

No. _____

**In The
Supreme Court of the United
States**

GARRETT WARD,

Petitioner,

v.

STATE OF LOUISIANA

Respondent.

On Petition for Writ of Certiorari to the
Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

JANE C. HOGAN
Counsel of Record
HOGAN ATTORNEYS
310 N. CHERRY STREET
HAMMOND, LA 70401
TEL: (985) 542-7730
E-MAIL: JANE@HOGANATTORNEYS.COM

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QUESTION PRESENTED

Petitioner Garrett Ward, a 25-year-old with no criminal record, woke from a drunken sleep on the side of a street in New Orleans to find a stranger going through his pockets, which prompted him to strike the stranger twice and kick him once. Twelve days later, the man died and Mr. Ward was charged and tried for second-degree murder. Before trial the defense invoked Louisiana Code of Criminal Procedure article 716(B), which requires the State to give notice of any oral statement by the defendant that it intends to offer at trial. Five days before trial, the State provided a response and identified only innocuous statements Mr. Ward made to police officers. On the first day of testimony, the prosecutor asked a witness whom the State had interviewed the day before what Mr. Ward had said during the fight. She claimed that Mr. Ward used a racial epithet. The prosecutor asked the question a second time, and she repeated the slur. No other witness heard this slur, the witness's own 911 call contained no such reference, and there was no reference to this type of language in any police report. The Louisiana courts denied relief on the grounds that the prosecutor professed not to have known the precise words the witness would use.

The question presented is:

Whether the Due Process Clause of the Fourteenth Amendment permits a State to elicit, without pretrial notice, a witness's previously undisclosed attribution of a racial epithet to the accused, where the accused had invoked the state's own mandatory notice rule, the State omitted this statement from its written notice of the statements it intended to use at trial, and the prosecutor had interviewed the witness before she testified.

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the Petitioner is Garrett Ward, who was the defendant in the District Court and the appellant in the Louisiana Courts of Appeal. The Respondent is the State of Louisiana, through the District Attorney of Orleans Parish.

LIST OF PROCEEDINGS

1. State of Louisiana v. Garrett J. Ward, No. 541-639, Section F, Criminal District Court for the Parish of Orleans, Louisiana.

Mistrial denied following Kerrie Williamson's testimony on May 3, 2022; renewed mistrial denied on May 4, 2022; verdict of guilty of manslaughter entered on May 10, 2022; sentence imposed on June 27, 2022; motion to reconsider sentence denied on December 15, 2022.

2. State of Louisiana v. Garrett J. Ward, No. 2023-KA-0524, Court of Appeal of Louisiana, Fourth Circuit.

Original judgment finding sufficient evidence but reversing the conviction under the state's mandatory mistrial grounds entered on April 17, 2025; judgment affirming the conviction and sentence on remand entered on December 3, 2025.

3. State of Louisiana v. Garrett J. Ward, No. 2025-K-00633, Louisiana Supreme Court. Per curiam granting the State's writ application and reinstating the conviction entered on October 14, 2025; rehearing denied on January 21, 2026. *State v. Ward*, 420 So.3d 675 (La. 10/14/25).

State of Louisiana v. Garrett J. Ward, No. 2025-K-00640, Louisiana Supreme Court. Order denying Petitioner's writ application pertaining only to sufficiency of the evidence entered on October 14, 2025.

State of Louisiana v. Garrett J. Ward, No. 2026-K-00004, Louisiana Supreme Court. Petitioner's writ application denied on June 16, 2026. *State v. Ward*, 433 So.3d 554 (La. 6/16/26).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Garrett Ward respectfully petitions this Court to grant this petition, vacate his conviction, and remand to the Louisiana Supreme Court.

OPINIONS BELOW

The Louisiana Supreme Court's six-to-one decision (App., *infra*, 1a) to deny Mr. Ward's writ is reported at *State v. Ward*, 433 So.3d 554 (La. 6/16/26). The Louisiana Fourth Circuit's decision (App., *infra*, 2a), affirming Mr. Ward's conviction and sentence on remand is unreported.

The order of the Louisiana Supreme Court denying Mr. Ward's application for a writ of certiorari on the sufficiency of the evidence is unreported. (App., *infra* 24a). The per curiam opinion (App., *infra* 25a) of the Louisiana Supreme Court granting the State's earlier writ application and reinstating Mr. Ward's conviction is reported at *State v. Ward*, 420 So. 3d 675 (La. 10/14/25). The order denying rehearing of that decision (App., *infra* 26a) is unreported. The original opinion of the court of appeal vacating the conviction (App. *infra* 27a) is reported at *State v. Ward*, 421 So. 3d 102 (La. App. 4 Cir. 4/17/25).

