

No. 25-6844 ORIGINAL

Supreme Court, U.S.  
FILED

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IN THE

Supreme Court of the United States

SHANNON SIMPSON,

*Petitioner,*

v.

STATE OF LOUISIANA,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF  
LOUISIANA COURT OF APPEAL, FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

## QUESTION PRESENTED

Under the U.S. Constitution Amendment VI's right to a fair trial and the due process clause of U.S. Constitution Amendment XIV, can a conviction rest: A.) On testimony from a witness who was not made known to the jury during the initial voir dire; when the voir dire was not reopened to jurors to potentially identify if jurors could have known this witness nor was the witness made known to the defense until minutes before the testimony of the alleged witness, and B.) Mr. Simpson has a constitutional right to remain silent when under custodial arrest or interrogation and no adverse admission may be drawn from that silence. The United States Supreme Court has stated that any reference to this silence for impeachment purposes violated his due process rights?

**PARTIES TO THE PROCEEDINGS BELOW**

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

## LIST OF PROCEEDINGS

Louisiana Supreme Court

Nº. 2025-K-00621

*State of Louisiana v.  
Shannon Simpson*

Date of Final Opinion: October 14, 2025

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Louisiana Court of Appeal, Fifth Circuit

Nº. 24-KA-250

*State of Louisiana v.  
Shannon Simpson*

Date of Final Opinion: April 16, 2025

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Louisiana District Court (Jefferson Parish)

Nº. 22-2884

*State of Louisiana v.  
Shannon Simpson*

Date of Final Opinion: March 27, 2024

TABLE OF CONTENTS

QUESTION PRESENTED ..... i

PARTIES TO THE PROCEEDINGS BELOW..... ii

LIST OF PROCEEDINGS..... iii

APPENDIX TABLE OF CONTENTS ..... v

TABLE OF AUTHORITIES ..... vii

PETITION FOR WRIT OF CERTIORARI..... 1

OPINIONS BELOW ..... 1

JURISDICTION..... 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 3

STATEMENT OF THE CASE ..... 4

REASONS FOR GRANTING THE PETITION ..... 6

    A. Under the United States Constitution Amendments VI and XIV, Mr. Simpson was denied a fair trial by the admission of testimony from a witness that was not made known to the jury during voir dire and not made known to the defense until minutes before the testimony of the alleged witness which resulted in violation of Mr. Simpson's right to due process. .... **Error! Bookmark not defined.**

    B. Under the United States Constitution Amendments V and XIV, the trial judge abused his discretion by denying a mistrial when the State violated Mr. Simpson's constitutional rights against self- incrimination and due process during an improper line of questioning concerning his post-arrest silence and instead admonished the jury following an hour lunch break..... **Error! Bookmark not defined.**

CONCLUSION ..... 17

PROOF OF SERVICE ..... 18

**TABLE OF CONTENTS – CONTINUED**

**APPENDIX TABLE OF CONTENTS**

Opinion of the Louisiana Supreme Court  
(October 14, 2025).....1a

Opinion of the Louisiana Court of Appeal  
Fifth Circuit  
(April 16, 2025) .....2a

## TABLE OF AUTHORITIES

Doyle v. Ohio, 426 U.S. 610, 617-18, 96 S.Ct 2240, 2244-45, 49 L.Ed.2d 91 (1976) .....	10,14,16
State v. Adams, 13-992 (La.App. 5 Cir. 5/21/14), 142 So.3d 265, 273, writ denied, 2014-1245 (La. 2/16/15), 158 So.3d 813 .....	14
State v. Bell, 446 So.2d 1191, 1193 (La. 1984).....	15
State v. Grant, 99-1065 (La.App. 5 Cir. 1/25/00), 761 So.2d 10, 14 .....	13,14
State v. Hayden, 243 La. 793, 147 So.2d 392 (1962) .....	10
State v. Harper, 10-356(La. 11/30/10), 53 So.3d 1263 .....	7
State v. Mitchell, 412 So.2d 1042, 1044 (La. 1982) .....	7
State v. Montoya, 340 So.2d 557 (La. 1976) .....	10
State v. Pierce, 11-320 (La.App. 5 Cir. 12/29/11), 80 So.3d 1267, 1272-73.....	10
State v. Sam, 412 So.2d 1082, 1084 (La. 1982) .....	16
State v. Smith, 336 So.2d 867, 869 (La. 1976) .....	15
State v. Vice, 22-512 (La.App. 3 Cir. 4/19/23), 365 So.3d 155, writ denied, 23-669 (La. 11/21/23), 373 So.3d 457.....	9,10
United States v. Fairchild, 505 F.2d 1378 (5th Cir. 1975) .....	15,16

