

Fifth Circuit Court of Appeal
State of Louisiana

NO. 25-KP-312

STATE OF LOUISIANA

VERSUS

ALLISON NGUYEN

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 24-5360, DIVISION "P"
HONORABLE LEE V. FAULKNER, JR., JUDGE PRESIDING

November 12, 2025

MARC E. JOHNSON
JUDGE

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and John J. Molaison, Jr.

CONVICTION AFFIRMED;
REMANDED WITH INSTRUCTIONS

MEJ
JGG
JJM

COUNSEL FOR DEFENDANT/RELATOR,
ALLISON NGUYEN

A. Bruce Netterville
Diana L. Netterville

COUNSEL FOR PLAINTIFF/RESPONDENT,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Thomas J. Butler
Darren A. Allemand
Sarah Helmstetter
Mallory Grefer

JOHNSON, J.

Defendant, Allison Nguyen, seeks review of her misdemeanor conviction for domestic abuse battery rendered in the 24th Judicial District Court, Division “P”. For the following reasons, we affirm Defendant’s conviction and remand the matter with instructions.

FACTS AND PROCEDURAL HISTORY

On December 19, 2024, the Jefferson Parish District Attorney filed a bill of information charging Defendant with domestic abuse battery, in violation of La. R.S. 14:35.3. Defendant pleaded not guilty on January 17, 2025.

On March 7, 2025, defense counsel filed a “Notice of Intent to Admit Evidence Pursuant to La Code of Evidence 404 (2) and Expert Testimony.” On March 10, 2025, the State filed the “State’s Notice of Intent to Introduce Evidence Under La. C.E. Article 412.4 or in the Alternative 404(B).” Defense counsel filed a motion for jury trial on May 13, 2025. The motion was denied at a hearing on May 14, 2025. A writ on the matter was filed by defense counsel on June 10, 2025 and was denied on June 13, 2025. *State v. Nguyen*, 25-255 (La. App. 5 Cir. 6/13/25), 2025 WL 1672963.

On June 12, 2025, defense counsel filed a motion to continue. The following day, the State filed an opposition to the motion to continue. The order at the bottom of the defense’s motion is dated June 12, 2025, and it set a hearing for June 18, 2025. However, “Denied” also appears to be typed below the order.

On June 18, 2025, defense counsel orally moved for a jury trial, which was denied. A bench trial was held that day. At trial, Officer Arianna Heard with the Gretna Police Department explained that on October 20, 2024, she responded to a Planet Fitness regarding a female striking a male covered in blood.¹ Upon

¹ In the 9-1-1 call, a Planet Fitness employee requested the police and an ambulance because a man was bleeding after a woman punched him.

arriving, she encountered Randy Le, who was standing outside with a laceration on his forehead and blood on his shirt. His injury was photographed. Officer Heard testified that EMS was automatically dispatched because of the nature of the call. After she declared that the scene was safe, Mr. Le was transported by EMS for medical assistance.

Officer Heard stated she also spoke to Defendant, who did not have any injuries. Officer Heard explained that, when she arrived, Defendant was already secured in handcuffs by the first responding officer. After advising Defendant of her *Miranda*² rights, she spoke to Defendant as she sat in the back of another officer's car. Defendant agreed to speak to the officer, and their entire interaction was captured on Officer Heard's body-worn camera.

Officer Heard's body-camera footage was played during the trial. Starting at 27:57 in the video,³ Officer Heard approached Defendant in the back of a police vehicle and advised her of her rights. Defendant relayed that she was in the corner of the gym near the weights. She said it was supposed to be just her and her friend but that Mr. Le wanted to come as well. Defendant stated she entered the gym as a guest of her friend, who was a member. However, Officer Heard informed Defendant that she had a membership, and Defendant agreed but qualified that "it had been a long time." Defendant explained that Mr. Le "snuck in."

In the body-camera video, Officer Heard asked Defendant why she hit Mr. Le. She replied that she told Mr. Le, "Let's go home." He wanted his air pods back. She indicated that Mr. Le was being disrespectful and "talking s**t" in Vietnamese, so she "slapped the s**t out of him" in front of everyone. Another officer asked what Mr. Le said in Vietnamese. Defendant explained that he called

² *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

³ The prosecutor played the video at trial starting at 27:57. She then played it again at 28:46. It is unclear if a part was skipped or if it was just paused due to an objection by the defense. The video was continued until 37:14.

her a “dumb ho.” She said, “Leave me alone. Like, what the f**k? Are you serious? So I slapped the s**t out of him. But I didn’t know that my phone would actually cut his face.” The second officer asked if she had her phone in her hand when it happened. Defendant agreed and said, “[U]sually at home when we hit each other, well he hits me too at home, yeah he gives bruises to me, but when I hit him, he doesn’t get a cut mark or bruises.” Officer Heard asked Defendant what she did after she hit Mr. Le, and Defendant replied that she went back to her friend and continued working out. She reiterated that she hit him with her phone and then left.

In the video, the second officer began to ask Defendant if it was normal, but she interrupted him to say this was not the first time this happened. The officer then asked if it was normal for them to degrade or belittle each other in public or at home and if it “went one way.” She indicated that Mr. Le did the same thing, and that it was aggravating. The second officer asked her, considering this had happened before, what happened that night that made her have enough. She said she just wanted to slap him. Defendant stated Mr. Le was not invited to the gym, and he had an attitude. She said he was “talking s**t” about her and calling her a “dumb ho” in front of others. Defendant explained that it was supposed to only be her and her friend. She acknowledged that they were in the car together and he was supposed to take a bus downtown. Defendant said she did not know Mr. Le was inside of the gym, and that is why she got mad. Officer Heard moved Defendant to a different police vehicle. The officer and Defendant talked as the vehicle moved. Defendant confirmed that she and Mr. Le were together for seven years and living together for four years.

On cross-examination, the video was played, starting at 19:19:47.⁴ Officer Heard testified that Mr. Le used the alias Andy and Randy and said his name was Andy Le. She was asked if she was aware that Andy Le was Mr. Le's brother and that he gave his brother's date of birth. Officer Heard answered negatively. Officer Heard stated that Mr. Le clarified that his name was Randy when he was in the back of the ambulance.

