No. 23 - 5379

IN THE

SUPREME COURT OF THE UNITED STATES

EVERETT CHARLES WILLS II — PETITIONER

vs.

TIM HOOPER, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

EVERETT CHARLES WILLS II
391159, CAMP D EAGLE—2
LOUISIANA STATE PENITENTIARY
ANGOLA LOUISIANA 70712

QUESTIONS PRESENTED

1. When guilt is the sole issue for the jury to decide, is it permissible for counsel to unilaterally concede the essential elements (*actus reus* and *mens rea*) of the charged offense over the defendant's intransigent objection?

2. Does *McCoy* v. *Louisiana* apply retroactively to persons whose convictions were final at the time it was decided when the criminal defendant complained that an attorney impermissibly conceded guilt over his or her objection?

3. Is a criminal defendant deprived the benefit of counsel at a critical stage when an attorney unilaterally concedes guilt over a criminal defendant's express objection?

LIST OF PARTIES

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

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Everett Charles Wills II ("Wills") is seeking a writ of certiorari to review the Louisiana Supreme Court's decision to deny his writ application requesting the benefit of this Court's holding in *McCoy v. Louisiana*, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018).

Wills is the defendant and defendant-petitioner in the courts below. The respondent is Warden Tim Hooper of the Louisiana State Penitentiary via the State of Louisiana.

OPINIONS BELOW

The Louisiana Supreme Court's decision to deny Wills's writ application appears at Appendix A to the petition and is reported at *State v. Wills*, 2021-00106 (La. 6/7/23); --- So.3d ---, 2023 WL 3859689; 2021-00106 (La. 6/7/23); --- So.3d ---, 2023 WL 3860115.

JURISDICTION

Wills invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Louisiana Supreme Court on the basis of 28 U.S.C. § 1257(a). The Louisiana Supreme Court denied Wills's writ application seeking a retroactive application of *McCoy v. Louisiana*, 138 S.Ct. 1500 on June 7, 2023. See Rules of the Supreme Court of the United States, Rule 10(b)(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United Sates Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defence.

The Fourteenth Amendment to the United Sates Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I § 1 of the Louisiana Constitution:

> All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Article I § 13 of the Louisiana Constitution:

> When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of ... his right to the assistance of counsel and, if indigent, his right to court appointed counsel....At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment

La. R.S. **14:30.1(A)(1). Second Degree Murder:**

> Second degree murder the killing of a human being: When the offender has a specific intent to kill or to inflict great bodily harm.

La. R.S. **14:31(A)(1). Manslaughter:**

> A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive

an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed

La. R.S. **14:10. Criminal Intent:**

Criminal intent may be specific or general: (1) Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. (2) General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.

La. R.S. **14:20 A.(1)(2). C. and D. Justifiable homicide:**

A. A homicide is justifiable: (1) 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 danger. (2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

C. 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.

D. 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 necessary and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

La. R.S. **14:22. Defense of others:**

It is justifiable to use force or violence or to kill in the defense of another person when it is reasonably apparent that the person attacked could have justifiably used such means himself, and when it is reasonably believed that such intervention is necessary to protect the other person.

STATEMENT OF THE CASE

A. Introduction.

Wills was charged, tried, and convicted by a non-unanimous (10-2) jury verdict for second degree murder. The court sentenced him to life imprisonment without the benefits of probation, parole, or suspension of sentence. Wills told authorities he shot and killed Carlos Guster in defense of self and others. Wills's trial counsel—Kurt Goins—conceded guilt to manslaughter over his objection. Wills's direct appeal of his conviction and sentence was unsuccessful. *State v. Wills*, 48,469 (La. App. 2 Cir. 9/25/13); 125 So.3d 509, *writ denied*, 2013-2563 (La. 6/13/14); 140 So.3d 1184. Wills timely filed his initial Application for Post-Conviction Relief ("APCR") in the trial court raising claims of ineffective assistance of counsel, prosecutorial misconduct and a denial of due process and equal protection. Specifically, Wills argued Goins's performance was deficient when he conceded guilt to a specific intent manslaughter over his intransigent objection. The trial court, in error, said Wills's argument was conclusory and summarily denied his APCR. Wills's writ applications to Louisiana's Second Circuit Court of Appeal and the Louisiana Supreme Court were unsuccessful. Wills also unsuccessfully sought a federal writ of habeas corpus. On March 9, 2020, this Court denied Wills's petition for writ of certiorari. *Wills v. Vannoy*, 140 S.Ct. 1293, 206 L.Ed.2d 374 (2020).