STATEMENT OF JURISDICTION

The Louisiana Fourth Circuit Court of Appeal issued a final judgment affirming Mr. Ward's conviction on December 3, 2025. (App., *infra*, 2a). The Louisiana Supreme Court then denied discretionary review on June 16, 2026, by a six-to-one vote. (App., *infra*, 1a). This petition is timely filed on September 14, 2026, and this Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...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 defence."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Louisiana Code of Criminal Procedure article 716(B) provides: "Except as

provided by Paragraph C of this Article, upon written motion of the defendant, the court shall order the district attorney to inform the defendant of the existence, but not the contents, of any oral confession or statement of any nature made by the defendant or any codefendant which the district attorney intends to offer in its case in chief at the trial, with the information as to when, where, and to whom such oral confession or statement was made.”

Louisiana Code of Criminal Procedure article 770 provides in relevant part: “Upon motion of a defendant, a mistrial shall be ordered when a remark or comment, made within the hearing of the jury by the judge, district attorney, or a court official, during the trial or in argument, refers directly or indirectly to: (1) Race, religion, color or national origin, if the remark or comment is not material and relevant and might create prejudice against the defendant in the mind of the jury; . . . An admonition to the jury to disregard the remark or comment shall not be sufficient to prevent a mistrial.”

INTRODUCTION

Garrett Ward was passed out drunk on St. Charles Avenue when he awoke to find Arnold Jackson rifling through his pockets. In response, Mr. Ward pushed, struck, and kicked Mr. Jackson. When Detrick Rainge intervened, Mr. Ward

immediately raised his hands, which were bleeding from open cuts to his palms, and walked away. Despite initial signs of recovery, Mr. Jackson, who had numerous pre-existing conditions and a lengthy criminal record, passed away after twelve days in the hospital, which led the State to charge Mr. Ward with second-degree murder.

Mr. Ward was deprived of due process when the prosecution deliberately elicited racially charged testimony from Kerrie Williamson, who claimed she heard Mr. Ward using racial epithets. There is absolutely no corroboration for this shocking testimony, and the State interviewed Ms. Williamson the day before her testimony and knew that she would attribute derogatory language to Mr. Ward. The State failed to provide any pretrial notice of these statements to the defense, which resulted in a self-defense trial being morphed into a trial about race.

The Louisiana state courts refused to grant Mr. Ward relief, finding that since the State claimed ignorance as to Ms. Williamson's precise language, it could not have provided pretrial notice. These rulings are at odds with this Court's jurisprudence on the notice requirement of due process, Louisiana's own statutory scheme, and this Court's recognition that notice is essential if race is to be an issue at trial. For the reasons herein, Mr. Ward prays that this Court grant his petition and remand to the Louisiana Supreme Court.

STATEMENT OF THE CASE

On the evening of January 5, 2018, Mr. Ward attended a dinner party with his girlfriend, Katy Kelly, and her work colleagues at a restaurant in New Orleans, Louisiana. (App., *infra*, 28a). After dinner, Mr. Ward, Ms. Kelly, and her co-workers — Jonathan Guy, Jamie Yorsch, and Freddie Yorsch — relocated to the Hot Tin bar atop the Pontchartrain Hotel on St. Charles Avenue in New Orleans. *Id.*

In the early morning hours, around 1:00 A.M. the next day, a verbal altercation between Mr. Ward and Ms. Kelly ensued at the bar, and Mr. Ward slapped Ms. Kelly. Mr. Ward left the bar and went down to the street. *Id.* Ms. Kelly, Mr. Guy, and a hotel valet's companion, Deondria Rainge, each saw Mr. Ward outside the hotel, slumped against a tree on the sidewalk. ROA. 5/3/22, pp. 21, 74, 100-01; 5/5/22, p. 25.

Ms. Kelly retrieved her phone from Mr. Ward on the street and described leaving him in a drunken, vulnerable position. ROA. 5/3/22, p. 101. She estimated that some twenty minutes passed between that encounter and her departure from the hotel after the police had arrived. ROA. 5/3/22, p. 80. Mr. Ward testified that he fell asleep against the tree and woke “to a man hovering over the top of me and he’s touching my chest and going through my pockets,” felt “something sharp” at his hand,

pushed the man off, and began punching him. (App., *infra*, 34a). The man was Arnold Jackson.

Mr. Ward struck Mr. Jackson twice and landed one kick before the valet, Detrick Rainge, pulled Mr. Ward away, at which point he put up his hands and walked to a nearby parking garage. (App., *infra*, 36a). Kerrie Williamson was on the scene and phoned the police, who arrived minutes later and arrested Mr. Ward for simple battery without incident. (App., *infra*, 29a). The arresting officer testified there were bleeding cuts to Mr. Ward's palms. ROA. 5/4/22, p. 86. Mr. Jackson was found to have a pocketknife and two razor blades on his person when he was admitted to the hospital. (App., *infra*, 22a, Dysart, J. dissenting). He died twelve days later, and Mr. Ward was arrested for second-degree murder. (App., *infra*, 4a).