Officer Heard testified that Defendant did not say that she was afraid of Mr. Le, but she said they had incidents in the past. The officer further explained that Defendant did not say that Mr. Le threatened her at Planet Fitness, or that he told Defendant, "Wait until we get home." Officer Heard also said Defendant did not say she was in imminent fear of Mr. Le or that she acted in self-defense.

Officer Heard recalled that she went into Planet Fitness to gather evidence. She obtained surveillance footage of the incident. In the video, Mr. Le sat alone on a piece of gym equipment. He appeared to have air pods in his ears. Defendant approached him from out of frame; she had several items in one hand and held out her other hand. He removed his air pods and stood up. They briefly talked. Defendant appeared to then strike Mr. Le while being slightly out of frame of the video before they both are out of frame entirely. Defendant then walked away.

Officer Heard stated she did not observe Mr. Le move aggressively toward Defendant. Officer Heard provided that the video did not have audio. She agreed that there was a moment where Defendant and Mr. Le interacted and spoke. She described that there was a very brief interaction before Defendant hit Mr. Le with a

⁴ It appears that this timestamp, unlike the earlier one, referred to the time in the video itself, not the time based on the length of the video. This video timestamp corresponds to forty-four seconds into the video. Officer Heard approached a man who was bleeding from his head. He stated his name was Andy Le and provided a birthday. The man said he was there working out. He went there with his girlfriend, who hit him in the head with a phone. EMS personnel arrived and assessed his injury. While in the ambulance, the man gave an EMT his license and clarified to Officer Heard that his name was Randy. He stated he and Defendant were together three years. He described that she needed discipline but not jail. He provided that they lived together and that she was on probation. Officer Heard then left the ambulance.

phone. Officer Heard explained that employees had already started cleaning up Mr. Le's blood but that there was a trail of blood from the bathroom to the front desk. The officer stated that, after the investigation, Defendant was arrested for domestic abuse battery.

Officer Heard acknowledged that she ran Mr. Le's criminal record and saw charges for possession of marijuana and battery of a police officer. The officer was shown a certified copy of convictions for possession of marijuana, drug paraphernalia, battery of a police officer, and resisting arrest. She was also shown a conviction for Mr. Le for possession of marijuana within one thousand feet of a school zone, which she agreed she saw when she ran his record.⁵

Body-camera footage from another officer was admitted into evidence by defense counsel and published.⁶ Officer Heard acknowledged that Defendant appeared to say, "[H]e hits me at home." She explained that it was not said to her and that it occurred before she arrived. The officer explained that she found "one previous JP report where there was a domestic disturbance" between Defendant and Mr. Le. Defendant called the police on Mr. Le.

Melinda Nguyen, Defendant's mother, stated she lived at 7424 Jessup Drive with Defendant, Defendant's father, and Defendant's brother. She stated that at the

⁵ The prosecutor objected to the admission of multiple exhibits related to Mr. Le's criminal record. The judge sustained the objections, and the defense proffered them into the record.

⁶ The record does not specify what portion of the 39-minute-long video was played. In the beginning of the video, Mr. Le identified Defendant as the person that hit him and said she did it because she thought he was looking at girls. Defendant and her friend then exited the Planet Fitness. Defendant told the officer that Mr. Le was disrespecting her so she hit him. She stated, "He always hits me at home, though. That's the thing. He hits me at home. He abuses me at home. I'm tired of his s**t." The officer then placed Defendant in handcuffs. Defendant repeated that Mr. Le was being disrespectful and that she hit him because he hits her at home. She admitted that she slapped him. When the officer asked how Mr. Le was bleeding, Defendant stated she hit him with her phone. She indicated that she had done it before a few times and that he hit her. She said, "That boy's not innocent." The officer said she did not have the right to do it, and Defendant replied that she should have hit him outside. The officer clarified that she should not have hit him at all. Defendant stated he hits her too and asked if it was okay for him to hit her. The officer asked if she reports it; she stated they live together. She then acknowledged that she does not report it. She indicated that she previously reported it and that she was told they could not live together. Defendant explained that it was her mother's house and that Mr. Le was supposed to have left. As she was placed in the back of a police vehicle, the officer asked if Mr. Le was being disrespectful by looking at other girls. Defendant replied that it was not just looking at other girls but that he was also cursing her in front of everybody. She indicated that she and Mr. Le were not dating but that they were living together.

time of the incident, Mr. Le, Defendant's ex-boyfriend, was also living there. She agreed that she was trying to get him out of the house. She described that Defendant and Mr. Le dated off and on for seven years and that she did not know if they were dating on the day of the incident. Ms. Nguyen stated she saw bruising on Defendant's face, and that Defendant and Mr. Le fought each other. Ms. Nguyen stated Mr. Le did not hit Defendant in front of her; she never saw Defendant abuse Mr. Le. She stated Defendant was afraid of Mr. Le. She stated that Defendant and Mr. Le were no longer together at the time of trial. Ms. Nguyen testified that she received a text message from Mr. Le three or four weeks before trial asking if Defendant was there. Ms. Nguyen did not respond to the message.

Defendant, who was 28 years old at the time of trial, testified that she lived at 7424 Jessup Drive with her parents and brother. She recalled that she and a friend went to Planet Fitness. Mr. Le was her boyfriend at the time. She acknowledged that in the video previously played, Mr. Le lied when he said he was Andy Le. She explained that her friend was a member of Planet Fitness. Mr. Le was not a member and snuck in. He was not supposed to go with Defendant. Defendant agreed that video showed her approach Mr. Le. She indicated that she asked him about air pods and that he gave them to her. Defendant testified that Mr. Le then said to her, "You're a dumb ho. Watch when we get home." She stated she took his statement to mean that he was going to hit her because he had done so previously. Defendant acknowledged that Mr. Le was her boyfriend in October 2024. She agreed that she and Mr. Le were in the car together when they went to Planet Fitness.

She stated she was telling the truth when she said in the video that Mr. Le hits her. Defendant recalled that he previously hit her many times. Defendant indicated that at one point, she and Mr. Le lived in Houston. While there, he hit

her because he did not want to take her to work. She recalled that she took the key, Mr. Le became angry, and he grabbed her hair and hit her. She said he hit her another time in Houston.