On May 14, 2018, this Court held that the Sixth Amendment guarantees a defendant the right to choose the objective of the defense and to insist that counsel refrain from admitting guilt because some decisions, like whether or not to plead guilty, are for the client to make. *McCoy v. Louisiana*, 138 S.Ct. 1500,1508, 200 L.Ed.2d 821 (2018).

Likewise, on September 7, 2018, the Louisiana Supreme Court echoed the sentiments of the *McCoy* Court. *State* v. *Horn*, 2016-0559 (La. 9/7/18); 251 So.3d 1069. The *Horn* Court also said the *McCoy* holding "focuses on a defendant's autonomy to choose the objective of his defense." *State* v. *Horn*, 251 So.3d at 1075,1076. On March 19, 2019, Wills filed a Successive Application for Post-Conviction Relief with Memorandum, Exhibits and Attachments in Support ("SAPCR") not barred by the provisions of *La. C. Cr. P. art.* 930.4 or *La. C. Cr. P. art.* 930.8. Appendix J, pp. 49-67.

The trial court acknowledged that Wills's *McCoy* claim was timely filed but said his claim "does not meet the *McCoy* test and does not establish any other criteria is met in accordance with La. C. Cr. P. art. 930.8 (A)(2)." Appendix H, p. 45. The trial court overlooked the documents Wills submitted with his SAPCR that proves Goins knowingly violated his request not to concede guilt to a specific intent killing. The trial court was also made aware through the bailiff, corporal Darryl Smith, that Wills was upset with Goins and sought to stop the trial when he conceded guilt in his opening statement. Corporal Smith instructed Wills to not cause a scene, especially in the jury's presence and he apprised the court of the situation in private. As for *La. C. Cr. P. art.* 930.8(A)(2), Wills had one year to file a successive application for post-conviction relief and, as the trial court agreed, Wills did and it was "timely filed." Appendix H, p. 45.

The trial court opined that *McCoy* does not apply retroactively to Wills's case; however, the trial court did not mention that when Wills filed his initial APCR he argued he received ineffective assistance when Goins conceded guilt over his objection. The trial court denied the claim and overlooked the submitted documents—including Goins's

notes acknowledging Wills insisted on maintaining a self-defense claim—and ruled that Wills's claim was conclusory. As for his SAPCR, the trial court's ruling did not explain how Wills's claim failed to "meet the *McCoy* test[.]" See Appendix H, pp. 45-46. On October 30, 2020, Wills timely exhausted his claim to the Louisiana Supreme Court after the Louisiana Second Circuit Court of Appeal denied relief. Appendix B, p. 3; Appendix C, p. 17.

On June 7, 2023, the Louisiana Supreme Court denied Wills's writ application. Justice Griffin concurred and assigned reasons. Justice Crichton and Justice McCallum were recused. Justice Griffin said although she concurred in the denial of the writ, "this Court must eventually address the issue of whether *State v. McCoy*, 14-1449 (La. 8/31/18), 251 So.3d 399, applies retroactively." Appendix A, pp. 1-2.

B. Facts of the Incident.

On April 18, 2011, Guster was at the home of his mother—Zina Guster—in the 3000 block of Lillian Street. There was an unspecified conflict between Zina and Guster that caused her to put him out. Guster's sister came home shortly after the trouble and saw him on the front porch. Guster left home, possibly angrier, after his sister refused to give him money. Dressed in all black, Guster proceeded to 3112 Lillian street—the home of Wills's mother: Aleana Johnson—where he tried to gain uninvited access.