A grand jury indicted Mr. Ward for second-degree murder on June 7, 2018. *Id.* Twelve days later, defense counsel filed a written discovery motion invoking article 716 and asking the State to "advise this defendant of the existence of any oral statement(s) made to any person other than a law enforcement officer by this defendant." (App., *infra*, 120a). Article 716(B) obliges the district attorney, on such a motion, to disclose the existence of "any oral confession or statement of any nature

made by the defendant . . . which the district attorney intends to offer in its case in chief at the trial, with the information as to when, where, and to whom such oral confession or statement was made.” La. Code Crim. Proc. art. 716(B).

On April 27, 2022, five days before trial, the State filed a written notice of its intent to use innocuous statements Mr. Ward made to three police officers. (App., *infra*, 124a). The notice identified no statement to any civilian witness, and no statement referring to race.

Trial began with jury selection and on May 3, 2022, the State called Kerrie Williamson as its third witness. Ms. Williamson was the only witness who claimed to have seen the beginning of the fight. (App., *infra*, 52a, 62a). She called 911 on the night of the incident and then left the scene without giving any statement to the police and refused to answer her phone when police tried to contact her. Even the State told the trial court that it had “had difficulty in finding Ms. Williamson” and “were able to find her at the last minute.” (App., *infra*, 91a).

On direct examination, after Ms. Williamson described the fight, the prosecutor asked: “You told us what Mr. Jackson was saying. What was Mr. Ward saying?” She answered with the word “N---er.” (App., *infra*, 56a). The prosecutor then asked, “Just the word?” and she continued: “You f---ing n---er; get a job; you f---ing

bum.” *Id.* She added that Mr. Ward had then said something like “You know how they are; they’re not like us.” (App., *infra*, 57a). Later in the same examination the prosecutor returned to the subject and asked again, “And what were the words that he used during the attack of Mr. Jackson?” and, when she did not immediately answer, “And what were his words, though?” She repeated: “You f---ing n---er; you f---ing bum.” (App., *infra*, 63a).

No other witness corroborated any of this. The recording of Ms. Williamson’s own 911 call, made at the scene and played for the jury, contained no reference to a slur, as she told the operator that “some idiot just kicked an old man in the face.” State’s Exhibit S-1. Mrs. Rainge, who watched the incident from her car parked in front of the hotel, heard no racial epithet. ROA. 5/5/22, p. 33. Mr. Rainge, who physically separated the men, heard Mr. Ward say only something about knowing “somebody who is a State Trooper.” ROA. 5/4/22, p. 144. Ms. Williamson further testified that she was “deaf in one ear” and “I don’t know what he’s saying. I don’t care.” (App., *infra*, 77a). She acknowledged that she wanted Mr. Ward to be convicted. (App., *infra*, 65a).

On the same direct examination, the prosecutor asked Ms. Williamson whether she had heard Mr. Ward “say that he was the victim, or that someone tried

to mug him or take his phone or hold a knife or anything like that.” She answered: “I want to say, he did.” (App., *infra*, 62a). The State had not disclosed that statement to the defense either.

At the close of Ms. Williamson’s testimony, outside the jury’s presence, defense counsel moved for a mistrial on the ground that the State had given no notice of its intent to introduce testimony that Mr. Ward had used a racial epithet and argued that the State’s failure to disclose Ms. Williamson’s account of Mr. Ward saying he was being robbed violated *Brady v. Maryland*, 373 U.S. 83 (1963). (App., *infra*, 87a-88a).

The State responded that it had no prior knowledge of Ms. Williamson’s testimony and that “[w]e made the Defense aware of everything we knew when we knew it.” (App., *infra*, 91a). Relying on that representation, the trial court denied the motion, though it said it would “think about this overnight.” (App., *infra*, 97a). The defense moved to preserve the prosecutors’ handwritten notes of the Williamson interview. (App., *infra*, 98a).

The next morning the defense filed a written, renewed motion for mistrial, and argued the motion at the end of the day. (App., *infra*, 103a-117a). The defense pointed out that Mrs. Rainge testified that the State had asked her before trial

whether she heard Mr. Ward using racial epithets, which she denied hearing. (App., *infra*, 107a). Defense counsel argued “it’s pretty safe for us to expect that they asked all of the witnesses that, including Ms. Williamson,” and argued that the State was appealing to racial prejudice: “You have a white young man they accused of killing a black man, and you have a jury composed of 10 minorities.” (App., *infra*, 108a-109a). The court denied the renewed motion (App., *infra*, 110a).