Defendant stated she has known Mr. Le since middle school, and they dated for four years. She testified that he had choked her a few times. When asked if she ever lost consciousness, Defendant stated that the first time she passed out, Mr. Le was scared. Defendant testified that she put up with it because Mr. Le had a car, and she did not. Defendant was asked if she remembered another fight “when he was going to, he was harassing [her] and going to put [her] on social media and said, ‘Look at this whore.’” She indicated that she remembered the incident, and that he dragged her out of a car, scraping her leg. Defendant was asked if she ever tried to press charges against Mr. Le. She replied, “Um, I did at one point. But I didn’t get a chance to do it.”

Defendant identified a text message from Mr. Le sent several weeks prior. She stated he said “not,” explaining that this is another term for “ho.”⁷ Defendant acknowledged that she pleaded guilty to aggravated battery on October 10, 2023, and was sentenced to “three years at hard labor suspended, three years active probation” for an offense on July 4, 2022. She agreed that the current charge was not the first time she was arrested for domestic abuse against Mr. Le.

Defendant was asked why she did not tell the police about Mr. Le calling her a “ho” or threatening her. She replied, “At that time, I couldn’t really like say everything that I needed to say to the cop, because everything happened like so fast.” She said she could have informed the officers about a threat of harm by Mr. Le but did not tell them. Defendant acknowledged that the Planet Fitness video showed her hit Mr. Le.

⁷ This text message was identified as an exhibit at trial, but it was not offered to be admitted into evidence.

At the conclusion of the presentation of evidence, the trial judge found Defendant guilty of domestic abuse battery.

On June 23, 2025, defense counsel filed a “Motion for New Trial and Incorporated Memorandum.” The trial court denied the motion on June 25, 2025. The trial court then sentenced Defendant to six months in parish prison. Defense filed a motion for a writ of review on the same day. On July 17, 2025, Defendant timely filed the instant writ application.

ASSIGNMENTS OF ERROR

In her writ application, Defendant alleges that the trial court erred when: 1) it required a hostile demonstration or an overt act to apply the justification of self-defense; 2) failed to acquit Defendant or grant a new trial under the uncalled witness rule; 3) failed to allow evidence under La. C.E. art. 404(B) relative to the alleged victim; 4) sentenced Defendant to the maximum six-month sentence; and 5) failed to grant a jury trial.

LAW AND ANALYSIS

Self-Defense

Defendant alleges that the trial court erred when it required a hostile demonstration or an overt act occur for the justification of self-defense to be applicable to this matter. Defendant contends that there was un rebutted evidence of abuse by the victim against her. She asserts that the prosecutor argued and the court accepted the “hostile demonstration rule” and was unfamiliar with “La. R.S. [sic] 404 (B) (2).”

The State argues that Defendant misunderstands La. C.E. art. 404(B)(2). The State explains that, despite Defendant’s claim, defense counsel was allowed to admit evidence under La. C.E. art. 404(B)(2) that the victim allegedly abused her in the past. It maintains that the Article governs the admissibility of evidence and is not a substantive theory of self-defense. The State contends that it did not argue

that there was not an overt act or hostile demonstration; but rather, it said the video did not show someone in imminent danger of receiving a battery.

On March 7, 2025, defense counsel filed a “Notice of Intent to Admit Evidence Pursuant to La [sic] Code of Evidence 404 (2) and Expert Testimony.” In part, he explained that “[D]efendant pleads self-defense but is not required to show an overt act on the part of the victim because there is a history of assaultive behavior by the victim and will show specific instances of domestic abuse.”

On June 23, 2025, Defendant filed a “Motion for New Trial and Incorporated Memorandum.” In part, she stated the State argued that the defense must show an overt act or a hostile demonstration by the victim at the time of the offense. She argued that the trial court agreed with the State and improperly ruled that self-defense requires a hostile demonstration or overt act by the victim at the time of the offense, citing to La. C.E. art. 404(B)(2). She stated a new trial was required as a result of that ruling.

At a hearing on June 25, 2025, defense counsel argued that an overt act or hostile demonstration was not necessary for a domestic case. He stated, “A woman can live with a man for a long period of time and get beaten up every day and one day wake up in the morning, look over at him while he’s fast asleep and slit his throat and claim self-defense under the law as it is now.” He pointed out that Defendant said Mr. Le hit her at home. Counsel argued that the court would not consider self-defense and ruled against Defendant because there was no overt act by the victim at the time of the offense. He asserted that the victim told Defendant to wait until they got home. Counsel stated there was a history of assaultive behavior. He contended that self-defense could be raised when there is a history of assaultive behavior within a domestic situation.

The trial judge explained that he did not recall sustaining an objection relative to that position and allowed defense counsel to present that position. The

judge explained, “So because of my ruling as to her guilt does not mean that I did not consider what you put before the Court, Counsel.” The judge stated that counsel presented pictures and was allowed to present that defense. Counsel replied that during trial, the prosecutor argued that there was not a hostile demonstration or overt act. The judge responded that he listened to all of the arguments, and defense counsel’s assertion that the court did not allow him to present that position was false. Defense counsel stated, “Well, then if we did present that position, I don’t see how you could have possibly found her guilty, unless you just discounted anything she had to say. And there was nothing, no rebuttal.” The judge agreed.

The trial judge explained:

I discounted what she said, Counsel, because I heard what she said relative to, “He beats me at home.” And I also heard her say that, “He was disrespectful. And I wanted to slap the s**t out of him.” She never said anything about being in any danger or anything, Counsel. Let’s present the whole picture here, okay? Let’s not cherry-pick what’s good for us and what’s not good for us we ignore. So don’t try to put the Court in the position --... --where the Court has, basically, ignored evidence, which I didn’t.

The trial judge stated that he heard the defense, weighed it, and ruled.

Counsel asserted that Defendant did not have to be in any immediate danger to use self-defense if she is an abused person. The judge said he heard it, and the prosecutor said she does not have to. The judge repeated his assertion that he heard the defense, weighed it, and ruled. The prosecutor contended that the State “never argued there was an overt act that needed to be necessary because it is a domestic relationship.” She asserted the State argued that Defendant was not in imminent harm of receiving a battery at the time she attacked the victim. The prosecutor further averred that, even if the court believed that the victim verbally threatened Defendant, it was clear that the threat was not immediate and that Defendant’s actions were unreasonable. The court denied the motion for new trial.

