

APPENDIX "A"
JUDGMENT OF CONVICTION AND SENTENCE

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2023-KO-01657

VS.

AHKEMON J. BARDELL

IN RE: Ahkemon J Bardell - Applicant Defendant; Applying For Writ Of Certiorari,
Parish of St. John the Baptist, 40th Judicial District Court Number(s) 17,322, Court
of Appeal, Fifth Circuit, Number(s) 23-KA-55;

June 05, 2024

Writ application denied.

WJC

JLW

JDH

SJC

JTG

JBM

PDG

Supreme Court of Louisiana
June 05, 2024

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

APPENDIX "B"
DENIAL BY COURT OF APPEAL FIFTH CIRCUIT
Opinion and Judgment

STATE OF LOUISIANA v. AHKEMON J BARDELL

Court of Appeal of Louisiana, Fifth Circuit. November 15, 2023 -- So.3d --- 2023 WL 7638701 23-55 (La.App. 5 Cir. 11/15/23) (Approx. 10 pages)

2023 WL 7638701

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PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR
WITHDRAWAL.

Court of Appeal of Louisiana, Fifth Circuit.

STATE OF LOUISIANA

v.

AHKEMON J BARDELL

NO. 23-KA-55

November 15, 2023

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT PARISH OF ST. JOHN
THE BAPTIST, STATE OF LOUISIANA

NO. 17,322, DIVISION "C"

HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

AFFIRMED

JGG

SMC

MEJ

Attorneys and Law Firms

COUNSEL FOR PLAINTIFF/APPELLEE, STATE OF LOUISIANA Honorable Bridget A. Dinvaut Orenthal J. Jasmin

COUNSEL FOR DEFENDANT/APPELLANT, **AHKEMON JACOB BARDELL** Gwendolyn K. Brown

Panel composed of Judges Susan M. Chehardy, Jude G. Gravois, and Marc E. Johnson

Opinion

JUDE G. GRAVOIS JUDGE

***1 GRAVOIS, J.**

Defendant, **Ahkemon Jacob Bardell, Jr.**, appeals his conviction as charged as a principal to second degree murder, in violation of La. R.S. 14:30.1 and La. R.S. 14:24. On appeal, he asserts three assignments of error:

1. The trial court erred by allowing the State to admit evidence in violation of Mr. Bardell's constitutional right to confront the witnesses against him.
2. The trial court erred by denying Mr. Bardell's motion for a new trial predicated upon the denial of the defense's right to confrontation.
3. The trial court erred by denying Mr. Bardell's request to remove and replace a juror with an alternate juror after it became known that the subject juror was a friend of one of the State's primary witnesses.

After thorough review of the briefs and the entire record, we find no merit to the assignments of error and accordingly affirm defendant's conviction and sentence.

PROCEDURAL HISTORY

On October 25, 2017, a St. John the Baptist Parish Grand Jury indicted defendant, **Ahkemon Jacob Bardell, Jr.**, as a principal to second degree murder, in violation of La.

street toward the victim's house.

Detective Barlow testified that he also looked at crime camera footage, where he saw the same vehicle later go through several intersections toward I-10. He noticed that the vehicle had a Texas license plate and that it was traveling eastbound towards New Orleans at approximately 11:00 p.m. Detective Barlow learned that the vehicle was registered to Haley Tillis, who had sold it to Domanique Barnes. He affirmed that they spoke on the phone with Barnes, who said he would talk to them if they would come to Houston; however, once they got to Houston, Barnes was not there. Detective Barlow testified that they located the vehicle in Houston and later learned that Barnes had sold the vehicle right after they told Barnes they were going to Houston to speak to him.

*3 Detective Barlow testified that his office also obtained defendant's cell phone records. He stated that defendant and the victim spoke numerous times in the days prior to the homicide, but afterwards, there was no contact ever again. Detective Barlow further testified that the last call from defendant to the victim was on February 13, 2017, at 10:32 p.m., and at that time, defendant's phone was approximately eighty-two feet from the victim's residence. He stated that there was no activity on defendant's phone between 10:33 p.m. and 10:50 p.m. that night. He asserted that at 10:50 p.m., defendant made one call to the Houston cell phone number of Branden Clegg.

Detective Barlow testified that his office also obtained the phone records of Barnes, Clegg, and Malcom Muse, which he said showed that they traveled from the Houston area to the LaPlace area close to the victim's residence on February 13, 2017, at the time of the homicide, and then left. He stated that this coincided with the camera footage that photographed the vehicle as it was traveling. Detective Barlow pointed out that the only person who made contact with the victim by phone was defendant. He stated that the GPS locations in the phone records showed that defendant's phone was at the victim's house at the time of the homicide.

Detective Barlow testified that defendant subsequently voluntarily came to the detective bureau and gave a statement. In his statement, defendant said that he met up with the three other men (Barnes, Clegg, and Muse) to go and buy "lean" from the victim.³ He stated that they went to the victim's house and he (defendant) went in first. Defendant stated that he bought "lean" from the victim and told the victim that he had other people who also wanted to buy some. He further asserted that the men texted him wondering why he was in the house so long. Defendant stated that he told the men that they could come inside. He also stated that the men came in and they all pulled guns, except for Clegg and himself, and shot the victim. Defendant explained that the other men ransacked the house and took the victim's phone. He noted that the victim also had a gun and had been on Instagram flashing money. Defendant claimed that there was only \$800 to \$1,000 in the house. He said that after the victim was killed, they left the house. Defendant admitted that they threw the victim's gun in the river.

