insurance policy, (2) she intended to kill him at that time, (3) she continued in her desire to get rid of him for the next six months, (4) she formulated a plan to kill her husband and blame it on another person, (5) she in fact executed her plan by killing him in defendant's motel room with defendant's gun after a quarrel between the two men, and (6) she persuaded the defendant to use his own car to dispose of the body and the murder weapon. The unarticulated premises conjoined with and supposed to justify the inferential steps are: (1) a woman who shoots her husband in the leg or foot, whether the injury appears to have been intentional or accidental, is more likely to have intended to kill him for his life insurance than a person of whom nothing is

> known; (2) it is also more likely that she would persist in her intention to kill her husband for six months after the shooting; (3) it is similarly more likely that she would conceive a plan to kill her husband that would place the guilt on the defendant, (4) and the fact that she had either accidentally or intentionally shot her husband six months before makes it more likely that she would execute her plan by shooting her husband to death in the defendant's room after the two men had quarreled and persuade the defendant to use his car to dispose of the body and the weapon. Obviously, the value of the first item of evidence as probative of the fact that Harr's wife, and not the defendant, killed Harr, varies inversely with the number and dubiousness of the intervening inferences. The reasoning is progressively attenuated and is fractionalized at several successive points. See, Weinstein's Evidence § 401. Trautman, Logical or Legal Relevancy—A Conflict in Theory 5 Vand.L.Rev. 385, 388–98 (1952).

Ludwig at 1078–79. The facts, as presented above, show how attenuated the analysis in *Ludwig* is from the present case. In its analysis, the Louisiana Supreme Court distinguished *Ludwig* from *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), and stated that "The evidence was, of course, extremely relevant, because it related to the crime for which the defendant was on trial and tended to completely exculpate him." *Ludwig* at 1079. And further: "In the present case, the

evidence which the defendant sought to introduce was at most of only slight probative value because it concerned a shooting which occurred six months before the charged offense involving a leg or foot wound which may have been unintentional under the terms of the proffer." *Ludwig* at 1079.

The fact that Williams possessed a firearm makes it more likely that he made threats to kill or harm Colton Matthews, which, in turn, make clear that Colton Matthews' belief he was in reasonable fear of receiving great bodily harm or death and was, thus, justified in shooting Williams, whether Williams successfully grabbed the firearm which the defense alleges he was reaching for and which he may have grabbed and dropped, when shot, back in the car – again an issue of fact for the jury. The fact of the firearms presence is extremely relevant, as in *Chambers* and its relevance is not outweighed by the danger of unfair prejudice, undue delay, or confusion of the issues. The issue for the jury to consider is whether Colton Matthews was justified in his use of force against Williams and all evidence related to the interaction between Colton Matthews and Williams on the day in question is relevant, and it was an abuse of discretion to exclude it, which the 2nd Circuit promptly rejected and then denied a rehearing even after new and creative arguments by the State.

The Second Circuit, in granting Matthews' writ and allowing the jury to hear relevant evidence, specifically cited to Smith v. Sawyer, 435 F. Sup 3rd 417 (ND NY 2020). This case dealt that with a § 1983 claim; the plaintiff Gordon was stopped by the police for suspicion

of involvement in a shooting. The officers were trying to break into Gordon's car because he would not roll down the window. At one point one of the officers yelled "gun" and then another officer fired his gun into the car and shot Gordon. The officer who fired his weapon testified he never saw a gun.

Gordon had been previously convicted of possession of a firearm, at the time the litigation surrounding the 1983 claim and pled guilty to having a gun at the time of his arrest. The officers (defendants) in the 1983 case, argued that Gordon could not deny facts admitted at his plea regarding the possession of a firearm. The issue was whether collateral estoppel prohibited him from raising that issue and whether Gordon's admitting to having a gun at the time of the stop in a parallel proceeding could be considered in the current 1983 motion for summary judgment. The Court ruled that Gordon was collaterally estopped from denying that he had a gun, said they would not consider as evidence the possession of the gun in determining whether the use of force was reasonable. And the Court ruled that the admission of the gun being present could be admitted in this trial but not used for determination of whether the force was excessive. In other words, the Court allowed the gun's presence, which no one had actually seen, to be admitted in the evidence of the trial for limited purposes.

In 1986, the United States Supreme Court obliquely addressed the issue of relevant of seen or unseen guns in self-defense cases, on issue is a case generally known for the ethics issue in Nix v. Whiteside, 106 S. Ct. 988

(1986). Whiteside was convicted of second-degree murder of Calvin Love who was in bed when Whiteside and his companions arrived and engaged in an argument over marijuana.