La. C.E. art. 404(B)(2) states:

In the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of the victim's prior threats against the accused or the accused's state of mind as to the victim's dangerous character is not admissible; provided that when the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship such as, but not limited to, the husband-wife, parent-child, or concubinage relationship, it shall not be necessary to first show a hostile demonstration or overt act on the part of the victim in order to introduce evidence of the dangerous character of the victim, including specific instances of conduct and domestic violence; and further provided that an expert's opinion as to the effects of the prior assaultive acts on the accused's state of mind is admissible.

(Emphasis added).

Here, there was evidence presented of prior abuse by the victim towards Defendant. Defendant and her mother testified about the abuse. The transcript reflects that the judge said he considered the evidence presented. We find that Defendant's contention that the judge was not familiar with La. C.E. art. 404(B)(2) or that the judge required a hostile demonstration or overt act to determine Defendant acted in self-defense was misplaced. As pointed out by the State, La. C.E. art. 404(B)(2) relates to the admissibility of evidence. The judge allowed the introduction of evidence of the victim's dangerous character into evidence, considered the claim of self-defense, and rejected it. We find that this assignment of error lacks merit.

Motion for New Trial

Defendant alleges that the trial court erred when it failed to acquit Defendant or grant a new trial under the uncalled witness rule. She asserts that the State had control of the victim and quotes the prosecutor as having said on June 13, 2025, that it had a cooperative witness who was not out-of-state and was incarcerated. Defendant explains that the State did not notify the court or the defense that it did not have the witness, and that the State failed to call him. Defendant states that she

argued at trial that his lack of presence inhibited her ability to introduce impeachment evidence into the record. She concludes that the case should be reversed.

The State explains that it is unclear whether the uncalled witness rule applies to Louisiana criminal cases and contends that this is not the case to make that determination. It points out that the issue was not raised prior to the verdict and was, therefore, not preserved for review. It also asserts that in its opposition to the motion to continue, the State said the victim was not located out of state and was not incarcerated. The State contends that it was prohibited by La. R.S. 15:257.1(B) from obtaining a material witness warrant for the victim because this is a domestic abuse battery case. It asserts the victim was not in the State's control. The State argues that, even if the uncalled witness rule applied, the presumption was rebuttable, and enough evidence was presented to prove the case.

In her rebuttal, Defendant argues again that the State said it had the witness, but that was not an accurate statement. She asserts that the State needed "him to rebut Mr. [sic] Nguyen testimony." She contends that the State's brief is purposefully ambiguous about the victim's availability because he would not have helped the State's case.

On June 12, 2025, defense counsel filed a motion to continue, wherein he asked that the matter be continued without date because the defense's writ to this Court would probably have to be filed with the Louisiana Supreme Court. He asserted that it was in everyone's best interest for this Court to have time to rule.

On June 13, 2025, the State filed an opposition to the motion to continue. In pertinent part, the State asserted that it had a "cooperative victim in this matter who is not located out of state and is also not incarcerated." It further provided, "Part of the basis for Defense's writ seems to be that we should not prosecute cases where the victim is uncooperative; however, at this time and to the State's knowledge,

there is a cooperative victim in this case.” The State said the victim and several witnesses were coordinated for trial on June 18, 2025, and that the trial should proceed as planned. The court ultimately denied the motion. The matter proceeded to trial on June 18, 2025, and the court found Defendant guilty of domestic abuse battery.

On June 23, 2025, Defendant filed a “Motion for New Trial and Incorporated Memorandum.” In part, she asserted that the State failed to produce the victim, who would have provided exculpatory evidence regarding his abuse of Defendant and of his threat toward her at the time of the offense. Defendant argued that the State purposefully failed to produce the victim. She said that the State asserted the witness was cooperative, he was not out-of-state, and he was incarcerated. Defendant explained that two days before trial, the State requested a subpoena for the victim. She argued that the State had a duty to disclose to the defense and the court if the witness was not cooperating, and the State misled the defense and the court. Defendant explained that, if the State was purposefully being misleading, and the information was exculpatory, then the State had a duty to produce it. She referenced the “uncalled witness rule.” Defendant asked for a new trial.

On June 25, 2025, defense counsel stated that he filed a motion to continue several days before trial, and the State filed a “scathing objection.” He explained that the State said it had the victim, that he was cooperating, and that the trial should not be continued. Counsel asserted that the State did not present the victim, and posited that he was not cooperating or that he would give exculpatory evidence. He explained that the State filed a subpoena for the victim two days before trial. Defense counsel said that the State called him a liar. He opined that the State had an obligation to notify him and the court that the victim was no longer cooperating.

Defense counsel then explained the uncalled witness rule. He provided, “If you have a witness under your control, and that was this witness, and you don’t call him, there’s a presumption that that witness would not help you.” Counsel said the witness had three outstanding warrants and that the State could have sent the police to pick him up. He reiterated that by not appearing, there is a presumption that his testimony would not help the State’s case.

The prosecutor questioned the existence of the uncalled witness rule. She explained that, at the time the State filed its opposition to the continuance, it believed the victim was cooperative and that there were documented phone calls. The prosecutor stated that three days after filing the opposition, the victim failed to appear at an agreed-upon meeting. She summarized that the victim was contacted, and he stated that he went to Texas and forgot about the trial. She explained that the victim said he would try to make arrangements. The prosecutor asserted that it was not accurate that the State did not try to get the victim there and referenced the subpoena. She stated the victim was contacted multiple times, but his phone eventually no longer accepted calls. She said they tried calling him from different phone numbers but none went through. The prosecutor asserted that the State did not know why he became uncooperative. She contended that, when the victim did not appear, the State proceeded with the evidence it had.

Defense counsel read aloud from the State’s prior response and asserted that the victim was not cooperative if he left the state. He argued that the State had a duty to provide notice that the victim was not present, once it became aware that he would not appear. He averred that it was obvious the victim would not appear for the trial. Counsel stated the victim was in another state and in jail but that the State disagreed. He argued that the State never had the victim. The trial court denied the motion for new trial.