Branden Clegg testified at trial that he was convicted of theft in 2013 and was still awaiting trial in the instant case for the charge of principal to second degree murder. He further testified that the State had not made any promises or offered any deals to him in exchange for his testimony. Clegg asserted that defendant called him about marijuana and asked him to come to the New Orleans area. He maintained that on February 13, 2017, he drove Barnes' black Impala from Houston to the New Orleans area with Barnes and Muse and that they arrived between 9:00 p.m. and 10:00 p.m.

Clegg testified that when they arrived in Louisiana, they went to his grandmother's house. He then called defendant, after which defendant came over. Clegg explained that when they were talking about marijuana, defendant had wanted to "hit a lick," which he explained meant rob someone. He stated that defendant told him he had a "lick" on some "dude" and showed them an Instagram video of someone, later identified as the victim, counting money. He also stated that defendant told them where the victim lived and that the victim had "lean."

Clegg testified that they decided they would rob the victim. He said that defendant asked him for gloves and they left afterwards. He further testified that they got into the black Impala and went to where the victim lived. Clegg asserted that defendant called the victim, they dropped defendant off at the victim's house, and defendant went inside. He explained that the plan was for defendant to go inside the house, call them once he did so, and they would then go in. He stated defendant's plan if the victim resisted was that defendant was going to

case, it was critical that defendant have the opportunity to confront and cross-examine his accusers. Thus, defendant maintains that the trial court erred by denying his motion for a new trial based upon the erroneous admission of this evidence.

The State responds that the trial court's ruling was proper. It asserts that in *Davis v. Washington*, 547 U.S. 813, 822, 126 S.Ct. 2266, 2273-74, 165 L.Ed.2d 224, 237 (2006), the Supreme Court found that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." The State argues that in the instant case, there was an emergency, as Mrs. Michelle Keller heard gunshots in her neighborhood prompting her husband's 9-1-1 call. It further argues that Mrs. Keller's husband's immediate call was for the intended purpose of enabling police assistance to meet an ongoing emergency.

The record reflects that Ms. Abbate testified at trial that she was employed by the St. John the Baptist Parish Sheriff's Office as the custodian of records for 9-1-1 calls. She identified State's Exhibit 1 as a disc with two 9-1-1 calls made on February 13, 2017, at 10:51:55 and 10:52:59. It appears that the first 9-1-1 call was made by David and Michelle Keller and that the second 9-1-1 call was made by Jamie Jacobs. Although both calls were played for the jury, it is unclear which call was played first.⁵ Also, the record reflects that defense counsel did not object to one of the 9-1-1 calls, but that he did object to the other one. However, it is unclear from the record which call he objected to. Also, the record shows that after defense counsel objected, he asked to approach, and there was a "Sidebar: off the record."

In one of the 9-1-1 calls, a woman who said her name was "Jamie," and who was later identified as Jamie Jacobs, stated that she lived at 1760 East Frisco Drive. Ms. Jacobs reported that she had just gotten home with her kids and believed she heard some shooting, which she described as "bam, bam, bam, bam, bam." She stated that the shots were close by, but not right next to her. She explained that she was unsure where the shots were coming from and wanted someone to come and check it out.

The other 9-1-1 call was initiated by a man who was later identified as Mr. Keller. Mr. Keller told the 9-1-1 operator that his wife was sitting outside "just now," when she heard gunshots and saw three people run into a house towards the end of the street. Mr. Keller said that he was watching the people running away "right now," explaining that he saw four black males running and getting into a black car. He stated that the car sped off and was going towards Belle Terre Boulevard. Mr. Keller reported that it was the second to last house from the church on the right side of East Frisco Drive. He said that he was eight houses down. Mr. Keller stated that he did not see what the men were wearing and that he did not hear the gunshots, but his wife did.

⁵ At that point, Mrs. Keller got on the phone and told the 9-1-1 operator that she heard at least five shots, after which a couple of seconds passed, and then she heard two more gunshots. Mrs. Keller explained to the 9-1-1 operator that as soon as she heard the last gunshot, a black car came racing down the road, "pulled into the house real fast," and three guys got out and ran up to the house. She stated that she knew the guy who lived at that house, explaining that he was arrested approximately two weeks prior for starting a fight. Defense counsel did not cross-examine Ms. Abbate.

During his cross-examination, Detective Barlow testified that he made an error in his report, namely, that the 9-1-1 caller stated that she saw a car pull up before she heard gunshots. He clarified that the caller heard gunshots and then saw a car pull up. He explained that both 9-1-1 callers stated that they heard gunshots and called right away. Detective Barlow stated that Mrs. Keller did not give a time as to when she heard the gunshots. He also testified that he made a mistake in his report when he wrote that at 10:30, Mrs. Keller was outside her home. He explained that he should have written 10:50. Detective Barlow also testified that according to his report, Ms. Jacobs made a 9-1-1 call and indicated that at approximately 10:51 p.m., she heard gunshots. He testified that the two 9-1-1 callers gave consistent information.

During his redirect examination, Detective Barlow testified that he had the opportunity to interview Ms. Jacobs. Detective Barlow explained that Ms. Jacobs was the second 9-1-1 caller and she lived directly next door to the victim. Detective Barlow testified that Ms. Jacobs arrived home and got her kids inside; she was not the caller who was outside. He further testified that a short time later, she heard gunshots, "got her kids down," and called

9-1-1. Detective Barlow thereafter indicated that he recognized "the video" and it had been provided through his report.