**STATUTES AND OTHER AUTHORITIES:**

U.S. Constitution Amendment V ..... 10,14,15,16

U.S. Constitution Amendment VI ..... i,3,7

U.S. Constitution Amendment XIV ..... i,3,7,10

Federal Rule of Criminal Procedure 16(c).....3

La. R.S. 14:43.1 .....4

La. C.E. art. 404B .....4

La. C.E. art. 412.2.....4

La. C. Cr. P. art. 716(F) .....8

La. C. Cr. P. art. 771.....15

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PETITION FOR WRIT OF CERTIORARI

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**OPINIONS BELOW**

The opinion of the Louisiana Supreme Court, dated October 14, 2025, is included in the appendix at App.1a. The opinion is reported at *State v. Simpson*, 2025-00621 (La. 10/15/25), 419 So.3d 354 (Mem). The ruling of the Louisiana Court of Appeal, Fifth Circuit, dated April 16, 2025, is included below at App.2a. The opinion is reported at *State v. Simpson*, 24-250 (La.App. 5 Cir. 4/16/25), 413 So.3d 1248.

## JURISDICTION

The judgment of the Louisiana Supreme Court was entered on October 14, 2025.

App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI, of the U.S. Constitution (Rights of the accused) states that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV, Section 1 of the U.S. Constitution (Citizens of the United States) states that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Federal Rule of Criminal Procedure 16(c) (Continuing Duty to Disclose) states in pertinent part that:

A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court. . . .

- (1) The evidence or material is subject to discovery or inspection under this rule; and
- (2) The other party previously requested, or the court ordered, its production

Louisiana Code Criminal Procedure Article 729.3 states that:

If, subsequent to compliance with an order issued pursuant to this Chapter and prior to or during trial, a party discovers additional evidence or decides to use additional evidence and such evidence is or may be, subject to discovery or inspection under the order issued, he shall promptly notify the other party and the court of the existence of the additional evidence, so that the court may modify its previous order or allow the other party to make an appropriate motion for additional discovery or inspection.

## STATEMENT OF THE CASE

This is a criminal case resulting in a conviction. Mr. Simpson was charged by indictment with one count of first-degree rape, in violation of La. R.S. 14:42. On October 21, 2022, he pled not guilty. On May 11, 2023, the State's motion to admit prior crimes pursuant to La. C.E. art.

412.2 and La. C.E. art. 404B was heard and granted, with the trial court ruling over defense objection that all prior allegations against the appellant were admissible.

Trial by jury commenced January 22, 2024. At the conclusion, the jury returned a unanimous responsive verdict of sexual battery, in violation of La. R.S. 14:43.1 On March 7, 2024, the defense's motions for acquittal notwithstanding the verdict and for new trial were denied. The trial court imposed a sentence of ten years at hard labor at the Department of Correction, without benefit of parole, probation, or suspension of sentence. The defense filed a motion to reconsider the sentence, which was denied, and a motion for appeal, which was granted.

A habitual offender hearing was held March 27, 2024. At the conclusion, the trial court adjudicated Mr. Simpson a second-felony offender, vacated the ten-year sentence, and imposed a new sentence of twenty years at hard labor, without benefits. The defense filed an oral motion to reconsider sentence, with the trial court ordering trial counsel to follow up with a written motion. That same day, trial counsel e-filed a motion to reconsider sentence. The motion was set for May 29, 2024. The minute entry for that date states that the matter was handled March 7, 2024, when the defense was ordered to file a written motion.

On April 16, 2025, the Fifth Circuit affirmed the sexual battery conviction, but found that Mr. Simpson was entitled to a ruling on his motion to reconsider the enhanced 20-year sentence. App.2a. The La. Supreme Court denied writs without reasons on October 14, 2025. App.1a.

## REASONS FOR GRANTING THE PETITION

Mr. Simpson was not provided a fair trial due to his rights to due process and against self-incrimination being violated. The State used Mr. Simpson's post-arrest silence to impeach him. The Defense objected to the improper line of questioning and moved for a mistrial. The Court overruled the objection and denied the request for mistrial. Following an hour-long lunch break, the Defense re-urged the issue requesting an admonishment in an effort to save Mr. Simpson. The Court decided to admonish the jury despite the improper questioning having already marinated in the minds of the jury for over an hour.

