

Case No.

**25-5492**

**ORIGINAL**

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**FILED**

**JUN 16 2025**

**OFFICE OF THE CLERK  
SUPREME COURT, U.S.**

**Shedrick GIVENS**

*Petitioner, pro se,*

**vs.**

**TIM HOOPER, WARDEN**

*Respondent.*

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

**PETITION FOR WRIT OF CERTIORARI**

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*i*  
**QUESTIONS PRESENTED**

1. Whether the trial court, in the 24<sup>th</sup> Judicial District Court, Parish of Jefferson, lacked subject matter jurisdiction where in *United States v. Cotton*, 535 U.S. 625, 1222 S.Ct. 1781, 152 L.Ed. 860 (2002), this Court held that “subject matter jurisdiction is a court’s statutory or constitutional power to adjudicate the case?”
2. Whether the State violated Givens’ fundamental Rights under the *Thirteenth and Fourteenth Amendments to United States Constitution* where in *Alexander v. Louisiana*, 405 U.S. 625, 92 S.Ct. 1221, 31 L.Ed.2d 536 (1972), this Court held that “Once a State chooses to provide grand jury and petit jury, whether or not constitutionally required to do so, it must hew to federal constitutional criteria?”
3. Whether the State violated Givens’ fundamental Rights under the *Thirteenth and Fourteenth Amendments to United States Constitution* where in *United States v. Cotton*, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed. 860 (2002), this Court upheld in *Ex parte Bain* that “an indictment may not be amended except by resubmission to the grand jury?”
4. Whether the State violated Givens’ Rights under the *Thirteenth and Fourteenth Amendments to the United States Constitution* where the State instituted prosecution for a crime punishable by life imprisonment by a bill of information rather than a grand jury indictment?
5. Whether the State violated Givens’ Rights under the *Thirteenth and Fourteenth Amendments to the United States Constitution* where in State and Federal law “defects in subject matter jurisdiction can never be forfeited or waived, and require correction regardless of whether error was raised in district court?
6. Whether the Louisiana Fifth Circuit Court of Appeals has erroneously applied *La. Code of Crim. Proc Article 930.4* and *La. Code of Crim. Proc Article 930.8* procedural bar to Givens’ claim that the trial court lacked subject matter jurisdiction?

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

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

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## **PETITION FOR WRIT OF CERTIORARI**

Shedrick Givens respectfully prays that a writ of certiorari be issued to the Louisiana Supreme Court. For reason, the Louisiana Fifth Circuit Court of Appeal has decided an important federal question that conflicts with a decision of this Court, United States Fifth Circuit Court of Appeals, and other Louisiana State Court of Appeals. *SUP. Ct. R. 10(b)*. Also, the Louisiana Fifth Circuit Court of Appeal has decided an important federal question that conflicts with relevant decisions of this Court. *SUP. Ct. R. 10(c)*.

### **OPINIONS BELOW**

The State district court's order denying Givens' Application for Post-Conviction Relief is shown at App. B.

The Louisiana Fifth Circuit Court of Appeal's order denying Givens' supervisory writ of review was not reported, and it is shown at *Givens v. Tim Hooper*, 2024 WL 4057582, 24-KH-384 (La. App. 5<sup>th</sup> Cir. 8/22/24); see also App. A.

The Louisiana Supreme Court's order denying Givens' Application for Writ of Certiorari is reported at *Givens v. Hooper*, 403 So.3d 1118, 2025WL971676, 2024-01168, (La. 4/1/25); see also App. C.

### **JURISDICTION**

The Louisiana Supreme Court's decision was entered on April 1<sup>st</sup>, 2025, in case no. 2024-KH-01168. See App. C. Accordingly, this Honorable Court has jurisdiction pursuant to *U.S. Sup. Ct. R. 13(1)* and *28 U.S.C. § 1257(a)*.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves *Article 1 §§ 2 and 15 of the Louisiana Constitution of 1974, Louisiana Revised Statue 14:30.1 B, Louisiana Code of Criminal Procedure Article 16, Louisiana Code of Criminal Procedure Article 382, Louisiana Code of Criminal Procedure Article 383, Louisiana Code of Criminal Procedure Article 384, Louisiana Code of Criminal Procedure Article 930.4, Louisiana Code of Criminal Procedure Article 930.8; La. Code of Civil Procedure Article 1, La. Code of Civil Procedure Article 3, 28 United States Code Annotated § 1257(a); Thirteenth Amendment to the United States Constitution § 1, and Fourteenth Amendment to the United States Constitution § 1*. Each of these provisions is set forth at length under Appendix D to this brief.