Afterwards, a video was played for the jury which the prosecutor advised was a recording of the detective's interview of Ms. Jacobs. Detective Barlow subsequently testified that Ms. Jacobs did not see any vehicles in the driveway of the victim's house before she went inside. He also provided that Ms. Jacobs said she sat outside for two minutes, went inside, and two minutes later, she heard the gunshots and called 9-1-1 at 10:51. Detective Barlow maintained that there was no vehicle in the driveway at 10:48.

On the second day of trial, defense counsel asked the trial judge to strike the 9-1-1 calls that were played and to admonish the jury to disregard the 9-1-1 calls because they violated defendant's right to confront the 9-1-1 callers. He cited *Crawford v. Washington, infra*, in support of his argument. The prosecutor responded that the 9-1-1 calls fell within a hearsay exception. He further responded that the right of cross-examination did not exist for the 9-1-1 callers. He argued that defendant's constitutional rights were not violated. The trial court stated, "Well, admonition will come. I will place it right before the jury charges." Defense counsel responded, "That's fine, Your Honor." The trial judge said that would give him the opportunity to conduct further research and he would probably make his decision prior to any admonition.

After the State and the defense rested, and jury was escorted out of the courtroom, the trial judge stated that he was declining to issue an admonition to the jury about the 9-1-1 calls. He ruled that the argument made by the defense about the Confrontation Clause did not apply to the 9-1-1 calls because they were nontestimonial in nature. The trial judge also said that the *Davis* case indicated "that particular situation does not afford itself to be a challenge by the confrontation clause of the constitution." Defense counsel responded that the 9-1-1 calls in this case were testimonial in nature and offered to prove the matter asserted. He pointed out that Mr. Keller told the 9-1-1 operator about something his wife had seen. He argued that by playing the 9-1-1 calls, the defense was denied the opportunity to cross-examine the witnesses.

*7 Following defendant's convictions, the defense filed a motion for a new trial. At the hearing on the motion for a new trial, defense counsel argued, in part, that the motion should be granted because defendant was denied the right to confront the witnesses against him. He argued that the trial court erred in allowing the tape made by the police of their interview with a witness to be played at trial. Defense counsel also argued that defendant's right of confrontation was violated when the 9-1-1 caller told her "boyfriend" something, and he in turn told the police, which was inadmissible hearsay. He argued that the ends of justice would be served by the granting of a new trial with respect to the violation of his right of confrontation.⁶

At the hearing, the prosecutor responded that the 9-1-1 tapes were clearly admissible under *Davis v. Washington*. He further responded that the video in question was introduced when defense counsel opened the door by questioning the witness about interviews for impeachment purposes. Defense counsel answered that it was not the 9-1-1 tapes at issue, it was the interview of the woman after the incident that was played for the jury. He explained that he was unable to cross-examine her, which violated the Confrontation Clause.

The trial judge subsequently denied the motion for a new trial.

The Sixth Amendment to the United States Constitution and Article I, § 16 of the Louisiana Constitution guarantee an accused in a criminal prosecution the right to confront witnesses against him. *State v. Jackson*, 03-883 (La. App. 5 Cir. 4/27/04), 880 So.2d 841, 852, *writ denied*, 04-1399 (La. 11/8/04), 885 So.2d 1118.

In *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court held that the Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." The Court held that the admission of a recorded statement made by the defendant's wife during interrogation violated the defendant's right under the Confrontation Clause because the statement was hearsay, because it was testimonial in nature, and because his wife did not testify at trial due to the State's marital privilege. *Id.*

In *Davis*, the United States Supreme Court considered the meaning of “testimonial statements” in the context of the Confrontation Clause, wherein the victim called 9-1-1 to report a domestic altercation with her ex-boyfriend. During the call, the victim identified her attacker and described the specifics of the ongoing assault in response to the 9-1-1 operator’s questions. *Davis*, 547 U.S. at 817-18, 126 S.Ct. at 2271. The trial court admitted the recording of the 9-1-1 call into evidence despite the fact that the victim did not testify at trial. *Davis*, 547 U.S. at 822, 126 S.Ct. at 2273-74. The *Davis* Court explained that the recordings were non-testimonial in nature and admissible because they were made to enable police assistance to meet an ongoing emergency. *Id.* It also stated that recordings are testimonial when the circumstances objectively indicate there is no ongoing emergency, and the primary purpose of the interrogation is to establish or prove past events potentially relevant to later a criminal prosecution. *Id.*

*8 The *Davis* Court reasoned that the statements were non-testimonial because the initial interrogation conducted in a 9-1-1 call is ordinarily not designed to prove some past fact, but to describe current circumstances requiring police assistance.

Davis, 547 U.S. at 827, 126 S.Ct. at 2276. The *Davis* Court stated that the questions posed and the circumstances of the call indicated that the primary purpose was to enable police assistance to meet an ongoing emergency. The Court also found that the statements were non-testimonial because the victim’s answers were frantic and provided over the phone, in an environment that was not tranquil or even safe. *Id.*

In determining whether a statement is testimonial or non-testimonial, courts have applied a three-part inquiry to evaluate the “primary purpose” of the statements. See *State v. Payne*, 17-553 (La. App. 5 Cir. 10/17/18), 258 So.3d 1015, 1022-23, *writ denied*, 18-1932 (La. 4/15/19), 267 So.3d 1122. The first consideration is whether there was an ongoing emergency. The existence of an “ongoing emergency” at the time of an encounter between an individual and the police is among the most important factors in determining the “primary purpose” of an interrogation. This is a “highly context-dependent inquiry.” The existence *vel non* of an ongoing emergency, however, is not dispositive of whether a statement is testimonial. *Id.* at 1022. The second consideration is the formality of the interrogation. More formal interrogations are generally indicative of non-emergency situations and “testimonial” statements being given. *Id.* The third consideration is the “primary purpose” of the interrogation based on the statements and actions of both the declarant and the interrogator. This inquiry examines both parties as reasonable actors in their actual circumstances, including the severity of the victim’s injuries. *Id.* at 1023.