La. C.Cr.P. art. 841(A) provides, in pertinent part: “An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence.” To seek appellate review of an alleged trial court error, a party must make a contemporaneous objection at trial and must state the grounds for the objection. *State v. Nix*, 22-446 (La. App. 5 Cir. 10/31/23), 374 So.3d 212, 216, writ denied, 23-1540 (La. 4/23/24), 383 So.3d 604; *State v. Williams*, 20-46 (La. App. 5 Cir. 12/30/20), 308 So.3d 791, 838. The purpose of the requirement of a contemporaneous objection is to put the trial judge on notice of an alleged irregularity, so that he or she may cure a legitimate problem and prevent the defendant from gambling for a favorable verdict and then resorting to appeal on errors that might easily have been corrected by an objection. *State v. Patin*, 13-618 (La. App. 5 Cir. 9/24/14), 150 So.3d 435, 441. A contemporaneous objection allows opposing counsel to reply or to correct the problem, and may also prevent the error entirely. *Id.* at 441-42.

Here, because Defendant failed to raise her uncalled witness rule objection prior to the rendition of the verdict by the trial judge, we find that she is precluded from raising the issue on appeal. (See, *State v. Chester*, 19-363 (La. App. 5 Cir. 2/3/21), 314 So.3d 914, 975, writ denied, 21-350 (La. 6/8/21), 317 So.3d 321, holding, “we find that Defendant raising his claim in his motion for new trial does not suffice as a contemporaneous objection under La. C.Cr.P. art. 841.”)

La. C.E. art. 404(B) Evidence

Defendant explains that she attempted to introduce the victim’s criminal history of violence and drugs into evidence under La. C.E. art. 404(B), but the judge prompted the State to object. She says that the defense was not permitted to introduce the convictions, which would have proven the victim’s intent and motive to beat her when they got home. She argues that, if the State had produced the

witness, the convictions would have been admissible for impeachment purposes.

The State asserts that Defendant mischaracterized how its objection occurred. It argues that the defense sought to introduce the evidence at issue under “reverse 404(B).” The State points out that Defendant did not provide notice of the reverse 404(B) evidence, and as such, it was inadmissible. It argues that regardless of the untimeliness and lack of notice, the victim’s prior offenses might have been relevant if they were for domestic violence; however, they were actually for marijuana crimes and battering/resisting a police officer. The State contends that defense counsel’s response to its objection demonstrates that the evidence was forbidden propensity evidence.

In response, Defendant reiterated that the court should have allowed the evidence under La. C.E. art. 404(B) to show the victim’s intent. At trial, while cross-examining Officer Heard, defense counsel showed her Defense Exhibit 1, which he characterized as a certified copy of convictions for possession of marijuana, drug paraphernalia, battery of a police officer, and resisting arrest. He then showed her Defense Exhibit 2, which he described as a conviction in case number 16-1116 for possession of marijuana within one thousand feet of a school zone. When counsel offered the exhibits into evidence, the judge asked if there was an objection to the exhibits. The prosecutor objected based on the relevance of the victim’s prior convictions. When asked for the relevancy of the evidence, defense counsel replied, “It’s a violent offense. He’s a violent person. He’s a weed smoker which means he was probably loaded that night.” The judge sustained the objection as to both exhibits.

Defense counsel then offered into evidence Defense Exhibit 3, characterized as a certified copy relating to possession of marijuana in a school zone associated with case number 16-116. The prosecutor objected based on relevance, and the court sustained the objection. Counsel stated, “I’m going to show and we’re going

to proffer these, Judge. And D 4, we're going to show you an objection, another objection to third offense marijuana, a felony. I offer, file and introduce D 4." The judge said there was no testimony. Defense counsel stated it was self-authenticating and asked Officer Heard if Defense Exhibit 4 was a conviction. She answered affirmatively. Counsel then indicated that it was a certified copy and offered it into evidence. The prosecutor again objected based on relevance, and the judge sustained the objection.

Defense counsel proffered Defense Exhibit 5. He asked Officer Heard if Mr. Le was convicted of another third offense possession of marijuana. She agreed. Counsel asked if it was a conviction. Officer Heard pointed out that it appeared to be a duplicate and that Defense Exhibits 2 and 3 also appeared to be the same. Counsel said, "Let's go with D 4. How about 18-411, another possession of marijuana, third offense." The judge asked what exhibit he was on; counsel replied Defense Exhibit 6. The judge asked what was Exhibit 5. Counsel replied that Defense Exhibit 5 was a conviction for case number 17-2049. The judge explained that he thought Defense Exhibit 5 was a duplicate. Officer Heard clarified that Defense Exhibit 5 was a duplicate of 4 and that Defense Exhibit 3 was a duplicate of Defense Exhibit 2. Defense counsel stated, "1 is 16-116. I mean 2 is 16-116. And 1 is 15-4766, a conviction. D 3 is one -- no. That's right. Never mind. D 3 will be 17-2049, a conviction, possession of marijuana, third offense, a felony." The judge asked what counsel was handing the officer. He replied Defense Exhibit 3. The judge then indicated that it was case number 17-2449. Counsel stated it was a certified copy and offered Defense Exhibit 3 into evidence. The prosecutor again objected based on relevance. *Id.* at 46.