At the eleventh hour, the State introduced an eighth witness during trial that the Defense knew nothing about. The witness' name nor initials was not provided on any discovery, list or mentioned to the jury during voir dire. The Defense objected and asked that the witness be struck. The State presented false information to the trial court resulting in the Defense's objection being overruled and their request denied. The Defense exposed the fabrication to the Court with the State conceding that the information it presented was a fabrication in the Defense's re-urging of the striking of the witness. This revelation had no impact on the court; the previous ruling was upheld. The witness' testimony was damaging and prejudicial to the defense. A total surprise attack in violation of the rules of discovery constituting reversible error.

These errors deprived Mr. Simpson of a fair trial and the rights afforded him by the constitution. This Honorable Court can right these wrongs by reversing the conviction and granting Mr. Simpson a new trial.

**A. Under the United States Constitution Amendments VI and XIV, Mr. Simpson was denied a fair trial by the admission of testimony from a witness that was not made known to the jury during voir dire and not made known to the defense until minutes before the testimony of the alleged witness which resulted in violation of Mr. Simpson's right to due process.**

Introduction of a witness on the morning of trial without prior notice—despite the information being requested during discovery—violated Simpson's constitutional rights to a fair trial and due process, constituting reversible error. The rules of discovery are intended to eliminate unwarranted prejudice arising from surprise testimony, to permit the defense to meet the State's case, and to allow proper assessment of the strength of its evidence in preparing a defense. When the defendant is lulled into misapprehension of the strength of the State's case through the failure of the prosecution to timely or fully disclose and the defendant suffers prejudice, basic unfairness results which constitutes reversible error. *State v. Mitchell*, 412 So.2d 1042, 1044 (La. 1982).

On the morning of January 23, 2024, the State informed the Defense of witness L. P., which the Defense had no prior knowledge of because the name was not included in the discovery or on any witness list. L. P.'s name was not mentioned to the jury during voir dire when the Court asked if jurors knew the witnesses and no hands were raised. The names read to the jury closely tracked the order that the witnesses were called at trial with L. P. immediately following D. C. and immediately before K. W. Ms. Friedberg asked the Court to not allow the State to call L. P.

ADA Grate argued that L. P.'s name, relationship to the victim, and her involvement in the case were turned over to the Defense. Ms. Friedberg stated that the name was redacted from the documents provided by the State. ADA Grate was adamant that at a minimum the witness' initials were provided to the Defense. ADA Grate quoted La. Code

of Crim. P. art. 716(F) and State v. Harper, 10-0356 (La. 11/30/2010), 53 So.3d 1263, contesting that the State was not obligated to turn over a witness list to the Defense. ADA Grate insisted that the information concerning the witness was turned over to the Defense; the State admitted that the name was skipped when the list was read to the jury. Ms. Friedberg argued the surprise nature of the introduction of L. P. which deprived the Defense the opportunity to fully investigate the witness and properly voir dire.

The Court reasoned under the false presumption that the witness' initials were included in the police reports provided to the Defense. The Court based its denial on this false presumption. Following restroom breaks, the Defense renewed the objection and request to strike L. P. with alerting the Judge that the State falsely stated that the witness' information or at bare minimum initials was provided to the Defense. The State conceded that the error was made concerning no information for the witness being provided to the Defense and that he falsely stated to the Court that the information was provided with a justification that the error was unintentional. Ms. Friedberg asked since the witness' information or initials was not provided to the Defense or the jury that the Court perform voir dire. The Court denied the requests.

L. P.'s testimony proved prejudicial to Simpson. L. P. testified to information that had not been included in any reports or testified to by any other witnesses. L. P. testified to K. W. being hit several times with the gun during the performance of the sexual act on Simpson. L. P. testified to making the decision that K. W. press charges because she felt like [Simpson] had already previously did it before this and probably would do it again. How would L. P. be privy to prior situations involving Simpson and be able to communicate that information to K. W. at the time of her encounter? This provides evidence that L. P.'s

testimony was coached. The most damaging of the testimony from L. P. came in the form of her testifying to K. W.'s emotion and mental state following the alleged attack.<sup>18</sup> Many of ADA Grate's questions were leading and Ms. Friedberg tried her best to get in front of it to no avail.