In the instant case, when the 9-1-1 calls were admitted into evidence and played for the jury, defense counsel lodged an objection to one of them. However, it is unclear which 9-1-1 call he objected to and what his exact objection was because it was made at a bench conference that was not transcribed. Pursuant to La. C.Cr.P. art. 841(A), an irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. Thus, in order to seek appellate review of an alleged trial court error, a party must make a contemporaneous objection at trial, and he must state the grounds for the objection. *State v. Williams*, 20-46 (La. App. 5 Cir. 12/30/20), 308 So.3d 791, 838, *writ denied*, 21-316 (La. 5/25/21), 316 So.3d 2. Because it is unclear which 9-1-1 call defense counsel objected to, the admissibility of both calls is addressed below.

Upon review, we find that both 9-1-1 calls were properly admitted at trial. The record reflects that the custodian of 9-1-1 calls identified State’s Exhibit 1 as a disc with two 9-1-1 calls made on February 13, 2017, at 10:51:55 and 10:52:59, respectively. With respect to Ms. Jacobs’ 9-1-1 call, she reported hearing gunshots nearby. As to Mr. Keller, he called 9-1-1 and reported that his wife was sitting outside “just now,” when she had heard gunshots and saw three people run into a house down the street. Mr. Keller also reported that he was presently observing four black males running from the house, getting into a car, and fleeing the scene. Defendant argues on appeal that Mr. Keller’s call should not have been played because he relayed information seen and heard by his wife and not him. However, the 9-1-1 call reflects that Mrs. Keller herself immediately got on the phone after her husband and told the 9-1-1 operator what she had just witnessed, namely, that she heard at least five shots, after which a couple of seconds passed, and then she heard two more gunshots. Mrs. Keller then explained to the 9-1-1 operator that as soon as she heard the last gunshot, a black car came racing down the road, “pulled into the house real fast,” and three guys got out and ran up to the house.

*9 As to the first consideration, whether there was an ongoing emergency, we find that the information relayed to the 9-1-1 operator in both calls was necessary to evaluate and resolve an ongoing emergency, namely, that gunshots were very recently fired, a car pulled up, and three people ran inside, after which four black males ran outside and fled in a car.

Regarding the second consideration, the formality of the interrogation, the 9-1-1 calls were non-testimonial. The conversations between the 9-1-1 operators and the 9-1-1 callers indicate that they were not in formal settings such as police stations, but were during 9-1-1 phone calls in the immediate aftermath of the incident and prior to the arrival of any medical services or the police. The questions asked by the operators related to the location of the gunshots and the fleeing men. These facts support that the statements were informal and nontestimonial.

The third consideration, the primary purpose of the interrogation, further indicates that the 9-1-1 calls were non-testimonial. The questioning during the calls was not part of an investigation into past criminal conduct. Ms. Jacobs and Mr. Keller called 9-1-1 to request police assistance and to describe the immediate incident. Both of them, as well as Mrs. Keller, informed the operators about the incident and provided details of it, including hearing gunshots and observing the individuals entering and then leaving the victim's house. All of these factors show that the purpose of the calls was to obtain emergency assistance.

Based on the foregoing considerations, we find that the 9-1-1 calls at issue here were non-testimonial. Non-testimonial statements do not cause the declarant to be a witness within the meaning of the Sixth Amendment and thus are not subject to the Confrontation Clause. *State v. Harris*, 15-485 (La. App. 5 Cir. 4/13/16), 190 So.3d 466, 480, *writ denied*, 16-902 (La. 5/12/17), 220 So.3d 746. (See also *Payne*, 258 So.3d at 1021-24 (9-1-1 call was non-testimonial because the shooting at issue involved an "ongoing emergency"; questioning was informal, occurred in the immediate aftermath of the shooting and before emergency services arrived; and the 9-1-1 operator's questioning was to enable police assistance)). Therefore, the admission of the non-testimonial 9-1-1 calls did not violate defendant's right of confrontation, and accordingly, the trial court did not err in admitting them into evidence.

Defendant also argues on appeal that an interview the police conducted with one of the 9-1-1 callers after that call would clearly meet the definition of a testimonial statement. Defendant contends that the trial court erred in admitting this interview into evidence as he did not have the opportunity to confront and cross-examine his accuser.

As was set forth in detail above, the record reflects that during the redirect examination of Detective Barlow, a video was played for the jury. Once the video was played, the prosecutor indicated that the jury had just watched the detective's interview of Ms. Jacobs. However, the video was not marked as an exhibit and was not contained on the exhibit list. There was no objection to the playing of this video or to Detective Barlow's testimony regarding the video.

The motion for a new trial is based on the supposition that injustice has been done to the defendant, and unless such is shown to have been the case, the motion shall be denied, no matter upon what allegations it is grounded. La. C.Cr.P. art. 851(A). With respect to defendant's claim that the "ends of justice" would be served by a new trial, this Court has previously held that such a claim presents nothing for appellate review. See *State v. Daniels*, 15-78 (La. App. 5 Cir. 9/23/15), 176 So.3d 735, 740, *writ denied*, 15-1997 (La. 11/29/16), 211 So.3d 386.