> "At one point, love directed his girlfriend to get his "piece" and at another point got up, and then returned to his bed. According to Whiteside's testimony, Love then started to reach under his pillow and move towards his right side. Whiteside stabbed Love in the chest, inflicting a fatal wound. *Id* at 160.

Here's what's important. When the police conducted the investigation "no pistol was found on the premises". *Id* at 160. Substitute Williams for Love – he asked for his piece, while Williams said, "I got something for you and will f-_ _ _ you up" and then reached for something where his girlfriend put his "piece." At trial Whiteside admitted he had not actually seen a gun in Love's hand (as is the testimony of the three eyewitnesses in this case). The presence of or the absence of the gun was discussed routinely in the case as a relevant issue on the self-defense matter and it definitely benefited the State that a search revealed that there was no gun, just as it would have benefited the defense had they truthfully testified that there had been a gun found.

In other words, nearly 30 years ago when the United States Supreme Court had the opportunity to say the presence or absence of a gun in a self-defense case is irrelevant if not <u>seen</u> by Whiteside, they treated it as

routine information to be presented to a jury in a self-defense case, whether there was or was not a gun. Justice Brennan specifically discussed it in his concurrence, and he noted that no gun was found even though there was testimony about whether the decedent had a weapon and was given one by his girlfriend. The facts of Nix v Whiteside are very similar to the facts here. Whiteside's counsel, in discussion of his effectiveness, acknowledged Whiteside's claim of self-defense would have been stronger had the gun been present. Again, the existence or nonexistence of the gun was *ipso facto* determined by the majority and concurring opinions was legally relevant to the issues in the case - was the decedent going for a gun or not. *Id* at 180.

Professor Pugh told all his evidence classes that rules are rules and to be following and applied equally to both sides in a case. The State has for decades made hay when in self-defense cases no gun/weapon is found. Sauce for the goose is sauce for the gander, and should be in this case, too.

The State seeks to avoid confusion and "prejudice" by not letting the jury know that Mr. Williams was reaching into a glove compartment that in fact had a gun in it and may have actually grabbed the gun and dropped it back into the glove compartment when he was shot. Rather the State prefers that the court simply accept the State's argued and factually incorrect version of the facts as the truth and prevent this defense from presenting the actual truth to the jury.

As a matter of fact, long and well-known jury instructions will properly guide the jury as to how they determine what law the judge provides them applies to the evidence. For example, State v. Mose, 412 So.2d 584 (LA 1982) is the Louisiana Supreme Court decision addressing constructive possession of a firearm which occurs when the firearm is subject to a person's (Williams in this case) dominion and control. Mose was found being in constructive possession of a firearm on his gun rack in his bedroom. In this instance, Williams was partially inside of his vehicle, reaching into his glove compartment according to the witness who thought he had a gun and ran away because of that where the gun was within Williams' dominion and control and was immediately accessible to him as it was located within his truck. The jury can be told that if Williams was in constructive possession of a firearm, then he was armed "under the law". The State's statement of facts argues, and they no doubt intend to argue at trial, that Williams was unarmed. Is the State succeeds in concealing the gun's presence which they make relevant by claiming him to be unarmed.

This rule is often used about law enforcement when justifying a search incident to an arrest. Chimel v. California, 89 Supreme Court 2034; 23. For the protection of an officer:

> "When an arrest is made it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect escape. Otherwise, the officer's safety

might well be endangered, and the arrest itself frustrated... and the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a light rule. A gun on a table or in a drawer in front of the one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing [or glove compartment of Williams] of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" - constructing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

Conclusion:

This Court should deny the State's Application for Writs as the 2nd Circuit its original ruling was sound and supported by law and the facts and the State's writ contained incorrect, incomplete statement of facts.

Respectfully submitted,

James E. Boren
Attorney at Law
Louisiana Bar #: 03252
830 Main Street
Baton Rouge, LA 70802
(225) 387-5786 (Tel)
(225) 336-4667 (Fax)
Jim@jamesboren.com

Katherine E. Gilmer
Louisiana Bar Number 31742
Gilmer & Giglio LLC
3541 Youree Drive
Shreveport, Louisiana 71105
Phone: 318-459-9111
Facsimile: 318-602-4716
Katherine@gilmergiglio.com
Counsel for Colton Matthews

Counsel for Colton Matthews

[VERIFICATION AND CERTIFICATE OF SERVICE OMITTED]