## **STATEMENT OF THE CASE**

On April 20, 1995, in the Twenty-Fourth Judicial District Court, Parish of Jefferson, State of Louisiana, a grand jury indicted Shedrick Givens (hereinafter Givens) and two other co-defendants on a six count bill of Indictment.

Givens and his two co-defendants were indicted on count one, one count of second degree murder of Shawn Brown (without the essential elements of specific intent to kill or inflict great bodily harm or during the perpetration of aggravated burglary); count two, one count of first degree feticide; counts three, four and five, three counts of attempt first degree murder; and count six, one count of aggravated burglary belong to Linda Robinson, John Hawkins, and Roy Johnson.

The State's lead prosecuting assistant attorney on the case was assistant district attorney, Caren Morgan.

On August 22, 1995, prior to trial, Mrs. Morgan amended counts two, three, four, five and six; and then severed count six, aggravated burglary in open court. Thereafter, a jury panel was sworn in, voir dire began, and a jury trial was commenced only on counts one through five.

After voir dire was given, the court gave the petit jury a recess. During this recess, motions were made by the defense.

Defense attorney, Mark Nolting (hereinafter Mr. Nolting), placed upon the record that all objections presume throughout the trial would go to Givens and his two co-defendants at the same time.

Defense attorney, Dorothy Graham DaPonte (hereinafter Ms. DaPonte), then made an oral motion. Ms. DaPonte asked the court what was the basis for the second degree murder charge as it relates to specific intent because the bill of particular said, "See Indictment." The clerk of court handed over the indictment to Ms. DaPonte, and Ms. DaPonte read the indictment in open court.

The indictment failed to charge Givens and his two co-defendants with second degree murder because it was missing the elements of specific intent and the underlying felony aggravated burglary that is needed to constitute the offense. Ms. DaPonte then noted an objection as to any mentioning of an aggravated burglary and the commission of other crimes.

Mrs. Morgan then asked the court to be allowed to amend the grand jury indictment to add count six, aggravated burglary, back to the indictment to try Givens and his co-defendants on all six counts.

Defense attorney, Mark Nolting, then joined in DaPonte's motion. Mr. Nolting stated to the court that Mrs. Morgan went even further to tailored her voir dire before the jury as to her idea of the specific intent and totally ignored the second part of the second degree murder statute concerning the aggravated burglary. Mr. Nolting then noted an objection to any mentioning of the specific intent and aggravated burglary.

The Court, thereafter, stated it was going to mis-try the case. Ms. DaPonte noted for the record that the defense were not asking for a mistrial. The Court then stated that it was not going to grant a mistrial.

The Court further stated that it misunderstood the defendants. The defendants were not asking for a mistrial, they were just objecting to the State amending the indictment. The court overruled the objection and then allowed State to amend the grand jury indictment.

Instead of Mrs. Morgan amending the indictment to add count six aggravated burglary back to the indictment, Mrs. Morgan amended the indictment upon count one to add the essential elements of the second degree murder charge. Mrs. Morgan amended the indictment to read from second degree murder of Shawn Brown to second degree murder of Shawn Brown "with specific intent to kill or inflict great bodily harm or during the perpetration of aggravated burglary."

When Mrs. Morgan amended the indictment to charge Givens and his co-defendants by an amended bill of information, Mrs. Morgan, wrote amended upon the bill, signed her initial "CM," dated it and filed it in open court. The petit jury then returned from recess.

Thereafter, the court granted a mistrial on the basis that Givens and his two co-defendants asked for a mistrial because of a technical nature involving the indictment.

After the removal of the petit jury, Mrs. Morgan asked the court, "What have we done wrong now?" The court stated, "Apparently there's nothing on the record indicating that you're amending the indictment, although it's penciled in."

Mrs. Morgan then asked the court to allow her to place the amendment upon the record the following day to make sure that she get it right.

On August 23, 1995, Mrs. Morgan amended the second degree murder charge on the record more verbiage to reflect her August 22<sup>nd</sup> amendment of the indictment. Thereafter, the second degree murder count was severed as to Givens from his co-defendant Ronnie Davis.

On December 12, 1995, prior to the commencement of a second trial, Mr. Nolting asked the State was it bringing the second degree murder charge by an amended bill of information with the underlying felony being aggravated burglary. The State stated, "Yes," with the underlying felony "burglary."