*10 Even though defendant raised this issue in the motion for a new trial, defense counsel failed to lodge a contemporaneous objection under La. C.Cr.P. art. 841(A) to the playing of this video or the detective's testimony about the video at trial. As such, defendant is precluded from raising this issue on appeal.⁷

Considering the foregoing, these assignments of error are without merit.

ASSIGNMENT OF ERROR NUMBER THREE

In this assignment, defendant argues that the trial court erred by refusing to release a juror⁸ who, after trial commenced but before the first witness was called, informed the trial court that the juror was friends with one of the State's primary witnesses. Defendant further argues that because the relationship was brought to the trial court's attention at a point that would have caused no inconvenience to replace the tainted juror with an alternate, the trial court abused its discretion by failing to abide by the defense's wishes that the juror be

replaced.

The State responds that the alleged friendship in the instant case is through Facebook. It further responds that the juror testified that he/she had no relationship outside of Facebook and no communication with the witness in question. The State asserts that the juror also indicated that his/her Facebook contact with this witness would not affect his/her ability to be fair and impartial, nor would the juror give this witness's testimony more credit than anyone else. It points out that the juror established that the witness was someone he/she knew as a result of being in the same community. The State maintains that the law does not require that a jury be composed of individuals who are totally unacquainted with the parties; rather, the law requires that jurors be fair and unbiased. The State submits that the trial court did not abuse its discretion in its ruling.

The record reflects that after defense counsel's opening statement and prior to the first witness being called at trial, the trial judge informed the prosecutor and defense counsel that the bailiffs had advised that there was a juror who said that he/she was Facebook friends with Ms. Lumar, the victim's girlfriend. The trial judge stated that the juror wanted to disclose that information after hearing oral arguments. He said that he would allow defense counsel and the prosecutor to speak to the juror to determine whether he/she would remain a juror or be excluded. Defense counsel requested that the juror be replaced with an alternate juror. The prosecutor thought they should have a brief colloquy with the juror. The trial judge allowed the juror to testify.

*11 The juror subsequently testified that he/she was not aware that Ms. Lumar would be involved in this case. The juror explained that he/she knew Ms. Lumar but not personally and they grew up in Edgard, which was a small town. The juror stated that they did not go to school together, but they were Facebook friends. The juror further stated that they did not have any relationship outside of being Facebook friends. The juror provided that they had never posted information on each other's Facebook page and they had never sent messages to each other.

The juror testified that Ms. Lumar had not communicated any information about this case to him/her. The juror submitted that Ms. Lumar's being a witness would not affect his/her ability in any way to be fair and impartial. The juror further testified that he/she did not think he/she would give Ms. Lumar's testimony more credit than anyone else's. The juror asserted that he/she was just friends with Ms. Lumar on Facebook because they lived in the same community. The juror stated that he/she did not know Ms. Lumar personally. The juror estimated that he/she had 400 or 500 Facebook friends.

The juror testified that he/she did not know Ms. Lumar's telephone number. The juror also testified that the fact that he/she lived in the same community with Ms. Lumar and was Facebook friends with him/her would not weigh in his/her ability to not give Ms. Lumar some leniency in terms of her testimony as compared to other witnesses. The juror was not sure how long he/she had been Facebook friends with Ms. Lumar, but believed it was more than a year. The juror testified that he/she joined Facebook in 2016 and he/she was unsure if the Facebook page said how long a person had been his/her friend.

Following the juror's testimony, the trial judge said he was going to keep the juror as a member of the jury. After the juror left the courtroom, defense counsel argued that the juror should be replaced out of an abundance of caution in this serious murder trial. The trial judge responded that he was compelled to follow the law and based on the presentation made to the court, he found no grounds to exclude the juror from serving as a juror at that time. Defense counsel noted his objection for the record.

La. C.Cr.P. art. 789 provides, in pertinent part: "... Alternate jurors, in the order in which they are called, shall replace jurors who become unable to perform or disqualified from performing their duties. ..." The trial court has discretion to utilize the service of an alternate juror, rather than to grant a mistrial, upon a proper finding that this is the best course of action. *State v. Tatum*, 09-1004 (La. App. 5 Cir. 5/25/10), 40 So.3d 1082, 1093 n.21 (citing *State v. Fuller*, 454 So.2d 119 (La. 1984)).

The law does not require that a jury be composed of individuals who are totally unacquainted with the defendant, the prosecuting witness, the prosecuting attorney, and the witnesses who may testify at trial. Rather, the law requires that jurors be fair and unbiased. *State v. Williams*, 00-1134 (La. App. 5 Cir. 3/28/01), 783 So.2d 566, 567 (citing *State v. Shelton*, 377 So.2d 96 (La. 1979)). A juror's disclosure during trial that the juror knows or is

related to a witness or the victim is not sufficient to disqualify that juror, unless it is shown that the relationship is sufficient to preclude the juror from arriving at a fair verdict. *State v. Stewart*, 08-1265 (La. App. 5 Cir. 5/26/09) 15 So.3d 276, *writ denied*, 09-1407 (La. 3/5/10), 28 So.3d 1003. The connection must be such that one must reasonably conclude that it would influence the juror in arriving at a fair verdict. *Id.*

*12 Upon review, we find that the trial court did not abuse its discretion by refusing to replace the subject juror with an alternate juror. The juror's testimony did not support a finding that the relationship between him/her and Ms. Lumar was sufficient to preclude the juror from arriving at a fair verdict. Also, the connection between them was not such that one must reasonably conclude that it would influence the juror in arriving at a fair verdict. See *Stewart, supra*.