Zina testified that Guster was never diagnosed with any issues and he was never seen by a doctor for mental illness. She said Guster was aggravated the last time she saw him because some people owed him money for yard work he had done. She also said

Guster would say inappropriate things to her and that she went to the Coroner's office to get him some help because she did not want anyone to hurt him.

Guster's sister—Evony Guster—testified that the last time she saw him was 10-to-15 minutes before the shooting. She said Guster had asked her for some money and she told him she did not have any. She also said he got mad and walked down the street.

Aleana testified that Guster was a sweet person when he first started coming around her home. She said Guster started calling Wills's sisters—Ellen and Emma Johnson—inappropriate names. Aleana testified that when she arrived at her house on the night of the incident, Guster was on her porch. She said when Guster observed them pull up, he ran and hid behind a tree.

Ellen testified that when she first met Guster he was alright—although he would act up at times. Ellen admitted that they should have called the police. Ellen said when they first heard the noise at the door, they did not think anything of it because Emma's baby-daddy played like that. She also said that when they looked out the door and saw Guster they were shocked because he had never done anything like that before.

Emma testified that Guster had threatened them and that she took his threats seriously because his behavior had been out of control the month preceding the shooting. Emma said on the night of the incident, Guster was on their front porch tampering with the door and that he was trying to get in. This petition for a writ of certiorari timely follows.

REASONS FOR GRANTING THE WRIT

Under Rule 10, the Louisiana Supreme Court denied relief and contrarily decided important questions of federal law that has been settled by this Court and has decided important federal questions in a way that conflicts with this Court's relevant decisions as set forth below:

According to *McCoy v. Louisiana*, the concept of client-autonomy is not new because certain fundamental decisions, like whether or not to plead guilty, are for the client to make. *McCoy v. Louisiana*, 138 S.Ct. at 1508; cf. *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308,3312, 77 L.Ed.2d 987 (1983). In *McCoy*, this Court unambiguously said because a client's autonomy and not counsel's competence is in issue, the usual ineffective-assistance-of-counsel jurisprudence does not apply to a *McCoy* claim. *McCoy v. Louisiana*, 138 S.Ct. at 1510-11; citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); or *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). The *McCoy* Court held that the Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist counsel refrain from admitting guilt over the counsel's experienced-based opinion because some decisions, like whether or not to plead guilty, are for the client to make. *McCoy v. Louisiana*, 138 S.Ct. at 1507,1508-12.

In this case, Wills told authorities he shot and killed Guster in defense of self and others. His affirmative defense was impermissibly changed—by Goins—into a guilt concession when Goins told the jury Wills was guilty of a specific intent killing over Wills's express objection. Contrary to the Sixth Amendment's guarantee—to have the

effective assistance of counsel for one's defense—Goins impermissibly conceded *actus reus* and *mens rea*.

In *Texas v. Cobb*, Justice Breyer, writing for the dissent, made some critical observations about the Sixth Amendment right to counsel that are relevant here: the right is essential to ensure fairness in criminal proceedings; the right attaches when the adversarial process begins; and the right gives criminal defendants the right "to rely on counsel as a 'medium' between him and the State[.]" *Texas v. Cobb*, 532 U.S. 162,177-78, 121 S.Ct. 1335,1345-46, 149 L.Ed.2d 321 (2001) (Breyer, J., joined by Stevens, Souter, and Ginsburg, JJ. dissenting) (internal citations and quotations omitted). When Goins conceded guilt—the *actus reus* and the *mens rea*—over Wills's objection, there was a complete breakdown in the adversarial process and Wills was deprived of his Sixth Amendment right to counsel.

The Sixth Amendment right to counsel has been interpreted as a fundamental bedrock principle. Once a criminal defendant chooses to be represented by counsel, that counsel is given an objective and must develop a plan to achieve the goal. If it works, fine. If not, then the failure does not constitute ineffectiveness under the United States Constitution unless counsel's performance was deficient and that deficient performance prejudiced the defendant's defense.