The Court of Appeal, Third Circuit addressed a similar situation in *State v. Vice*, 22-512 (La.App. 3 Cir. 4/19/23), 365 So.3d 155, writ denied, 23-669 (La. 11/21/23), 373 So.3d 457. In *Vice*, the State failed to call the names of two witnesses during voir dire. Also, one of the witnesses was not on the witness list provided to the defense before trial or was either witness placed under sequestration. *Id.* at 158. Following the State calling one of the witnesses to testify, a conference was held and the trial judge reopened voir dire to ask the jurors if they knew the witness. The witness was known by one of the jurors and the judge offered to release the juror. Neither the defense nor the state struck the juror. *Id.* at 159. The second witness was discussed and it was noted that the name did not appear on the state's subpoena list but the witness was not a surprise to the defense. The trial court disallowed testimony from the second witness based on the objection and the representations made. *Id.*

Based on the facts that the defense acknowledged the name of the first witness being in discovery, the second witness not being a surprise, the failure to request exclusion of the witness, and the lack of a declaration of prejudice, the Third Circuit held the claim meritless. Simpson's case is distinguishable from *Vice*; first, the State failed to provide L. P.'s name in any documents turned over to the Defense. Second, the trial court neither re-opened voir dire nor excluded L. P. due to the surprise nature of the discovery. Finally, the trial court offered no remedy for the state's subterfuge in presenting its

argument concerning L. P.'s information being delivered to the Defense. This Honorable Court should take the opposite stance to that of the Vice court and grant Mr. Simpson a new trial for the reasons listed above.

**B. Under the United States Constitution Amendments V and XIV, the trial judge abused his discretion by denying a mistrial when the State violated Mr. Simpson's constitutional rights against self- incrimination and due process during an improper line of questioning concerning his post-arrest silence and instead admonished the jury following an hour lunch break.**

The State violated Mr. Simpson's constitutional rights against self-incrimination and due process when ADA Zach Grate (ADA Grate) used Mr. Simpson's post-arrest silence to impeach him which is forbidden by *Doyle v. Ohio*, 426 U.S. 610, 617-18, 96 S.Ct 2240, 2244-45, 49 L.Ed.2d 91 (1976), and its progeny requiring reversal. In *Doyle v. Ohio*, the United States Supreme Court held that reference to a defendant's silence at the time of his arrest for impeachment purposes violates his due process rights. *Id.* It is improper to reference the fact that an accused exercised his right to remain silent to ascribe a guilty meaning to his silence or to undermine, by inference, an exculpatory version of events related by the accused. *State v. Pierce*, 11-320 (La.App. 5 Cir. 12/29/11), 80 So.3d 1267, 1272-73; *State v. Montoya*, 340 So.2d 557 (La. 1976). Mr. Simpson has a constitutional right to remain silent when under custodial arrest or interrogation and no adverse admission may be drawn from that silence. U.S. Const. Amend. V; *State v. Hayden*, 243 La. 793, 147 So.2d 392 (1962).

During the course of Ms. Anna Friedberg's (Ms. Friedberg) direct examination of Mr. Simpson, he was asked for information involving three different individuals and incidents. The inquiry started with K.W. K.W.'s case was the case that Mr. Simpson was on trial for and the most recent in terms of time line. Mr. Simpson testified that following

his 1st encounter with the Jefferson Parish detectives—after extradition from Maryland—he refused to submit to a buccal swab without first being shown the warrant authorizing the swab. After being provided with the warrant, he voluntarily cooperated with the detectives. The questioning then shifted to an October 2017 incident involving K.H. Mr. Simpson testified that after the Lafayette Police Department (LPD) informed him of the allegations brought against him he voluntarily cooperated with the officers and was willing to cooperate with any investigation they wanted to do. This was evidenced by Mr. Simpson submitting to questioning by the officers and allowing the officers to search his home without a warrant after being asked by the officers to do so. The questioning then shifted to an April 2020 incident involving D.C. This time when the LPD showed up and provided a narrative of the alleged events, Mr. Simpson was not so cavalier with forfeiting his constitutional rights and required the officers to secure a warrant when they asked to search his home. The officers detained Mr. Simpson and transported him to the Investigation Bureau for questioning and evidence retrieval. Mr. Simpson testified to cooperating thoroughly with the investigation, as he has done every time an investigation was performed. When asked for something or to do something by law enforcement and provided the proper verification, Mr. Simpson cooperated. That cooperation presented differently over the four years since the 2017 incident involving K.H., where officers were given free reign without proper warrants.