Here, the juror testified that he/she was Facebook friends with Ms. Lumar; however, the juror maintained that he/she did not know Ms. Lumar personally, they never sent messages to each other, and Ms. Lumar did not communicate anything to him/her about the instant case. Further, the juror indicated that he/she would be fair and impartial despite the fact that he/she and Ms. Lumar were Facebook friends. The juror also testified that he/she would not give Ms. Lumar's testimony more credibility than any other witness's testimony. As such, we find that the trial court did abuse its discretion in its ruling on this issue. This assignment of error is without merit.

ERRORS PATENT REVIEW

The record was reviewed for errors patent, according to La. C.Cr.P. art. 920, *State v. Oliveaux*, 312 So.2d 337 (La. 1975), and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990).

Upon review, we find that the trial judge failed to completely advise defendant of the provisions of La. C.Cr.P. art. 930.8. The transcript reflects that the trial judge stated: "We are maintaining Mr. Bardell's ... right to file a Petition for Post-Conviction Relief within that two year window as prescribed in the statute." The minute entry provides: "Defendant has a two (2) year prescriptive period in which to file for post conviction relief that period to commence after judgment of conviction and sentence have become final." The transcript generally prevails. *State v. Lynch*, 441 So.2d 732, 734 (La. 1983).

If a trial court fails to advise, or provides an incomplete advisal, pursuant to La. C.Cr.P. art. 930.8, the appellate court may correct this error by informing the defendant of the applicable prescriptive period for post-conviction relief by means of its opinion. See *State v. Becnel*, 18-549 (La. App. 5 Cir. 2/6/19), 265 So.3d 1017, 1022. Accordingly, by way of this opinion, defendant is advised that no application for post-conviction relief, including applications that seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922.

DECREE

For the foregoing reasons, defendant's conviction and sentence are affirmed.

AFFIRMED

FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNNA, LOUISIANA 70054

www.fifthcircuit.org

SUSAN M. CHEHARDY

CHIEF JUDGE

FREDERICKA H. WICKER

JUDE G. GRAVOIS

MARC E. JOHNSON

ROBERT A. CHAISSON

STEPHEN J. WINDHORST

JOHN J. MOLAISSON, JR.

SCOTT U. SCHLEGEL

JUDGES

CURTIS B. PURSELL

CLERK OF COURT

SUSAN S. BUCHHOLZ

CHIEF DEPUTY CLERK

LINDA M. WISEMAN

FIRST DEPUTY CLERK

MELISSA C. LEDET

DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5 THIS DAY **NOVEMBER 15, 2023** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

*13 CURTIS B. PURSELL CLERK OF COURT

23-KA-55

E-NOTIFIED

40TH DISTRICT COURT (CLERK)

HONORABLE J. STERLING SNOWDY (DISTRICT JUDGE)

HONORABLE BRIDGET A. DINVAUT (APPELLEE)

ORENTHAL J. JASMIN (APPELLEE)

GWENDOLYN K. BROWN (APPELLANT)

MAILED

All Citations

--- So.3d ----, 2023 WL 7638701, 23-55 (La.App. 5 Cir. 11/15/23)

Footnotes

1 St. John the Baptist Parish Sheriff's Office Lieutenant Staty Lewis testified that he was a crime scene technician and that he processed the crime scene on February 15, 2017. He further testified that crime scene technicians took photographs, marked items, collected evidence including casings, and took a video of the crime scene. He stated that there were no signs of forced entry.

2 Jessica Abbate testified that she was employed by the St. John the Baptist Parish Sheriff's Office as the custodian of records for 9-1-1 calls. She identified State's Exhibit 1 as a disc with two 9-1-1 calls made on February 13, 2017, at 10:51:55 and 10:52:59, respectively. See Assignments of Error Numbers One and Two for a more thorough discussion of the two 9-1-1 calls.

STATE OF LOUISIANA

NO. 23-KA-55

VERSUS

FIFTH CIRCUIT

AHKEMON J BARDELL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 17,322, DIVISION "C"
HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

November 15, 2023

JUDE G. GRAVOIS
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Marc E. Johnson

AFFIRMED

JGG
SMC
MEJ

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Morgan Naquin
Deputy Clerk of Court

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Bridget A. Dinvaut
Orenthal J. Jasmin

COUNSEL FOR DEFENDANT/APPELLANT,
AHKEMON JACOB BARDELL

Gwendolyn K. Brown

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
JOHN J. MOLASON, JR.
SCOTT U. SCHLEGEL

JUDGES



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CURTIS B. PURSELL

CLERK OF COURT

SUSAN S. BUCHHOLZ
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CURTIS B. PURSELL
CLERK OF COURT

23-KA-55

E-NOTIFIED

40TH DISTRICT COURT (CLERK)
HONORABLE J. STERLING SNOWDY (DISTRICT JUDGE)
HONORABLE BRIDGET A. DINVAUT ORENTHAL J. JASMIN (APPELLEE) GWENDOLYN K. BROWN (APPELLANT)
(APPELLEE)

MAILED

APPENDIX 'C'

APPLICATION AND MEMORANDUM BRIEF FOR WRIT OF CERTIORARI/DENIAL
SUPREME COURT OF LOUISIANA

SUPREME COURT OF LOUISIANA
WRIT APPLICATION FILING SHEET

NO. _____

TO BE COMPLETED BY COUNSEL or PRO SE LITIGANT FILING APPLICATION

TITLE _____ Applicant: _____
Have there been any other filings in this
STATE OF LOUISIANA Court in this matter? Yes No

VS. _____ Are you seeking a Stay Order? Yes No
AHKEMON J. BARDELL Priority Treatment? Yes No
If so you MUST complete & attach a Priority Form

LEAD COUNSEL/PRO SE LITIGANT INFORMATION

APPLICANT: _____ RESPONDENT: _____
Name: AHKEMON J. BARDELL Name: Tim Hooper, Warden
Address: Louisiana State Penitentiary Address: 17544 Tunica Trace, Angola, La.
_____, Angola, LA 70712 70712
Phone No. _____ Bar No. _____ Phone No. _____ Bar No. _____

Pleading being filed: In proper person, In Forma Pauperis
Attach a list of additional counsel/pro se litigants, their addresses, phone numbers and the
parties they represent.