When an indigent defendant is granted counsel to assist with his or her defense, the Sixth Amendment's guarantees and protections, made applicable through the Fourteenth Amendment for state cases, may not be abrogated or circumvented. Wills is asking the Court for a grant, vacate, and remand because he insisted that his attorney

not concede guilt to manslaughter. Wills admitted he shot and killed Guster; but only in defense of himself and others. Goins claimed he did not find any evidence to support Wills's claim of justifiable homicide; however, in arguing manslaughter, his argument could have been used to argue justifiable homicide. For instance, Goins said Wills's motive for shooting Guster was to be protective of his mother and his sisters but that Wills was overly protective. Goins unilaterally, and arbitrarily, decided to override Wills's defense—and to this date Wills has not received a merit review on the issue. This Court's *McCoy* decision did not announce a new rule of constitutional law: the Court simply did a new thing by removing counsel's error from under the *Strickland/Cronic* analysis. Even assuming the rule was new, it gave rise to a cause of action in need of a procedural vehicle to bring the issue to the Court's attention.

The Court's *McCoy* holding was dictated by precedent apparent to reasonable jurists and simply restored the balance between a client's objective to decide the objective of his or her defense and an attorney's duty to prepare a strategy with the hope of achieving the client's goal. *McCoy* did not break new ground or impose any new obligation on the state or federal governments; indeed, it restored the Sixth Amendment's guarantee—to the criminal defendant—of the right to the assistance-of-counsel for one's defense and prevented attorney's from violating a client's autonomy and mount a spurious defense strategy.

Specific instances, such as the one found in *Florida v. Nixon*, 543 U.S. 175,178, 128 S.Ct. 551, 160 L.Ed.2d 565 (2004) and discussed by the *McCoy* Court, are not relevant to the issue complained of here. As the Court is aware, defendant's who remain

silent when counsel proposes a strategic plan cannot later complain when the tactic does not work. Wills complained and was even removed from the courtroom by the bailiff. Although Wills did not tell the trial court what was happening, the bailiff did. See Appendix M, p. 96.

The error presented here is structural and not amenable to harmless error analysis. A criminal defendant has the constitutional right to counsel at every critical stage. Trial has to be considered a critical stage because that is where the decision will be made to deprive citizens—accused of committing crimes—of their liberty. In Wills's case, the jury was told to convict—by Wills's trial counsel—because he had an unbelievable defense. The prosecutor, of course, also asked for a conviction. Where the jury is instructed that a defendant has entered a plea of not guilty—and must be considered innocent until proven guilty—no amount of instruction from a trial court will cure a trial counsel's unilateral decision to concede the very issue the jury alone is tasked with deciding from the evidence presented. As it stands, Wills's trial was reduced to a mere formality. The prosecution did not have to meet its burden of proving guilt beyond a reasonable doubt and neither did it have to prove that Wills did not shoot and kill Guster in defense of self and others. Goins made sure the prosecution did not have to meet its burden when he unilaterally conceded guilt—the *actus reus* and the *mens rea*—over Wills's adamant protestations.

To hold that a trial counsel could concede guilt over a defendant's express objection, even before *McCoy v. Louisiana*, is violative of the state and federal constitutions—namely Article I, § 13, and the Sixth and Fourteenth Amendments.

Accordingly, Wills respectfully ask the Court to hold that *McCoy v. Louisiana* is retroactive to persons whose cases were final when *McCoy* was decided. Wills also asks the Court to vacate his conviction and sentence and remand his case "for further proceedings not inconsistent with this" Court's decision in *McCoy v. Louisiana*, 138 S.Ct. at 1512.

1. [Questions 1-3] This Court should decide if the holding of *McCoy v. Louisiana*, should be applied retroactively in cases that were already final but the defendant had raised the issue under this Court's ineffective-assistance-of-counsel jurisprudence but otherwise satisfy the *McCoy* test.

A. Wills's trial counsel conceded guilt over his explicit objection in violation of Article I, § 13 of the Louisiana Constitution and the Sixth Amendment to the United States Constitution.