The judge stated he wanted to get the record straight. He explained, "D 1 is 15-4766; D 2 is 16-1166 [sic]; D 3 is 17-2049. The Court previously sustained the objections by the State." Defense counsel noted his objection and proffers. He

then showed Officer Heard Defense Exhibit 4, associated with 18-4811, which the officer agreed was a conviction. Counsel offered it into evidence, the prosecutor objected, and the judge sustained the objection. Counsel proffered it into the record. He then stated Defense Exhibit 5 was 17-2049 and directed the officer to look at it. The judge then asked what Defense Exhibit 3 was. Counsel replied that it was 17-2049. Officer Heard answered affirmatively when she was asked if she was the investigating officer. Defense counsel asked her if she looked at his record, and she replied that she looked at both of their records. Counsel stated he wanted to show her “18-2998” and asked if it was a conviction. The prosecutor asked what exhibit it was. Counsel stated it was Defense Exhibit 5. Counsel asked Officer Heard if she was aware of the conviction in 18-2998. She stated she was aware of the charge but not the conviction.⁸

In her writ application, Defendant included several exhibits related to Mr. Le’s prior convictions. A minute entry for case number 15-4766 dated November 30, 2015, shows that on that day, Randy Le pleaded guilty to possession of marijuana weighing less than fourteen grams, in violation of La. R.S. 40:966(C); possession of drug paraphernalia, in violation of La. R.S. 40:1023; battery of a police officer, in violation of La. R.S. 14:34.2; and resisting an officer, in violation of La. R.S. 14:108. This minute entry was proffered at trial as Defense Exhibit 1.

A minute entry for case number 16-1116 dated June 20, 2018, reflects that Randy Le had his probation revoked related to a guilty plea entered on October 31, 2016, for possession of marijuana within 1000 feet of a school or church, in violation of La. R.S. 40:981.3. This minute entry was proffered at trial as Defense Exhibit 2.

⁸ The minute entry for trial and the list of evidence provided by the trial court in response to this Court’s order to supplement reflects that only four exhibits were proffered into evidence: Defense Exhibit 1 (certified copy of minute entry for 15-4766), Defense Exhibit 2 (certified copy of minute entry for 16-1116), Defense Exhibit 3 (certified copy of minute entry for 17-2049), and Defense Exhibit 4 (certified copy of minute entry for 18-4811).

A minute entry for case number 17-2049 dated July 9, 2018, showed that Randy Le pleaded guilty that day to possession of marijuana third offense, in violation of La. R.S. 40:966(C). This minute entry was proffered at trial as Defense Exhibit 3.

In a minute entry for case number 18-4811 dated September 13, 2018, Randy Le pleaded guilty to possession of marijuana third offense, in violation of La. R.S. 40:966(C). This was proffered at trial as Defense Exhibit 4.

A separate minute entry also dated July 9, 2018, but in case number 18-2998 showed that Randy Le pleaded guilty that day to possession of marijuana third offense, in violation of La. R.S. 40:966(C). It appears this exhibit was intended to be Defense Exhibit 5, but it was not offered to be admitted into evidence at trial.

Exhibits and attachments not properly and officially offered and admitted into evidence cannot be considered, even if it is physically filed into the trial court record. *State v. Leggett*, 18-647, (La. App. 5 Cir. 3/18/19), 2019 WL 1246911; *State v. Whitley*, 14-737 (La. App. 5 Cir. 3/25/15), 169 So.3d 658, 660 n.1 (citing *Denoux v. Vessel Mgmt. Services, Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84, 88). Documents attached to memoranda do not constitute evidence and cannot be considered as such on appeal. *Denoux*, 983 So.2d at 88.⁹ Thus, we find that Exhibits J and K attached to the instant writ application will not be considered.

In a minute entry for case number 19-624 dated September 6, 2022, Randy Le had his probation revoked for guilty pleas (entered on February 24, 2021) to prostitution, in violation of La. R.S. 14:82, and possession of marijuana, in violation of La. R.S. 40:966(C). Based on the case number, this minute entry was not proffered into evidence at trial.

⁹ Although this is a writ application on a “misdemeanor appeal,” this Court has cited the aforementioned jurisprudence in a prior writ application regarding misdemeanor convictions. *See State v. Winstead*, 16-217 (La. App. 5 Cir. 5/26/16), 193 So.3d 565, 574.

To understand the admissibility of “reverse 404(B)” evidence used against a victim, it is helpful to first consider Article 404(B) evidence as used against a defendant. In Louisiana, the fundamental rule governing the use of evidence of other crimes, wrongs, or acts is that such evidence is not admissible to prove that the accused committed the charged crime because he has committed other such crimes in the past. La. C.E. art. 404(B)(1); *State v. Perez-Espinosa*, 23-353 (La. App. 5 Cir. 5/22/24), 389 So.3d 284, 292, *writs denied*, 24-431 (La. 10/15/24), 394 So.3d 812, and 24-811 (La. 10/15/24), 394 So.3d 818, and 24-464 (La. 10/15/24), 394 So.3d 823. The prosecution is not allowed to suggest to the jury that because the defendant has a “propensity” to do certain criminal things, the defendant is guilty in the case before the jury. *See* Art. 404. Character evidence generally not admissible in civil or criminal trial to prove conduct; exceptions; other criminal acts, La. Prac. Evidence Art. 404 (2024 ed.). This is the so called “propensity bar.” The propensity bar in Article 404 prohibits any evidence that is introduced to portray the defendant in a negative light. Additionally, the propensity bar should prevent any party in a criminal case from introducing character to prove conduct. *See id.* Evidence of other crimes, wrongs, or acts committed by the defendant is generally inadmissible because of the “substantial risk of grave prejudice to the defendant.” *Perez-Espinosa*, 389 So.3d at 292.

However, while the State may not admit evidence of other crimes to prove the defendant is a person of bad character, evidence of prior crimes may be admitted if the State establishes an independent relevance aside from proving the defendant’s criminal character. *Id.* Evidence of other crimes, wrongs, or acts is allowed to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or when it relates to conduct, formerly referred to as *res gestae*, that constitutes an integral part of the act or transaction

that is the subject of the present proceeding. La. C.E. art. 404(B)(1); *Perez-Espinosa*, 389 So.3d at 292.

This Court has previously determined that a defendant may utilize La. C.E. art. 404(B) in the same manner that the State may seek to introduce evidence under the article, sometimes referred to as “reverse 404(B)” evidence. *State v. Terrio*, 18-421 (La. App. 5 Cir. 8/7/18), 2018 WL 3748409. *See also State v. Beal*, 15-806 (La. App. 5 Cir. 4/11/16) (unpublished writ disposition). “In contrast to ordinary ‘other crimes’ evidence, which is used to incriminate criminal defendants, ‘reverse 404(b)’ evidence is utilized to exonerate defendants.” *United States v. Dabit*, No. CR 19-143-JWD-RLB, 2023 WL 334782 (M.D. La. Jan. 20, 2023).