TYPE OF PLEADING

Civil, Criminal, R.S. 46:1844, Bar, Civil Juvenile, Criminal Juvenile, Other
 CTNC, Termination, Surrender, Adoption, Child Custody

ADMINISTRATIVE OR MUNICIPAL COURT INFORMATION

Tribunal/Court: _____ Docket No. _____
Judge/Commissioner/Hearing Officer: _____ Ruling Date: _____

DISTRICT COURT INFORMATION

Parish and Judicial District Court: 40th JDC/St. John the Baptist Docket Number: 0100-F-2021
Judge and Section: Hon. Sterling Snowdy/Div. " " Date of Ruling/Judgment: 3-17-22

APPELLATE COURT INFORMATION

Circuit: 5th Docket No. 23-KA-0055 Action: Direct - Appeal Applicant
in Appellate Court: _____ Date: _____ Ruling Date: 11-15-22 Panel of Judges: Hon. Susan M. Chehardy, Jude B. Gravois, Marc E. Johnson En Banc:

REHEARING INFORMATION

Applicant: _____ Date Filed: _____ Action on Rehearing: _____
Ruling Date: _____ Panel of Judges: _____ En Banc:

PRESENT STATUS

Pre-Trial, Hearing/Trial Scheduled date: _____, Trial in Progress, Post Trial
Is there a stay now in effect? Yes Has this pleading been filed in any other Court? No
If so, explain briefly Direct - Appeal only.

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 (if required), to the respondent judge in the
case of a remedial writ, and to all other counsel and unrepresented parties.

1129/24 Ahkemon BardeLL

DATE

SIGNATURE

IN THE
SUPREME COURT
STATE OF LOUISIANA
DOCKET NUMBER: _____

STATE OF LOUISIANA
VERSUS
AHKEMON J. BARDELL

ORIGINAL APPLICATION FOR WRIT OF CERTIORARI OR REVIEW
BY AND FOR PETITIONER AHKEMON J. BARDELL PRO SE

LOUISIANA COURT OF APPEAL, FIFTH CIRCUIT
DOCKET NUMBER: 23/KA/0055
Hon. SUSAN M. CHEHARDY, JUDE G. GRAVOIS, AND MARC E. JOHNSON
PANEL OF JUDGES

FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
DOCKET NUMBER: 0200-F-2021
Hon. STERLING SNOWDY
JUDGE PRESIDING

RESPECTFULLY SUBMITTED:

AHKEMON J. BARDELL #712214
CAMP "D", FALCON 3
LOUISIANA STATE PENITENTIARY
17544 TUNICA TRACE
ANGOLA, LA. 70712
PRO SE

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VII

STATE V. ANTHONY, 98-0406, p. 24 (LA. App. 5 Cir. 4-11-00) 776 So. 376, 392, CERT. DENIED, 531 U.S. 934, 121 S. Ct. 320, 148 L. Ed. 2d 258 (2000).

STATE V. PAYNE, 17-553 (LA. App. 5 Cir. 10-17-18), 258 So. 3d 1015, 1022-23, WRIT DENIED, 18-1932 (LA. 4-15-19), 267 So. 3d 1122.

FEDERAL CASES

CRAWFORD V. WASHINGTON, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

STATE V. ANTHONY, 98-0406, p. 24 (LA. App. 5 Cir. 4-11-00) 776 So. 376, 392, CERT. DENIED, 531 U.S. 934, 121 S. Ct. 320, 148 L. Ed. 2d 258 (2000).

SUPREME COURT RULE X, 1(A)(4)
ERRONEOUS INTERPRETATION OR APPLICATION OF CONSTITUTION
OR LAW.

In Assignments of Errors number one, two, and three, the Louisiana Court of Appeal, Fifth Circuit's decision, resulted in an erroneous interpretation of LSA-Const. (1974), Art. 1, §§ 2, 3, 16; U.S. Const. Amends. 6 & 14.

ISSUES FOR REVIEW

1. WAS PETITIONER DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION, IN HIS TRIAL, AND WAS THE APPELLATE COURT IN ERROR FOR AFFIRMING HIS CONVICTION AND SENTENCE?
2. WAS PETITIONER DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW, IN HIS TRIAL, AND WAS THE APPELLATE COURT IN ERROR FOR AFFIRMING HIS CONVICTION AND SENTENCE?

STATEMENT OF THE CASE

Petitioner, along with three other suspects were arrested in connection with the murder of Andrew Jasmine. Petitioner, along with his three other codefendants were charged by bill of indictment with principle to second degree murder, in relation to LSA-R.S. 14:24 and 14:30.1. (R.P. 1-2).

On the date of 3-15-22, a jury-trial commenced with the selection of jury members and culminated on the date of 3-17-22, where the jury found petitioner, guilty as charged. R.P. M-U, 1120).

On the date of 6-23-22, petitioner's motion for a new trial was denied, and he was subsequently sentenced to life imprisonment at hard labor, without benefits.