According to this Court, the decision whether to plead guilty or not rests solely in the discretion of a criminal defendant and not the attorney. *McCoy v. Louisiana*, 138 S.Ct. 1500. The *McCoy* Court held:

> [A] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. Guaranteeing a defendant the right "to have the *Assistance* of counsel for *his* defense," the Sixth Amendment so demands. With individual liberty—and, in capital cases, life—at stake, it is the defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.

McCoy v. Louisiana, 138 S.Ct., at 1505.

The Louisiana Supreme Court expounded on this Court's holding and said:

> ... there is no question that a criminal defendant's decision whether to concede guilt implicates fundamental constitutional rights and the right to exercise that decision is protected under the Sixth Amendment. Moreover, a violation of this Sixth Amendment right is a structural error and not subject to harmless error

> review. [Thus] ... [a] criminal defendant's express refusal to concede guilt is safeguarded by core constitutional protections.

State v. Horn, 251 So.3d 1069, 1073-74.

Because a criminal defendant does not surrender complete control of his defense to his counsel, Wills was deprived of his Sixth Amendment right to counsel when Goins conceded guilt to manslaughter. The Sixth Amendment grants an accused the right to make his own defense and when it "speaks of the 'assistance' of counsel, [that] assistant, however expert, is still an assistant." *McCoy v. Louisiana*, 138 S.Ct. at 1508.

Goins tried to convince Wills to agree with a manslaughter defense and Wills refused. Goins noted several things about Wills's defense—and his opinion about that defense—in his notes:

- Self-defense. Defendant started with denial then self-defense.
- Defendant asserted, as before, he acted in self-defense.
- Told defendant evidence to date doesn't fit his story....Defendant insist on his self-defense claim.
- Told defendant I was considering line of argument and whether or not to give opening statement ... Defendant said he didn't want situation he wasn't a killer. I told defendant I believed he didn't want it either.
- Defendant clings to his self-defense theory, which I told him I have not found evidence to support. This did not please defendant nor did possibility of arguing manslaughter.
- Defendant considers 40 years a life sentence when I told him difference between second degree murder and manslaughter.
- Defendant doesn't like my manslaughter argument. I told defendant basically there's not a viable self-defense claim.

See Appendix L. pp. 85, 88-90.

Goins did not have Wills's permission to concede guilt to anything. The matter was dropped and did not come up again until after Goins changed the objective of

Wills's defense—without his consent—and actually conceded guilt—*actus reus* and *mens rea*—at trial. Goins did not inform Wills of his plan to present a manslaughter defense.

In his opening statement, Goins told the jury that "this is a case where you have combustible elements. [Guster], flirtatious and afflicted with a mental illness" and Wills overprotective. Appendix K, p. 70. He said "[t]he State mentions guilt. I would also add another word for you, regret, even remorse." Appendix K, p. 71. He said the jury had "heard the State's allegation of murder" and they would also hear Wills's "claim of self-defense through his statement." Appendix K, p. 71. Goins violated Wills's constitutionally protected autonomy right when he told the jury the "evidence won't support that. This is a case of Manslaughter. And at the end, that is what I will argue that you find. Appendix K, p. 71.

In his closing statement, Goins said this case was a "collision between a young man who is mentally ill and won't take no for an answer, another man, [Wills], whose motive is to be protective of his sisters and his mother and goes to the level of being overprotective[.]" Appendix K, p. 72. He also said, "What we're arguing about is what offense was committed, what was proven, and what was not proven. And as I told you in my opening statement, this is a case of Manslaughter." Appendix K, p. 72. Returning to his mantra, Goins said: "[W]e know that [Guster] had this mental illness that's undiagnosed. Ms. Guster couldn't get him help. Is it getting worse, and is it going to lead to something worse?"Appendix K, p. 75. Concerning Wills, he said:

> That's what I refer to when I mention that [anchor] of self-defense that turns out to be an anvil. Many times when a person thinks they are acting in a way to protect their loved ones and they overreact, they try to justify it in their minds. Well, I was right to do it. Well, no, you weren't right to do it. That's the fact of

> the matter. And you try to cling to this anchor of self-defense. But as you see, ladies and gentlemen, from the evidence in the case, it's not an anchor, it's an anvil that drags him down. That's why quite literally, right now as you sit here, when you get through hearing from me and Mr. Edwards again, and Judge Emanuel charges you, when you go back to the jury room, what you're going to decide literally is how far down that anvil carries him. That's the bottom line.