The jury rejected the charge of second-degree murder and returned a responsive verdict of manslaughter, which under the only definition read to the jury required a homicide “committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection.” (App., *infra*, 32a-33a); La. R.S. 14:31(A)(1). The trial court sentenced Mr. Ward, a first offender whose presentence report recommended ten to twenty years, to thirty years at hard labor. (App., *infra*, 21a-22a).

On direct appeal, Mr. Ward’s second assignment of error contended that “the trial court erred by refusing to grant a mistrial and the repeated injection of racially charged testimony deprived Garrett Ward of his right to due process,” and, within that assignment, that the State had violated *Brady v. Maryland*, *supra*, *Napue v. Illinois*, 360 U.S. 264 (1959), and Louisiana Code of Criminal Procedure Article 716

by failing to disclose Ms. Williamson's testimony before trial.

The Fourth Circuit initially vacated the conviction. Quoting the testimony at length, the court found that "while the prosecutor may not have initially been aware of Ms. Williamson's racially-charged comment when he first inquired about Defendant's statements during the attack, based on Ms. Williamson's answer to his initial question, the prosecutor was aware of her racially-charged testimony, yet solicited this testimony, when he repeated the same question." (App., *infra*, 41a). Because the State solicited "a racially charged comment," the court held that a mistrial was mandatory under Louisiana Code of Criminal Procedure Article 770(1) and, following the Louisiana Supreme Court's decision in *State v. Thompson*, 233 So. 3d 529 (La. 9/18/17), that "an improper appeal to racial prejudice during the presentation of evidence is not susceptible to harmless error review." (App., *infra*, 45a). The court pretermitted the remaining assignments, including the notice, *Brady*, and *Napue* claims.

The Louisiana Supreme Court granted the State's writ application and reversed in a per curiam opinion. (App., *infra*, 25a). It held that "the witness's challenged statements merely recounted defendant's own words and actions during the charged offense," so that "the references to race were not attributable to the

prosecutor and were in fact material and relevant to establishing the defendant's specific intent to commit the charged offense of second-degree murder . . . and establishing that the defendant did not act in self-defense." *Id.* The court reinstated the conviction and remanded for consideration of the pretermitted claims. *Id.* Rehearing was denied, with one justice voting to grant rehearing and docket the matter. (App., *infra*, 26a).

On remand, the Fourth Circuit rejected the remaining claims and affirmed. It held that no *Brady* violation occurred because, "[p]redicated on the State's statements to the trial court . . . that it had no prior knowledge" of Ms. Williamson's account of Mr. Ward saying he was robbed, "the State complied with its discovery obligations." (App., *infra*, 8a). It rejected the *Napue* claim because "[t]he State was not in a position to know whether Ms. Williamson's testimony was false as it heard this testimony for the first time at trial." (App., *infra*, 9a). It also rejected the Article 716 claim in a single paragraph: "Because it was not aware of Defendant's alleged use of a racial epithet until Ms. Williamson's testimony, the State could not have provided Defendant with this information prior to trial. As such, the State did not violate La. C.Cr.P. art. 716." (App., *infra*, 10a). The court did not address the State's acknowledgment that it knew before Ms. Williamson testified that she would

attribute other derogatory statements about Mr. Jackson to Mr. Ward, and it did not consider prejudice. Judge Dysart dissented from the affirmance of the sentence, concluding that a thirty-year term for a first offender who “was awakened by someone going through his pockets while he was passed out in an intoxicated state” was constitutionally excessive. (App., *infra*, 21a-22a).

Mr. Ward sought review in the Louisiana Supreme Court, arguing that “[t]he State violated its statutory and constitutional obligations to provide the defense with pretrial notice of Kerrie Williamson’s testimony,” and urged the *Brady* and *Napue* claims. The court denied the application on June 16, 2026, with one justice voting to grant the application. (App., *infra*, 1a).

REASONS FOR GRANTING THE PETITION

The rule of law in a criminal courtroom begins with notice. A defendant is entitled to know the charge he must meet, and, when a State has promised by statute to tell him what words of his own it will present at trial, he is entitled to rely on that promise. Louisiana made that promise in Code of Criminal Procedure Article 716(B), which Mr. Ward invoked. The State answered with a written notice that listed his statements to police officers and nothing else. Then, before a jury that defense counsel

described on the record as composed of ten minorities, the State asked a witness it had interviewed the day before what Mr. Ward (a white man) had said while striking Mr. Jackson (a Black man). After Ms. Williamson claimed that Mr. Ward used the word “n---er”, the prosecutor again elicited the word.