On January 24, 1996, Givens, through Indigent Defender Board attorney, Carol Kiff, expressed that the interaction between the trial judge and Mr. Nolting during the course of the trial had prejudiced the jury. Through his appointed attorney, Ms. Kiff, Givens moved for a mistrial.

On July 25-28, 1996, the trial court commenced a third jury trial. Givens was brought to trial only on the amended second degree murder charge by the State. Thereafter, a jury found Givens guilty as charged by the amended bill of information.

On September 23<sup>rd</sup>, 1996, Givens was sentenced to life imprisonment at hard labor without the possibility of parole, probation or suspension sentence. Thereafter, Givens' trial counsel filed a timely Motion for Notice of Appeal.

On direct appeal, appellant attorney, Christopher Aberle, raised one issue for appeal. Mr. Aberle raised in the Louisiana Fifth Circuit Court of Appeal that the July 25-28, 1996, trial was barred by double jeopardy by an improperly granted mistrial to occurred on January 24, 1996. The Fifth Circuit Court of Appeal affirmed Mr. Givens conviction on October 15, 1997. *State v. Givens*, 701 So.2d 1042, 97-17 (La.App. 5<sup>th</sup> Cir. 10/15/97).

Givens filed a timely supervisory writ of review into the Louisiana Supreme Court. The Louisiana Supreme Court affirmed Givens' conviction and sentence on March 27, 1998. *State v. Givens*, 716 So.2d 884, 97-KO-2893 (La. 3/27/98).

On October 2<sup>nd</sup>, 2008, upon a successive Application for Post-Conviction Relief (APCR) that was previously filed by Givens, assistant district attorney, Anne Wallis, asserted in her procedural objection, on an ineffective assistance of trial counsel claim, that Givens and his two co-defendants were charged on August 22<sup>nd</sup>, 1995, by an amended six count grand jury indictment. Ms. Wallis stated that the amended indictment charged Givens with second degree murder of Shawn Brown, first degree feticide, attempted second degree murder of Linda Robinson, attempted second degree murder of John Hawkins, attempted second degree murder of Roy Johnson, and aggravated burglary of 1348 Myrtle Street, belonging to Doris Robinson.

On July 1<sup>st</sup>, 2024, Givens filed another successive APCR into the Twenty-Fourth Judicial District Court in the Parish of Jefferson, State of Louisiana. Givens raised two claims.

Givens asserted upon claim two, that the trial court lacked subject matter jurisdiction where the State instituted prosecution for a second degree murder charge by a bill of information rather than a grand jury indictment.

The State trial court denied Givens' APCR on July 30<sup>th</sup>, 2024, as time barred, repetitive, and successive under *La. Code of Crim. Proc. Articles 930.4* and *930.8*. Also the State trial court found Givens' claim to be unpersuasive upon the merits. See App. B.

On August 5<sup>th</sup>, 2024, Givens filed a timely notice of appeal. The return date was set for August 26<sup>th</sup>, 2024.

On August 20<sup>th</sup>, 2024, Givens electronically filed a timely supervisory writ of review into the Louisiana Fifth Circuit Court of Appeal.

In an unpublished opinion, the Louisiana Fifth Circuit Court of Appeal denied Givens' supervisory writ of review on August 22, 2024. *Givens v. Tim Hooper*, 2024 WL 4057582, 24-384 (La.App. 5<sup>th</sup> Cir. 8/22/24).

In its ruling, the Louisiana Fifth Circuit Court of Appeal ruled that Givens' claim that the trial court lacked subject matter jurisdiction based on the amendment of the charges by the State had been previously addressed and denied by its court and the Louisiana Supreme Court in prior writ applications.

Further, the Louisiana Fifth Circuit Court of Appeal ruled that Givens' present claim in his recent APCR are repetitive and procedurally barred under *La. Code of Crim. Proc. Articles 930.4* and *930.8*.

The Louisiana Fifth Circuit Court of Appeal cited *Givens v. State*, 10-103 (La. App. 5 Cir. 2/8/10), writ denied, *State ex rel. Givens v. State*, 11-1999 (La. 5/4/12), 88 So.3d 460; *Givens v. State*, 19-605 (La.App. 5 Cir. 1/3/20, unpublished disposition, writ denied, *Givens v. State through Att'y Gen.'s Off.*, 20-268 (La. 10/6/20), 302 So.3d 514.

None of these cases deal with the amendment of the second degree murder charge by the State nor was this claim ever ruled upon the merits by the Louisiana Fifth Circuit Court of Appeal. *Givens v. Tim Hooper*, 2024 WL 4057582, 24-384 (La.App. 5<sup>th</sup> Cir. 8/22/24); see also App. A.