“All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Louisiana, this Code of Evidence, or other legislation. Evidence which is not relevant is not admissible.” La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403. A district court’s ruling on the admissibility of evidence will not be reversed absent an abuse of discretion. *State v. Expose*, 24-498 (La. App. 5 Cir. 5/21/25), 2025 WL 1452955.

In her brief, Defendant asserts that the proffered minute entries would have shown that Mr. Le was a violent drug user with outstanding warrants. She asserts that they would have “proven his intents, among other motivations to beat her again when they got home.” Defendant vaguely references La. C.E. art. 404(B) but does not cite to specific case law. She does not explain how guilty pleas from 2015 and 2018 relating to possession of marijuana, possession of drug paraphernalia, and battery of a police officer form a motivation for Mr. Le to hurt or threaten to hurt Defendant in 2024. On the showing made, we find that the trial

judge did not err in finding that the victim's prior convictions were not relevant and in excluding them from trial.

Excessive Sentence

Defendant argues that the court erred in imposing a maximum sentence because she only has one prior arrest that resulted in a deferred sentence and that she has a perfect probationary record. She references La. C.Cr.P. art. 894.1(26) and La. C.Cr.P. art. 894.1(C). She contends that the trial court failed to consider that the victim's conduct included or facilitated its commission and that the victim provoked her by physically abusing her.

The State avers that the sentence was not excessive. It explains that the judge was aware of Defendant's additional background, as set out in the State's notice of intent to introduce evidence under La. C.E. art. 412.2. Specifically, the State informed the judge *via* its notice that Defendant previously attacked her aunt, "accidentally" struck a child that her aunt was holding, grabbed a knife, and struck her aunt in the face with the knife multiple times. The State opines that the sentence in this matter was justified.

In her rebuttal, Defendant reiterated that she had one prior conviction. Here, she asserts for the first time that the trial court did not specify any grounds under La. C.Cr.P. art. 894.1 and states the sentence was not particularized.

La. C.Cr.P. art. 881.1(B) provides that a motion for reconsideration of sentence "shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based." La. C.Cr.P. art. 881.1(E) provides that "failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review."

This Court has held that the failure to file a motion to reconsider sentence, or to state the specific grounds upon which the motion is based, limits a defendant to a bare review of the sentence for constitutional excessiveness. *State v. Manuel*, 20-172 (La. App. 5 Cir. 6/2/21), 325 So.3d 513, 568, *writ denied*, 21-926 (La. 10/12/21), 325 So.3d 1071. This Court has held that when the specific grounds for objection to the sentences, including alleged non-compliance with La. C.Cr.P. art. 894.1, are not specifically raised in the trial court, then these issues are not included in the bare review for constitutional excessiveness, and the defendant is precluded from raising these issues on appeal. *State v. Robertson*, 23-525 (La. App. 5 Cir. 10/23/24), 398 So.3d 767, 775.¹⁰

Here, Defendant has not included or stated that a motion to reconsider sentence was filed. Further, the transcript from the sentencing hearing does not show that Defendant objected to the sentence at the time it was imposed. Accordingly, we find that Defendant is limited to a review for constitutional excessiveness.

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. Article I, § 20 of the Louisiana Constitution also prohibits cruel and unusual punishment but further explicitly prohibits excessive punishment. *State v. Ford*, 24-197 (La. App. 5 Cir. 2/26/25), 406 So.3d 652, 680, *writ denied*, 25-356 (La. 5/20/25), 409 So.3d 216. A sentence is considered excessive, even when it is within the applicable statutory range “if it makes no measurable contribution to acceptable goals of punishment and is nothing more than the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime.” *Id.* A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to

¹⁰ La. C.Cr.P. art. 894.1(A) states in part, “When a defendant has been convicted of a felony or misdemeanor, the court should impose a sentence of imprisonment if any of the following occurs... [.]”

society, it shocks the sense of justice. *State v. Beckendorf*, 24-242 (La. App. 5 Cir. 2/26/25), 406 So.3d 729, 733, writ denied, 25-379 (La. 5/20/25), 409 So.3d 222.

A trial judge is in the best position to consider the aggravating and mitigating circumstances of a particular case and, therefore, is given broad discretion when imposing a sentence. *Ford*, 406 So.3d at 680. “The issue on appeal is whether the trial court abused its discretion, not whether another sentence might have been more appropriate.” *State v. Hidalgo*, 20-89 (La. App. 5 Cir. 3/18/20), 293 So.3d 780, 789.¹¹ The review of sentences under La. Const. art. 1, § 20 does not provide an appellate court with a vehicle for substituting its judgment for that of a trial judge as to what punishment is most appropriate in a given case. *Ford*, 406 So.3d at 680. Generally, courts reserve maximum sentences for cases involving the most serious violations of the offense charged and the worst type of offender. *Beckendorf*, 406 So.3d at 734.

The appellate court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La. C.Cr.P. art. 881.4(D); *State v. Reed*, 24-59 (La. App. 5 Cir. 12/30/24), 409 So.3d 980, 1007. In reviewing a sentence for excessiveness, the reviewing court shall consider the crime and the punishment in light of the harm to society and gauge whether the penalty is so disproportionate as to shock the court’s sense of justice, while recognizing the trial court’s wide discretion. *Id.* In reviewing a trial court’s sentencing discretion, three factors are considered: 1) the nature of the crime; 2) the nature and background of the offender; and 3) the sentence imposed for similar crimes by the same court and other courts. However, there is no requirement that specific matters be given any particular weight at sentencing. *Id.*

¹¹ In *Hidalgo*, this Court referenced an appeal; however, it is noted that the matter was a writ for a misdemeanor conviction.

Here, Defendant was convicted of domestic abuse battery, in violation of La. R.S. 14:35.3. Pursuant to R.S. 14:35.3(C), “On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than six months.” The statute further specifies that at least 48 hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

On June 25, 2025, the judge sentenced Defendant to six months in parish prison. The judge stated that he considered the sentencing guidelines in accordance with Article 894.1. He also acknowledged Defendant’s criminal history and that she was on probation for the crime of aggravated battery.