The Louisiana courts held that none of this violated any rule, statutory or constitutional, because the prosecutor said he did not know the exact word the witness would use. Those holdings cannot be squared with this Court’s due process cases, which treat notice of the issues to be tried as “a fundamental characteristic of fair procedure,” *Lankford v. Idaho*, 500 U.S. 110, 126 (1991), and forbid the State to lull a defendant with an assurance and then convict him with what the assurance concealed. Those holdings are further at odds with this Court’s cases on race in the courtroom, which recognize that the injection of race is a toxin that “can be deadly in small doses,” *Buck v. Davis*, 580 U.S. 100, 122 (2017), and that a prosecutor’s knowing use of it is a matter of constitutional dimension. Finally, those holdings are at odds with the Court’s insistence that the prosecutor’s office “is an entity” whose responsibility does not depend on what any one lawyer chose not to learn. *Giglio v. United States*, 405 U.S. 150, 154 (1972).

The decision below announces a rule with obvious consequences: a prosecutor who intends to elicit a defendant's own words from a witness does not need to give any pretrial notice so long as he refrains from asking the witness, before trial, exactly what those words were. That is an incentive for willful ignorance in the area of race, which demands heightened care. The question is recurring, was preserved at every stage, and the facts are undisputed. This Court should grant review.

1. **The decision below conflicts with this Court's due process precedent on notice and on the State's obligation to abide by its own assurances.**

- i. **Relevant Law**

"No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." *Cole v. Arkansas*, 333 U.S. 196, 201 (1948). The right to "reasonable notice of a charge against him, and an opportunity to be heard in his defense" is "basic in our system of jurisprudence," and it includes, "as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." *In re Oliver*, 333 U.S. 257, 273 (1948).

This Court has applied that principle beyond the charging document to the issues the adversary process will actually decide. For example, in *Lankford*, a capital sentencing proceeded despite no prior notice given to the defendant or his counsel that such a sentence would be sought. This Court held that the resulting “practical effect of concealing from the parties the principal issue to be decided” violated due process, because “[n]otice of issues to be resolved by the adversary process is a fundamental characteristic of fair procedure.” 500 U.S. at 126-127. *See also Gardner v. Florida*, 430 U.S. 349, 362 (1977) (plurality opinion) (due process violated by death sentence imposed “on the basis of information which he had no opportunity to deny or explain”); *In re Ruffalo*, 390 U.S. 544, 551 (1968) (adversary proceedings of a quasi-criminal nature “become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused,” because “[h]e can then be given no opportunity to expunge the earlier statements and start afresh”).

Louisiana has extended that principle, by statute, to a defendant’s own words. Article 716(B) requires the State, on the defendant’s written motion, to disclose “the existence, but not the contents, of any oral confession or statement of any nature made by the defendant . . . which the district attorney intends to offer in its case in

chief at the trial, with the information as to when, where, and to whom such oral confession or statement was made.”

The Louisiana Supreme Court has explained the purpose of this rule gives a “defendant sufficient notice of each inculpatory statement the state intends to use” in order to “permit defendant a fair opportunity to meet the issue.” *State v. Jackson*, 450 So. 2d 621, 630 (La. 1984). “If a defendant is misled by state responses relative to the state’s possession of an oral inculpatory statement and is lulled into a misapprehension of the strength of the state’s case and suffers prejudice when the statement is subsequently introduced at trial, basic unfairness results which constitutes reversible error.” *Id.* Once a State creates an entitlement of that kind, the Fourteenth Amendment “preserves [it] against arbitrary deprivation by the State.” *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

ii. The State’s own conduct put race before the jury without notice.

The state appellate courts treated the issue as one of pure surprise: the prosecutor asked an innocent question and an unpredictable witness said something no one expected. The record does not support that account, and the court’s own findings contradict it.

First, the State admitted that it interviewed Ms. Williamson the day before she testified and learned that she would say Mr. Ward called Mr. Jackson a “bum,” referred to “people like that.” and used “other offensive language.” (App., *infra*, 91a, 96a). Those are clearly “statement[s] of any nature made by the defendant” within article 716(B), and the State plainly “intend[ed] to offer” them as it twice asked Ms. Williamson “What was Mr. Ward saying?” (App., *infra*, 56a, 63a). The article thus required disclosure of the existence of the statement and details such as “when, where, and to whom” it was made, not its precise wording. The State’s professed ignorance of the single most inflammatory word therefore excused nothing under the statute’s own terms. The court of appeal never addressed this point; it analyzed only whether the State knew of “the racial epithet.” (App., *infra*, 10a).