On September 20, 2024, Givens filed a timely writ of certiorari into the Louisiana Supreme Court. The Louisiana Supreme Court denied review without an opinion on April 1<sup>st</sup>, 2025. *Givens v. Hooper*, 403 So.3d 1118, 2025WL971676, 2024-KH-1168 (La. 4/1/25); see also App. C.

#### **REASONS FOR GRANTING WRIT**

**THE LOUISIANA FIFTH CIRCUIT COURT OF APPEAL'S DECISION WAS ERRONEOUS WHERE THE TRIAL COURT IN THE TWENTY-FOURTH JUDICIAL DISTRICT, PARISH OF JEFFERSON, LACKED SUBJECT MATTER JURISDICTION.**

**Givens' Fundamental Rights Under the *Thirteenth* and *Fourteenth* Amendments were Violated When The State Trial Court Lacked Subject Matter Jurisdiction By Its Statutory and Constitutional Powers.**

Givens' fundamental Rights under United States Constitution were violated where the trial court lacked subject matter jurisdiction when the State instituted prosecution for a second degree murder charge by a bill of information rather than a grand jury indictment.

In the Louisiana Fifth Circuit Court of Appeal's decision, it ruled that Givens' claim that the trial court lacked subject matter jurisdiction was raised previously in an Application for Post-Conviction Relief (APCR) and was addressed by its court and the Louisiana Supreme Court. See App. A.

The cases that the Louisiana Fifth Circuit Court of Appeal cited to support its allegation reveals that these cases do not have anything to do with the lack of subject matter jurisdiction, and that this claim was never ruled on the merits by any of the state courts. See App. A.

Further, the Louisiana Fifth Circuit Court of Appeal stated that Givens' claim is repetitive pursuant to *La. Code of Crim. Proc. Art. 930.4* and that his APCR was not timely filed in the district court pursuant to *La. Code of Crim. Proc. Art. 930.8*. See App. A.

In the State of Louisiana, it is the duty of a court to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. *Boudreax v. State, Dept. of Transp. And Development*, 2001-1329 (La. 2/26/02), 815 So.2d at 13; *City of Baton Rouge v. Bernard*, 2001-2468 (La.App. 1 Cir. 1/22/03), 840 So.2d So.2d 4, 6, writ denied, 2003-1005 (La. 6/27/03), 847 So.2d 1278.

The Louisiana Supreme Court has held that a subject matter jurisdiction is a "threshold" issue. *Spinsosa v. Spinsosa*, 05-1935, p. 7, 934 So.2d 35, 41 (La. 7/6/06).

In *United States v. Catton*, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed. 860 (2002), this Court held that a defective indictment does not deprive a court of jurisdiction; overruling *Ex parte Bain*, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849.

Bain's elastic concept of jurisdiction was not what the term "jurisdiction" means today, i.e., "the court's statutory and constitutional power to adjudicate the case." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998); *State v. Armstead*, 144 So.3d 66 (La.App. 4 Cir. 6/4/14); *La. Code of Civ. Proc Article 1* and *La. Code of Crim. Proc Article 16*.

This latter concept of subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. *Id.* at 535 U.S. 625, 122 S.Ct. 1781; see also *Gonzalez v. Thaler*, 565 U.S. 134 S.Ct. 641, 181 L.Ed. 2d 619; *State v. LeBlanc*, 517 So.2d 219, 220 (La.App. 1<sup>st</sup> Cir. 1987)(jurisdiction cannot be conferred by waiver or consent); *State v. Kendrick*, 779 So.2d at 885, 34,097, p. 1; *Wilson v. Ponchatoula, et al.*, 18 So.3d 1272 (La. 10/9/09); *La. Code Civ. Proc. Article 3*. Also, see generally, *1 Wharton's Criminal Procedure* § 11 at p. 95 (1989)(an objection that the court lacks jurisdiction of the subject matter can be raised at any time.)

Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in district court. See, e.g., *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 29 S.Ct. 42, 53 L.Ed. 126 (1908); *State v. Crosby*, 338 So.2d 584 (La. 1976).

*Ex parte Bain* has been cited in later cases such as *Stirone v. United States*, 316 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960), and *Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962) for the proposition that "an indictment may not be amended except by resubmission to the grand jury, unless the change is merely a matter of form," *id.*, at 770, 82 S.Ct. 1038 (citing *Bain*, *supra*).