IN THE
SUPREME COURT
STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

AKEMON J. BARDELL #712214

DOCKET NUMBER: _____

DATE FILED: _____

CLERK: _____

ORIGINAL APPLICATION FOR WRIT OF CERTIORARI OR REVIEW

MAY IT PLEASE THE COURT:

COMES NOW, Ahkemon J. Bardell/Petitioner, pro se, And in proper person, who respectfully present his Application for Writ of Certiorari, or Review to this HONORABLE COURT for consideration for the following reasons :

JURISDICTION

Jurisdiction vests in this HONORABLE COURT pursuant to LSA-Const.(1974), Art.5, §§ 5(A), and 5(C), And Louisiana Rules of Court, Supreme Court Rule X.

STATEMENT OF THE FACTS

Ahkemon Jacob Bardell/Petitioner was charged in conjunction with principle to second degree murder of Andrew Jasmine, with three other Codefendants, by bill of indictment. From the district Attorney of the parish of St. John The Baptist, pursuant to LSA- R.S. 14:24 and 14:30.1. Exhibit #1

Ultimately, following a 2 day jury-trial, petitioner was convicted and sentenced to serve life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence.

Exhibit #2

Petitioner was the only person in the group (4 people) that was charged with principle to the offense, and received a life sentence. The other three were charged with principle and got the charges

reduced to Conspiracy, and were sentenced to ten (10) years.

Petitioner subsequently filed a motion for Appeal, in which was granted.

On the date of 11-15-23, petitioner's conviction and sentence were Affirmed. Exhibit #3A.

Finally, petitioner is before this HONORABLE COURT for Writ of Certiorari, and/or Review.

ASSIGNMENTS OF ERROR PRESENTED

1. PETITIONER WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION, IN HIS TRIAL, AND THE APPELLATE COURT ERRED BY AFFIRMING HIS CONVICTION AND SENTENCE.

SUMMARY OF ARGUMENT

The Appellate court upheld the erroneous admission by the district court of inadmissible hearsay evidence in petitioner's trial, violating his constitutional right (state and federal) to Confrontation.

SUPREME COURT RULE X, (2)(A)(f)
CONFLICTING DECISIONS

In Assignment of Error number one, the Louisiana Court of Appeals' decision conflicted with the United States Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004); LSA-Const. (1974), Art. 1, §16; U.S. Const. Amends 6 & 14.

In Assignment of Error number two, the Louisiana Court of Appeals' decision conflicted also with the United States Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004), when it denied the Assignment of error based upon the district court's denial of petitioners' "motion for a New Trial"; LSA-Const. (1974), Art. 1, §16; U.S. Const. Amends. 6 & 14.

In Assignment of Error number three, the Louisiana Court of Appeal, Fifth Circuit's decision conflicted with the Louisiana Court of Appeal, Fifth Circuit's, and the Supreme Court of Louisiana's decision in *State v. Tatum*, 09-1004 (LA. App. 5 Cir. 5-25-10, 16-17), 40 So. 3d 1082, 1092-93; *State v. Fuller*, 454 So. 2d 119 (LA. 1984); and the Louisiana Court of Appeals' decision in *State v. Anthony*, 98-0406, p.24 (LA. App. 5 Cir. 4-11-00) 776 So. 376, 392, cert. denied, 531 U.S. 934, 121 S.Ct. 320, 148 L.Ed. 2d 258 (2000), as well as the decision in the United States Supreme Court. LSA-Const. (1974), Art. 1, §2, 3; U.S. Const. Amend. 14.

LAW AND ARGUMENT

ASSIGNMENT OF ERROR # 1

PETITIONER WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION, IN HIS TRIAL, AND THE APPELLATE COURT ERRED BY AFFIRMING HIS CONVICTION AND SENTENCE.

Through this particular assignment of error, petitioner respectfully submit, that despite the fact that an interview of Ms. Jamie Jacobs, that was played for the jury during the redirect-examination of Det. Brandon Barlow, of the St. John the Baptist Sheriff's Office, that was not listed by the State as evidence, but the evidence, still should have been found to be inadmissible hearsay, in violation of petitioner's Confrontational rights because of the following:

1. At the point in time of Ms. Jacobs' interview with Det. Brandon Barlow, there was no ongoing emergency;
2. It was a formal interview, conducted by Det. Barlow in the Sheriff's headquarters, in which was indicative of no ongoing emergency; And
3. The primary purpose of the interview was to obtain information from Ms. Jacobs, that was testimonial in nature. See *State v. Payne*, 17-553 (LA App. 5 Cir. 10-17-18), 258 So. 3d 1015, 1022-23, writ denied, 18-1932 (LA 4-15-19), 267 So. 3d 1122.

In addition to the preceding, Ms. Jamie Jacobs did not testify at petitioner's trial. For whatever reason, Ms. Jacobs was not available to testify, and the state did not show her unavailability. This was an error in the trial, in which the Appellate Court failed to recognize, and remedy, by erroneously Affirming petitioner's conviction and sentence.

CONCLUSION

Wherefore, for the foregoing reasons, this HONORABLE COURT should use its authority and discretion to grant relief to petitioner, with the setting aside of his conviction and sentence, and whatever other remedy that this Court deems necessary, just and sufficient.

PRAYER

Whereas petitioner pray, that this HONORABLE COURT will grant him a Writ of Certiorari.

Respectfully Submitted:

ANKEMON J. BARDELL #712214
Camp "D", Falcon 3
Louisiana State Penitentiary
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Angola, LA. 70712
PRO SE