Second, the State was not indifferent to race before trial. It asked Mrs. Rainge in her pretrial interview whether she had heard Ward use racial epithets, and Mrs. Rainge testified that she told the prosecutor she had not heard any such language. ROA. 5/5/22, p. 33. The State opened its case with testimony from Jonathan Guy, who claimed Mr. Ward had made an offensive remark to a Hispanic Uber driver earlier in the evening. ROA. 5/3/22, p. 15. A prosecutor who canvasses his witnesses for racial slurs, interviews his key witness the day before she testifies, and then asks her in

front of the jury what the defendant “was saying” cannot plausibly claim to have been ambushed by her answer. Further, the Fourth Circuit found as a fact that the prosecutor, “aware of her racially-charged testimony,” nonetheless “solicited this testimony” again by repeating the question. (App., *infra*, 41a). The Louisiana Supreme Court did not disturb that finding; it held only that the witness was recounting the defendant’s “own words,” so the reference to race was “not attributable to the prosecutor” for purposes of Louisiana’s mistrial statute. (App., *infra*, 25a).

Third, the State made an affirmative representation on which the defense was entitled to rely. Five days before trial, in a written filing under the very article the defense had invoked, the State identified innocuous statements Mr. Ward had made to police officers while in the back of a police unit. (App., *infra*, 124a). That filing was, in substance, an assurance that no other statement attributed to Mr. Ward would be offered. The defense prepared for a trial about whether a drunk man who woke to a stranger’s hands in his pockets used more force than the law allows. After the first day of testimony, the trial became about whether Mr. Ward was a racist.

- iii. **Due process prohibits the State from lulling a defendant with an assurance and then convicting him with what the assurance concealed.**

Mr. Ward is not asking this Court to create a constitutional right to discovery, as he acknowledges this Court has said that “[t]here is no general constitutional right to discovery in a criminal case, and *Brady* did not create one[.]” *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). In *Gray v. Netherland*, 518 U.S. 152 (1996), this Court held, in the special context of federal habeas review governed by *Teague v. Lane*, 489 U.S. 288 (1989), that a bare “notice-of-evidence claim” would require a new rule. *Gray*, 518 U.S. at 167-170. But the *Gray* Court distinguished a second theory, which it called the “misrepresentation claim,” and acknowledged that this Court’s precedents “would lend support to [such] a claim if it could be shown that the prosecutor deliberately misled” the defense. *Id.* at 165 (discussing *Mooney v. Holohan*, 294 U.S. 103 (1935), and *Raley v. Ohio*, 360 U.S. 423 (1959)). *Raley* itself involved no deliberate deception; the Court reversed convictions because “to sustain the judgment . . . after the Commission had acted as it did would be to sanction the most indefensible sort of entrapment by the State.” 360 U.S. at 438.

This case falls within the line *Gray* preserved, not the one it declined to extend. The State did not simply decline to preview its evidence. It responded to a statutory demand for notice of the defendant’s statements with a written notice that omitted the statements it then used. It did so after interviewing the witness and learning that

she would attribute derogatory statements to the defendant. And it did so in a case where the statute and the State's own filing all told the defense that the notice could be relied on. Whether the omission is called a misrepresentation or, in the terminology of *State v. Jackson, supra*, being "lulled into a misapprehension," the constitutional principle is the same one this Court applied in *Raley*. The State may not induce reliance on its own assurance and then punish that reliance.

This Court's discovery cases point the same way. Due process "does speak to the balance of forces between the accused and his accuser," *Wardius v. Oregon*, 412 U.S. 470, 474 (1973), and "the State's inherent information-gathering advantages suggest that if there is to be any imbalance in discovery rights, it should work in the defendant's favor," *id.* at 475 n.9. This Court has enforced notice rules against defendants with the exclusion of the defense witness, on the reasoning that "[d]iscovery, like cross-examination, minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony," and that "[l]awyers are accustomed to meeting deadlines." *Taylor v. Illinois*, 484 U.S. 400, 411-412, 415 (1988). The adversary system "is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played." *Williams v. Florida*, 399 U.S. 78, 82 (1970). A rule that binds the accused to disclose his alibi

witnesses on pain of preclusion but permits the State to serve a statutory notice of the defendant's statements and then elicit an undisclosed racial epithet from a witness it interviewed the day before, is not a balance of forces, but rather the imbalance *Wardius* forbids.

iv. The prosecutor cannot evade its obligation by failing to ask.

The decision below rests entirely on what the individual prosecutor said he did not know. This Court has never allowed the State's constitutional obligations to turn on that. "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). "[W]hether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government." *Giglio*, 405 U.S. at 154. "Unless, indeed, the adversary system of prosecution is to descend to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of truth, the government simply cannot avoid responsibility for knowing" what its own case will consist of. *Kyles*, 514 U.S. at 439. The prudent prosecutor "will resolve doubtful questions in favor of disclosure." *United States v. Agurs*, 427 U.S. 97, 108 (1976).