This Court also held in *Bain*: 'that after the indictment was changed it was no longer the indictment of the grand jury who presented it. Any other doctrine would place the rights of the citizen, which were intended to be protected by the constitutional provision, at the mercy or control of the court or prosecuting attorney \*\*\*.' 121 U.S. 1, 13, 7 S.Ct. 781, 787.

Under the *Fifth Amendment to the United States Constitution*, a state is not constitutionally required to commence a criminal prosecution by grand jury indictment, *Hurtado v. California*, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1984), and it is only where a state has chosen to require a grand jury indictment that it must “hew to federal constitutional criteria”. *Bennett v. Cain*, 2011 WL 2690609 (June 9, 2011) citing *Alexander v. Louisiana*, 405 U.S. 625, 92 S.Ct. 1221, 31 L.Ed.2d 536 (1972); see also *Carter v. Jury Commission of Greene*, 396 U.S. 320, 330, 90 S.Ct. 518, 523, 24 L.Ed.2d 549.

The federal criteria under the *Thirteenth Amendment to the United States Constitution* guarantees that ‘Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The *Fourteenth Amendment to the United States Constitution* guarantees that “No State shall ... deprive any person of life, liberty, or property, without due process of law.”

In the State of Louisiana, a prosecution for a crime punishable by life imprisonment is constitutionally and statutorily required to be brought by an indictment by a grand jury.

*Article I § 15 of the Louisiana Constitution of 1974*, guarantees that “no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury.”

Likewise, the *La. Code of Crim. Proc. Article 382(A)*, provides “A prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury.”

*Article 1 § 2 of the Louisiana Constitution of 1974* guarantees that: "No person shall be deprived of life, liberty, or property, except by due process of law."

Under the law applicable to Givens, second degree murder carries a punishable of life imprisonment. *Louisiana Revised Statute 14:30.1 B.* Therefore, prosecution for the offense with which Givens was charged can be instituted only by a grand jury indictment. *State v. Stevenson*, 334 So.2d 195 (La. 1976); *State v. Donahue*, 355 So.2d 247 (La. 1978); *State v. Ruple*, 437 So.2d 873 (La.App. 2<sup>nd</sup> Cir. 1983); *State v. Demolle, Jr.*, 621 So.2d 167 (La.App. 4<sup>th</sup> Cir. 6/30/93); *State v. Underdonk*, 92 So.3d 369 (La.App. 1<sup>st</sup> Cir. 3/23/12) writ denied, 2012-0910 (La. 10/8/12), 98 So.3d 848; *State v. McElroy*, 241 So.3d 424 (La.App. 3<sup>rd</sup> Cir. 3/7/18).

These legal precepts would require that a person should not be accused of the offense for which Givens was charged and convicted except by a group of his fellow citizens acting independently of either prosecuting attorney or judge. *Stirone v. United States*, 361 U.S. 212 at 218, 80 S.Ct. 270 at 273, 4 L.Ed.2d 252 (1959); *State v. Green*, 347 So.2d 229 (La. 1977); *State v. Davis*, 385 So.2d 193 (La. 1980); *State v. Lott*, 434 So.2d 1274 (La.App. 1<sup>st</sup> Cir. 1983); *State v. Thomas*, 461 So.2d 332 (La.App. 2<sup>nd</sup> Cir. 1984); *State v. Gary*, 445 So.2d 200 (La.App. 3<sup>rd</sup> Cir. 1984); *State v. Bates*, 113 So.3d 411 (La. 5 Cir. 3/27/13).

Under Louisiana law "An indictment is a written accusation of crime made by a grand jury. It must be ... indorsed 'a true bill' and the indorsement must be signed by the foreman." *La. C.Cr.P. art. 383.*

"An information is a written accusation of crime made by the district attorney and signed by him or her. It must be filed in open court in a court having jurisdiction to try the offense." *La. Code of Crim. Proc. Article 384.*

The charging instrument complained of herein, while labeled an indictment, was amended and signed by assistant district attorney, Caren Morgan (hereinafter Mrs. Morgan), and filed in open court.

On August 22<sup>nd</sup>, 1995, Mrs. Morgan amended the charging instrument to say from second degree murder of Shawn Brown to second degree murder of Shawn Brown "with specific intent to kill or inflict great bodily harm or during the perpetration of aggravated burglary."

When Mrs. Morgan amended the indictment to charge Givens by an amended bill of information, Mrs. Morgan wrote amended upon the bill, signed her initial "CM," dated it and filed in open court. After the amendment of the indictment, Mrs. Morgan asked the court, "What have we done wrong now?" The district court stated that "Apparently, there is nothing on the record indicting that you are amending the indictment, although its penciled in."