Appendix K, p. 80.

It was neither an anchor nor an anvil that caused Wills's defense to sink. It was Goins's concession of guilt to a specific intent manslaughter over Wills's objection. Goins asked the jury: "What happen[ed] to the gun?" He then told them it was, without a doubt, "disposed of by [Wills] somewhere, sometime." Appendix K, p. 81. Goins even asked the jury if getting rid of the gun was evidence of guilt? He answered: "Yes, it can be construed that way." Appendix K, p. 81. He then told the jury they could "still see [Wills] clinging to that anvil of self-defense with Officer Entrekin when he's in the car." Appendix K, p. 81. Goins also said that "a person who has not acted in self defense has a responsibility for the killing. And [Wills] has done that. I'm sorry to say that, but that's what happened." Appendix K, p. 83. In conclusion, Goins said, "given all of the facts in the case and the evidence, I ask that you return a verdict of Manslaughter."Appendix K, p. 84. Again, Goins conceded the *actus reus* and the *mens rea* over Wills's objection.

In Louisiana, manslaughter and second degree murder have the same elements and definitions. Wills was indicted under *La. R.S.* 14:30.1 A.(1) which defines second degree murder as the killing of a human being when "the offender has a specific intent to kill or inflict great bodily harm." Paragraphs two through four are irrelevant because they refer to felony murders committed during the commission of certain enumerated felonies; or deaths caused by the unlawful distribution or dispensing of any controlled

dangerous substance. Likewise, manslaughter is defined as a homicide that would be a first or second-degree murder:

> ... but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time of the offense was committed.

Again, like second-degree murder, manslaughter's paragraph 2, 2(a) and 2(b) are inapplicable because they describe: (1) a homicide without specific intent; (2) felony murder committed during the perpetration—or attempt perpetration—of any felony enumerated in La. R.S. 14:30.1 A.(2)—or any intentional misdemeanor that directly affects someone; and (3) when the offender is resisting lawful arrest but not by means that are inherently dangerous. See La. R.S. 14:31.

I. The Sixth Amendment Right to the Assistance of Counsel.

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." Under this Court's jurisprudence, the Sixth Amendment right to counsel is "offense specific" and attaches when "a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *Texas v. Cobb*, 532 U.S. 162,165,168, 121 S.Ct. 1335,1339-40 (1991) (quoting *McNeil v. Wisconsin*, 501 U.S. 171,175, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991).

Wills was arrested and indicted for second degree murder. During the police interrogation, Wills did not deny shooting Guster. He told police detectives he shot and

killed Guster in defense of self and others. At his arraignment, Wills pled not guilty to the second degree murder accusation. According to this Court's jurisprudence—interpreting criminal defendants right to the assistance of counsel for their defense—Wills was deprived of his Sixth Amendment right to counsel, during a critical stage of the proceeding, when Goins unilaterally, and arbitrarily, chose to concede guilt over his express objection. Goins declared Wills guilty to the jury and relieved the prosecution of its burden to prove he: (1) actively desired to shoot and kill Guster; and (2) was not acting in defense of self or others, when he did so. Cf. *La. R.S.* 14:30.1(A)(1); *La. R.S.* 14:10. Counsel's concession resulted in a complete breakdown of the adversarial process.

II. One Purpose of the Sixth Amendment Right to Counsel is to Protect Unaided Laymen at Critical Confrontations with their Adversaries.