ADA Grate began his cross examination with a 2022 incident involving D.M. in Maryland. ADA Grate claimed that Mr. Simpson opened the door concerning testimony about D.M. but that did not happen. The arrest that Mr. Simpson was referring to in his response to ADA Grate was concerning the extradition to Louisiana for K.W. ADA Grate

crossed Mr. Simpson about several cases not involving the victim K.W. It was during the State's questioning about D.C. then shifting to K.W. that ADA Grate asked Mr. Simpson if he "always cooperate[ed] with the police, completely." Mr. Simpson responded that he did. The questioning then shifted to K.H. concerning deleted text messages. Mr. Simpson explained that he voluntarily gave his cell phone to the officers during the investigation. ADA Grate shifted the questioning back to D.C. and again he asked about Mr. Simpson being cooperative with police. Mr. Simpson confirmed that he did provide a statement to officers when brought to the bureau for questioning and DNA sampling. ADA Grate alluded to Mr. Simpson alleging trying to destroy evidence after consenting to having his genitals swabbed. Mr. Simpson explained that he had already consented to what was asked for by the officers and was voluntarily cooperative with the investigation involving D.C. ADA Grate then shifted again to questioning concerning K.W. and the multiple meetings between her and Mr. Simpson. Following a short recess, ADA Grate shifted back to the incident involving D.C. and Mr. Simpson being shot. ADA Grate mentioned Mr. Simpson's cooperation—or lack thereof—with the police following him being shot. Following an exchange around why Mr. Simpson was shot, ADA Grate shifted the questioning back to K.W. and the unknown male that was in the home. ADA Grate again mentioned Mr. Simpson's cooperation with police at all times. ADA Grate said that since Mr. Simpson was being super cooperative with law enforcement he should have decided to allow the officers to take the swab without the warrant. ADA Grate acknowledged Mr. Simpson's right to demand to see the warrant before giving a DNA sample. Mr. Simpson explained the extent of his cooperation with detectives after being extradited to Louisiana

with his desire to see the warrant prior to submitting to being swabbed. The detectives asked for nothing else from Mr. Simpson.

It was following that exchange that Mr. Simpson's constitutional rights were violated. ADA Grate asked the following:

Q. Mr. Simpson did you ever ask to make a statement to the Detective, once he had taken your swab, so that you could be cooperative and solely upfront?

A. Ask that question again.

Ms. Friedberg objected and moved for a mistrial. ADA Grate responded that "[Simpson] opened the door when he said that he was fully cooperative with the police. And that he could then ask him did he want to give a statement." Counsel responded that the door could not be opened to that right. The trial court overruled the objection and denied the request for a mistrial. Following an hour-long lunch break, Ms. Friedberg re-urged the issue concerning the improper line of questioning by ADA Grate about Mr. Simpson's post-arrest silence. Due to the severity of the issue, Ms. Friedberg asked the court for at least an admonishment since the court had already denied the request for a mistrial. The court admonished the jury to disregard any statements made by the ADA Grate regarding whether or not Mr. Simpson made a statement to the police or was being cooperative. The judge's decision to admonish the jury after lunch tainted the jury allowing time for ADA Grate's improper questioning implying guilt by virtue of Mr. Simpson not volunteering to give a statement to police to sink in and rest on the mind of the jurors.

In the 2000 case involving Olin Grant, this Honorable Court held that the prosecutor's use of Grant's post-arrest silence warranted reversal. *State v. Grant*, 99-1065 (La.App. 5 Cir. 1/25/00), 761 So.2d 10, 14. This Court reasoned that: it is obvious

that the prosecutor's line of questioning in this case was not merely an oblique reference to defendant's post-arrest silence. Rather, as explained in his response to defense counsel's objection at trial, the prosecutor was trying to impeach defendant's credibility with his post-arrest silence. The prosecutor specifically asked why defendant did not talk to anybody else when you first got arrested. This is precisely the type of questioning forbidden by Doyle and its progeny. Because it is fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial. *Id* (citing, Doyle, 426 U.S. at 617-18, 96 S.Ct. at 2244-45) (internal quotations omitted).

Like the prosecutors in the Grant case, ADA Grate was trying to impeach Mr. Simpson's credibility with his post-arrest silence. This is evidenced by ADA Grate's response to Ms. Friedberg's objection at trial. Like the Grant case, Mr. Simpson's conviction should be reversed and the matter remanded to the trial court for a new trial.