On the following day, August 23<sup>rd</sup>, 1995, Mrs. Morgan placed her amendment of count one, second degree murder, on the record more verbiage.

This amendment of the indictment by Mrs. Morgan was never resubmitted to the grand jury. Therefore, it was not founded by the grand jury; nor was the amendment endorsed "a true bill" and signed by the grand jury foreman. This document in question thus qualified as a Bill of Information. *Love v. Johnson*, 2007 WL 2350263 (July 20, 2007). Not Reported in F. Supp.2d; see also *Stirone v. United States*, 361 U.S. 212 at 218, 80 S.Ct. 270 at 273, 4 L.Ed.2d 252 (1959).

On December 12, 1995, prior to the commencement of a second trial, Assistance District Attorney, Ken Dohre, admitted that the State was instituting the prosecution for the second degree murder charge by an amended bill of information with the underlying felony being aggravated burglary. However, this trial later ended up in a mistrial because of remarks by Mr. Nolting in front of the petit jury.

On July 25, 1996, the State instituted prosecution against Givens only for the second degree murder charge by the same bill of information.

On October 2<sup>nd</sup>, 2008, upon an Application for Post-Conviction Relief (APCR) that was filed previously by Givens, Assistant District Attorney, Anne Wallis, asserted in her procedural objection, on an ineffective assistance of trial counsel claim, that Givens and his two co-defendants were charged on August 22<sup>nd</sup>, 1995, by an amended six count grand jury indictment. Ms. Wallis asserted that count one, three, four, five and six were amended. The second degree murder was count one.

According to Louisiana statutory and constitutional requirements, the State had to institute prosecution for the second degree murder charge by a grand jury indictment. *State v. Stevenson*, 334 So.2d 195 (La. 1976); *State v. Donahue*, 355 So.2d 247 (La. 1978); *State v. Davis*, 385 So.2d 193 (La. 1980); *State v. Ruple*, 437 So.2d 873, 875 (La. App. 2<sup>nd</sup> Cir. 1983); *State v. Underdonk*, 92 So.3d 369 (La. App. 1<sup>st</sup> Cir. 3/23/12) *writ denied*, 2012-0910 (La. 10/8/12), 98 So.3d 848 .

Without a second degree murder charge being instituted by a grand jury indictment in the State of Louisiana, there can be no charge or conviction. *Id.* at 355 So.2d 247 (La. 1978). The failure to proceed by a grand jury indictment is a “fatal defect.” *State v. McElroy*, 241 So.3d 424 (La.App. 3 Cir. 3/7/18); *State v. Henderdink*, 92 So.3d 369, at 374 (La.App. 1<sup>st</sup> Cir. 3/23/12); *State v. Donahue*, 355 So.2d 247 (La. 1978).

According to *Article 1 § 15 of the La. Const. of 1974* and *La. Code of Crim. Proc. Art. 382(A)*, when the State instituted prosecution for the second degree murder charge by a bill of information rather than a grand jury indictment, the State took away the court's statutory and constitutional power to adjudicate the case. The trial court did not have jurisdiction over the subject matter.

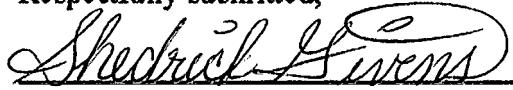
When jurisdiction over the subject matter is lacking, the court is bound *ex officio* to notice it, and the judgment of a court wanting such jurisdiction will be null. *State v. Armstead*, 144 So.3d 66, at 70 (La.App. 4 Cir. 6/4/14); *State v. Daniel*, 128 So.3d 349, 351, 13-176, p. 5 (La.App. 5 Cir. 10/9/13); *Brinkaus v. Senate of State of La.*, 655 So.2d 394, 396, 95-0647, p. 4 (La.App. 1 Cir. 4/18/95); *State v. Langley*, 985 So.2d 1160, at 1165 (La. 5/22/07); See also *La. Code of Crim. Proc. Art. 3*.

Under *La. Code of Crim. Proc. Art. 382(A)*, *Article 1 § 2 of the Louisiana Constitution of 1974*, *Thirteenth and Fourteenth Amendments to the United States Constitution*, the State was under legal obligation to institute prosecution by grand jury indictment.

## CONCLUSION

Accordingly, this Court should grant certiorari to address any or all issues.

Respectfully submitted,



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