Trial, whether by judge or jury, is a critical confrontation where the Sixth Amendment applies. A criminal defendant goes to trial when he or she professes innocence or not guilty by way of an affirmative defense. In Wills's case, his defense was not guilty by way of justifiable homicide. See *La. R.S.* 14:20A. (1)(2) C. D. In *Engle* v. *Isaac*, 456 U.S 107,121-22, 102 S.Ct. 1558,1568-69 (1982), the Court agreed that a claim of self-defense negates the elements of criminal behavior and once a "defendant raises the possibility of self-defense, ... the State must disprove that defense as part of its task of establishing guilty *mens rea*, voluntariness, and unlawfulness." The Court also agreed that the Due Process Clause "forbids the States to disavow any portion of this burden." *Engle* v. *Isaac*, 456 U.S. at 122, 102 S.Ct. at 1568. In *United States* v. *Gouveia et al*, 467 U.S. 180,189 104 S.Ct. 2292,2298, 81 L.Ed.2d 146 (1984); this Court said the Sixth Amendment right to counsel "is far from a mere formalism." Even

so, Wills's trial was reduced to a formality when Goins decided he would relieve the State of its burden of proving guilt beyond a reasonable doubt—or that Wills was not acting in defense of self and others when he conceded guilt to a specific intent manslaughter after Wills rejected the would-be strategy. Under the Sixth Amendment's right to counsel provision, Goins was obligated to structure his trial strategy around Wills's not guilty plea and his claim of justifiable homicide. Cf. *McCoy v. Louisiana*, 138 S.Ct. at 1507-12.

III. The Sixth Amendment does not Allow a Defense Counsel to Unilaterally Concede Mens rea or Actus reus.

Writing for the *McCoy* dissent, Justice Alito opined that McCoy's attorney did not concede guilt when he admitted his client killed three people—although McCoy maintained he did not kill anyone. According to the dissent, McCoy's attorney did not concede guilt because "English strenuously argued that petitioner was not guilty of first degree murder because he lacked the intent (the *mens rea*) required for the offense." *McCoy v. Louisiana*, 138 S.Ct. at 1512 (Alito, J., dissenting, joined by Thomas and Gorsuch, JJ.). The *McCoy* dissent made some important observations that must be compared to the applicable law and facts of Wills's case:

The *McCoy* dissent acknowledged that, apart from capital cases, "guilt is almost always the only issue for the jury, and therefore admitting guilt of all charged offenses will achieve nothing. It is hard to imagine a situation in which a competent attorney might take that approach." *McCoy v. Louisiana*, 138 S.Ct. 1514. Wills's case may not be considered capital because he will not be executed by the Louisiana Department of Corrections; even so, Wills has to die to satisfy his sentence because there is no parole

eligibility in Louisiana. Goins's decision—to override Wills's affirmative defense of justifiable homicide actually happened and it is hard to imagine why he did so when, in Louisiana, life means life.

Wills's line of defense was not guilty and not guilty because the homicide was justified. Goins apprised Wills of his intended strategy to concede guilt to manslaughter and Wills rejected the idea of conceding guilt. Goins did not concede some elements of the charged offense, he conceded all of the essential elements. Cf. *McCoy v. Louisiana*, 1380 S.Ct. at 1516 (Alito, J., dissenting, joined by Thomas and Gorsuch, JJ.). Again, in Louisiana, manslaughter—as applicable to Wills's case—does not have separate or distinct elements for the prosecution to prove in order to win a conviction.

In *State v. Cannon*, 2018-1846 (La. 11/20/18); 257 So.3d 182, the Louisiana Supreme Court denied the defendant's writ application concerning a *McCoy* violation. Justice Crichton disagreed with the majority and, in part, said the court was "missing a valuable opportunity to provide guidance on the best practice for trial courts across the state in conducting hearings in this unprecedented area of the law." Louisiana has again passed on the opportunity to provide guidance; therefore, Wills respectfully ask this Court to provide that guidance and prevent a miscarriage of justice.

CONCLUSION

For the foregoing reasons Wills's petition for a writ of certiorari should be granted.

Respectfully submitted,

Everett Charles Wills II

Date: July 31, 2023