The rule below inverts those principles. Under it, a prosecutor who has interviewed a witness, learned that she will attribute derogatory statements to the defendant, and decided to ask her at trial what the defendant said, may withhold notice under a mandatory statute so long as he did not pin down the precise wording. The less the prosecutor asks, the less he must disclose; the less he discloses, the freer he is to be “surprised” in front of the jury. That is not a discovery rule. It is a license for the trial by ambush that this Court has condemned in every context in which it has considered the question.

2. The State court’s decisions cannot be reconciled with precedent recognizing that race is different.

i. Relevant Law

“Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.” *Rose v. Mitchell*, 443 U.S. 545, 555 (1979). Racial bias is “a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice,” and “[t]his Court’s decisions demonstrate that racial bias implicates unique historical, constitutional, and institutional concerns.” *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 224 (2017). “Some toxins can be deadly in small doses,” and when a jury hears evidence “that expressly

makes a defendant's race directly pertinent," its impact "cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record." *Buck*, 580 U.S. at 122. "Our law punishes people for what they do, not who they are." *Id.* at 123. The Constitution prohibits racially biased prosecutorial arguments. *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). And "[e]qual justice under law requires a criminal trial free of racial discrimination," *Flowers v. Mississippi*, 588 U.S. 284, 301 (2019), a guarantee that this Court has enforced without regard to which race is the defendant's and which the victim's. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 206 (2023) ("Eliminating racial discrimination means eliminating all of it.").

Louisiana law is, on paper, at least as protective. Article 770(1) makes a mistrial mandatory when the prosecutor refers, "directly or indirectly," to race in a manner "not material and relevant" that "might create prejudice against the defendant," and provides that an admonition "shall not be sufficient." The Louisiana Supreme Court has described "the unbroken line of jurisprudence holding that an improper appeal to racial prejudice in violation of La. C.Cr.P. art. 770(1) is *per se* prejudicial and a mistrial is mandatory," *Thompson*, 233 So. 3d at 561, has held such an appeal to be structural error not subject to harmless error review, *id.* at 562-563,

and has recognized that “race is such a sensitive matter that a single appeal to racial prejudice furnishes grounds for a mistrial,” *id.* at 560 (quoting *State v. Wilson*, 404 So. 2d 968, 970 (La. 1981)).

ii. **Notice is critically important where the evidence is a purported racial slur.**

This Court’s precedents do not merely condemn racial prejudice in the abstract, but rather prescribe procedures for guarding against it. However, the applicability of these procedures require pretrial notice that race will be an issue in the case. Where racial issues are “inextricably bound up with the conduct of the trial,” the Constitution requires that the defendant be permitted to question prospective jurors about racial prejudice. *Ristaino v. Ross*, 424 U.S. 589, 597 (1976) (describing *Ham v. South Carolina*, 409 U.S. 524 (1973)); *see also Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion); *McCleskey v. Kemp*, 481 U.S. 279, 309 n.30 (1987) (“If the circumstances of a particular case indicate a significant likelihood that racial bias may influence a jury, the Constitution requires questioning as to such bias.”). The *Ham* line of cases is meaningless if the State can keep the racial issue to itself until after voir dire and then introduce it through a witness it interviewed the day before trial.

That is what happened here. The defense selected a jury for a case about self-defense and the degree of force, with no reason to ask a single juror about racial attitudes. As defense counsel put it to the trial court, “You have a white young man they accused of killing a Black man, and you have a jury composed of 10 minorities.” (App., *infra*, 109a). Then, on the first day of testimony, the State’s key eyewitness told those jurors that Mr. Ward had called Mr. Jackson the most inflammatory word in the English language while beating him.

Notice would also have allowed the defense to test the accusation before it reached the jury. Ms. Williamson was a witness who had left the scene, given no statement to the police, and been located by the State only “at the last minute” after years of “difficulty in finding” her. (App., *infra*, 91a). Her 911 call made no reference to a slur, nor did any police report provided in discovery. Ms. Williamson testified that “two guys” leaving the bar had helped her restrain Mr. Ward, (App., *infra*, 57a), even though Mrs. Rainge, who was present, testified that no one but Mr. Rainge intervened. ROA. 5/5/22, p. 28. Ms. Williamson was also “deaf in one ear.” With notice, the defense could have subpoenaed the “two guys,” had the 911 recording analyzed, developed impeachment, and asked the trial court to rule on relevance and prejudice under Article 770(1) and the Louisiana Code of Evidence before the jury

ever heard the word. Without notice, the defense could only object after the fact to a bell that could not be unrung, which is precisely why the Louisiana Legislature provided in article 770 that an admonition “shall not be sufficient.”

iii. **The Louisiana Supreme Court’s relevance rationale does not resolve the issue of notice.**

The Louisiana Supreme Court reasoned that the slur “merely recounted defendant’s own words and actions during the charged offense” and was “material and relevant to establishing the defendant’s specific intent to commit the charged offense of second-degree murder.” (App., *infra*, 25a). Two things are wrong with that as a response to the constitutional claim.