In the 2014 case of State v. Adams, this Honorable Court stated that, "the prosecutor's line of questions to the investigating officer regarding defendant's exercise of his Fifth Amendment privilege against self-incrimination was improper and impermissible. Likewise, the trial judge's ruling overruling defense counsel's objection to this impermissible line of questions was also in error." State v. Adams, 13-992 (La.App. 5 Cir. 5/21/14), 142 So.3d 265, 273, writ denied, 2014-1245 (La. 2/16/15), 158 So.3d 813. The Adams court affirmed the conviction holding that a brief reference to post-Miranda silence does not mandate a mistrial or reversal where the trial as a whole was fairly conducted, the proof of guilt is strong, and the state made no use of the silence for impeachment purposes. *Id* (internal citations omitted). Mr. Simpson's case is

distinguishable from Adams in that: (1) the post-arrest silence in Mr. Simpson's case was used for impeachment purposes; and (2) the proof of guilt was not strong in Mr. Simpson's case evidenced by the jury returning a guilty verdict on the lowest possible responsive verdict available.

The Louisiana Supreme Court in *State v. Smith* stated that the comment by prosecutors concerning Smith's election to remain silent and refrain from giving a statement to the police immediately after his arrest was improper; and if the testimony and comment had the effect of depriving Smith of a fair trial, he was therefore entitled to a mistrial under La. C. Cr. P. art. 771. *State v. Smith*, 336 So.2d 867, 869 (La. 1976). The *Smith* court held that no mistrial was warranted due to the incidental and almost inadvertent reference to Smith's custodial silence ..... *Id* at 869-870. Both Justice Dennis and Justice Calogero dissented with Justice Calogero stating: No doubt exists that defendant had the right, guaranteed by the fifth amendment, to refuse to make a statement to the police at that time. When a prosecutor brings before the jury the fact that an accused chose to exercise that right by remaining silent when questioned by police, the conviction must be reversed. There can be no question that the prosecutor's use of Smith's pretrial silence infringed upon his fifth amendment privilege and rendered his conviction constitutionally infirm. *Id* at 870 (CALOGERO, J. dissenting).

ADA Grate conflated the instances of Mr. Simpson's cooperation across several events into a blanket for impeachment claiming that the door was opened when Simpson said that he was fully cooperative with the police. The Louisiana Supreme Court in *State v. Bell* stated that exceptions exist to references to a defendant's post-arrest silence one being to rebut a contention of active cooperation with the police when in fact the defendant

had invoked his fifth amendment rights. *State v. Bell*, 446 So.2d 1191, 1193 (La. 1984) (citing, *United States v. Fairchild*, 505 F.2d 1378 (5th Cir. 1975)). In both the *Bell* and *Fairchild* cases, the respective detectives—after mirandizing the defendants—asked if they wanted to make a statement and each defendant refused thus invoking their fifth amendment right. *Id.* at 1192 (*Fairchild*, 505 F.2d at 1382). Both cases are distinguishable from Mr. Simpson's case because Mr. Simpson was never asked by detectives to give a statement in the case involving K.W. ADA Grate neither asked Detective Nicholas Vega if he requested a statement from Mr. Simpson nor did Detective Vega testify that he requested a statement from Mr. Simpson.<sup>67</sup> Mr. Simpson had proven on several occasions during trial that when asked by law enforcement to give a statement, provide DNA, be allowed to search his person, home, or cell phone, or any request—provided with the proper verification—he complied.

In conclusion, ADA Grate's question about Mr. Simpson's post-arrest silence violated Mr.

Simpson's constitutional rights against self-incrimination and due process requiring reversal. Looking at the words cooperative and cooperate in their simplest terms, each are defined as: (1) adj. marked by a willingness and ability to work with others; (2) v. to act or work with another or others: act together or in compliance, respectively. Mr. Simpson acted in compliance with the requests of law enforcement. In *State v. Sam*, the Louisiana Supreme Court discussed the ways *Doyle* had been interpreted in this state and held that, "[a]lthough the defendant can be fully cross-examined when he takes the stand and is subject to impeachment by use of his silence under certain circumstances, it is fundamentally unfair to allow the arrested persons silence to impeach him at trial..."

State v. Sam, 412 So.2d 1082, 1084 (La. 1982). Therefore, this Honorable Court should reverse Mr. Simpson's conviction and remand the matter to the trial court for a new trial.

**CONCLUSION**

For these reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted this 12th day of January, 2026.

  
\_\_\_\_\_  
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