The first is that relevance is not notice. This Court has recognized that “[e]vidence of a defendant’s previous declarations or statements is commonly admitted in criminal trials subject to evidentiary rules dealing with relevancy, reliability, and the like.” *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993). Notice rules are among the rules to which such evidence is subject. *See* Fed. R. Crim. P. 16(a)(1)(A); Fed. R. Evid. 404(b)(3); La. C.Cr.P. art. 716. That a defendant’s own statement may be admissible on notice says nothing about whether it may be admitted without it. Indeed, the very premise that a racial epithet is powerful

evidence of intent is the reason the accused must have notice of it: powerful evidence demands an opportunity to meet it.

The second is that the jury did not convict Mr. Ward of the offense for which the Louisiana Supreme Court deemed the slur relevant. It rejected second-degree murder and returned the responsive verdict of manslaughter, which under the only definition the trial court read to the jury required a homicide “committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection.” (App., *infra*, 32a-33a). The jury, in other words, found that Mr. Ward acted in response to provocation, a finding difficult to reconcile with the picture of an unprovoked racial attack that the epithet was offered to paint. Whatever work the epithet did in the jury room, it did not establish the offense the State offered it to prove. What it could do was taint the questions the jury was asked to decide, which was whether Mr. Ward acted in self-defense and whether the force he used was reasonable. To these questions, a racial slur could only contribute the suggestion that the jurors should judge the defendant by who he is rather than what he did. *See Buck*, 580 U.S. at 123. The Louisiana Supreme Court’s rationale thus confirms, rather than answers, the constitutional problem: the State was permitted to inject race into a trial about self-defense on a

theory of relevance that the verdict did not vindicate, and it was permitted to do so without a word of notice.

3. The question is important, recurring, and cleanly presented.

The scenario in this case is not unusual. Prosecutors routinely interview witnesses on the eve of trial. Witnesses routinely say things in those interviews that never appear in a police report. And when a witness attributes a racial slur to a defendant for the first time from the stand, the prosecutor's response is, as here, that he did not know she would say it. *See, e.g., Martinez v. Quick*, 134 F.4th 1046 (10th Cir. 2025) (deferring on federal habeas review to a state court's finding that a witness's attribution of a racial slur to a capital defendant at sentencing was "unexpected" where the prosecutor "told [the] trial court at [the] mistrial motion that he did not know [the] witness was going to say what she said"). The decision below supplies a rule for those cases, and the rule is that the State's professed ignorance ends the inquiry, even when the State has interviewed the witness, canvassed other witnesses for slurs, served a statutory notice omitting the statement, and asked the question twice.

This Court has not decided whether the Due Process Clause is offended when a State, having given a defendant an affirmative assurance under its own notice

statute, elicits undisclosed and racially inflammatory statements attributed to him. *Gray* reserved the general question in the habeas posture and expressly preserved the misrepresentation theory on which this petition rests. 518 U.S. at 165, 167-170. Only this Court can settle it, and this case presents it without complication. The claim was raised at trial in the oral and written motions for mistrial, on direct appeal in an assignment of error framed in terms of due process, and in the Louisiana Supreme Court, which passed on it by denying review after its own earlier per curiam. *See* Rule 14.1(g)(i). The state courts decided the federal questions on the merits, and nothing in their opinions rests on an independent and adequate state ground. *See Michigan v. Long*, 463 U.S. 1032, 1040-1041 (1983). The operative facts, the timing and content of the State's interview, the State's written notice, the questions the prosecutor asked and the answers he received, and the composition of the jury, are all in the record and undisputed. Because this case comes on direct review, no question of retroactivity or deference under the federal habeas statute is presented; the only question is what the Constitution requires.

The stakes for Mr. Ward are thirty years at hard labor. The stakes for the administration of justice are broader. When the State promises notice of a defendant's statements, but instead introduces an unnoticed accusation of racial hatred before a

jury never questioned on racial attitudes, it deprives the defendant of a fair trial and results in a verdict unworthy of any confidence.

CONCLUSION

For these reasons, Garrett Ward respectfully prays that this Court grant his petition, vacate the judgments of the Louisiana appellate courts, and remand this matter for further proceedings.

Respectfully submitted:

/S/ JANE HOGAN

JANE C. HOGAN, ESQ.
HOGAN ATTORNEYS
310 N CHERRY ST
HAMMOND, LA 70401
PHONE: (985) 542-7730
EMAIL: JANE@HOGANATTORNEYS.COM

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