Considering the nature of the crime, we acknowledge that the video of the incident showed that the victim was keeping to himself when Defendant approached him and hit him in the head with her cell phone. After Defendant hit him, she walked away, apparently unconcerned for his well-being. The victim suffered from a laceration to his head, requiring medical attention. Defendant told officers at the scene that the victim was “talking s**t” about her and that she wanted to slap him. Evidence at trial established that Defendant and Mr. Le dated off and on for years and lived together with Defendant’s family. Defendant described that they both hit each other at home. However, she did not testify that the victim threatened her or that she feared him.

We next consider the nature and background of Defendant. Defendant’s background was not extensively addressed at trial or at sentencing. We find that Defendant has a history of engaging in violence not only with the victim here but also with another family member. Additionally, in the incident involving Defendant’s aunt, Defendant used a dangerous weapon and showed a disregard for the safety of a child in her aunt’s arms. At the time of the charged offense,

Defendant was on probation for that aggravated battery. We find that committing this offense while on probation for another offense demonstrates a general disregard for the sentence previously imposed. Based on the foregoing, we find that the trial court did not err in imposing the sentence. We conclude that the sentence is not excessive and that this assignment of error lacks merit.

Jury Trial

Defendant asserts that the trial court erred in failing to grant her a jury trial because domestic violence is a serious offense. She contends that because a domestic violence conviction limits a person's gun rights, she was entitled to a jury trial.

The State argues that because this Court already denied a writ application on this issue, this Court should decline to revisit this issue under the law of the case doctrine. It provides that, alternatively, Defendant was not entitled to a jury trial. The State explains that Defendant makes a constitutional challenge to La. C.Cr.P. art. 779, but she did not particularize this argument; instead, she filed a boilerplate motion before trial. It also points out that Defendant did not serve the attorney general as required for such a challenge. As such, the State contends that the claim is not properly before this Court. It further asserts that, even if it is properly before this Court, it lacks merit.

In Defendant's rebuttal, she restated that domestic violence is a serious offense and that this Court characterized it as such in its prior writ disposition. She explains that such a conviction cannot be expunged and impacts her gun rights.

In defense counsel's motion for a jury trial, which was filed on May 13, 2025, he stated that Defendant was charged with La. R.S. 14:35.3. He alleged that the victim would not appear and was in another state. He said that Defendant was on felony probation, and a potential conviction was "so grievous" that she should be afforded a jury trial.

At the motion hearing held on May 14, 2025,¹² defense counsel argued that “in *Duncan*¹³ and in some of the refining cases of *Duncan* they talk about serious -- it has to be serious to get a jury trial.” He argued that, once a person was convicted of domestic violence, under federal law, one could not own a gun or have the conviction expunged. He compared the limitation of jury trials for certain misdemeanors to the *Ramos*¹⁴ court’s ruling. He explained that, at the time that “they” went to a “ten-two” verdict, was around the same time that “the African-Americans” were going to start getting on juries. He explained that the motivation for the rule of judge or misdemeanor trials excluding a jury was for the same reason and stated, “And they have, basically, an all-white judiciary deciding your decision.” He asserted that certain precedents needed to be overruled.

Defense counsel explained that he requested a jury trial for Defendant because constitutionally, one could not get a fair trial before the court. He asserted that the victim was not there and was in Houston. He stated that the victim was texting Defendant’s mother to try to contact her. He alleged that video evidence did not have audio and it was not known what occurred before the incident. Defense counsel averred that the State would not try the case if it was before a jury and alleged that the State thought it could “sneak it past the judge.” He argued that the State would be embarrassed if it had to try the case before a jury.

The State responded that Defendant was charged with one count of misdemeanor domestic abuse battery. It stated that *Ramos* did not apply and argued that *Duncan*, which said that a defendant is not entitled to a jury trial for a misdemeanor charge, was applicable. It asked for Defendant’s motion to be denied. Defense counsel responded that *Duncan* “set it at six months,” and he

¹² According to Uniform Rule – Courts of Appeal, Rule 2-1.14, “Any record lodged in this court may, with leave of court, be used, without necessity of duplication, in any other case on appeal or on writ.”

¹³ *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

¹⁴ *Ramos v. Louisiana*, 590 U.S. 83, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020).

believed it was ultimately reversed. He stated, “And he got his jury trial because it was down in Plaquemines Parish.” He also informed the court that the instant charge had “broader implications” because Defendant was on probation. The trial court denied the motion, and defense counsel noted an objection and stated his intent to file a writ.

On May 28, 2025, defense counsel filed a “Notice of Intent to File Writ of Certiorari” and “Motion to Set Return Date.” The trial court set a return date of June 12, 2025. He filed a writ application on June 10, 2025.

On June 13, 2025, this Court denied the writ. This Court explained that, although Defendant was charged with a serious offense, because it is not punishable by more than six months imprisonment, she is not entitled to a trial by jury. This Court stated that “the provisions of La. C.Cr.P. are mandatory.” This Court found that the district court’s decision was correct and denied the writ. *Nguyen*, 25-255, 2025 WL 1672963.

Defense counsel raised the issue again prior to trial on June 18, 2025. He orally moved for a jury trial, and the judge asked if it was the same issue that was already before this Court. Counsel acknowledged that it was but that he wanted to make a record for it in the event that the issue is appealed. The judge replied that this Court had already ruled on it and that he did not need to “re-rule on a motion.” Counsel verified that the court’s “ruling is going to be the same,” and the judge answered affirmatively. Defense counsel objected.

On June 23, 2025, Defendant filed a “Motion for New Trial and Incorporated Memorandum.” In part, she asserted that the trial court erred in failing to grant a jury trial. She stated she was entitled to a jury trial because domestic violence is a serious offense that takes away a person’s second amendment rights and has other serious repercussions. Defendant acknowledged that this Court denied her pretrial writ on the matter but pointed out that this Court

labeled it a “serious offense.” She stated a six-person jury would have found her not guilty. Defendant requested a new trial.

On June 25, 2025, the defense orally argued the motion for new trial. In relevant part, defense counsel stated that the court should have granted the motion for a jury trial and that a jury would have quickly found Defendant not guilty. Counsel explained that a domestic violence conviction stays on a person’s record for life and impedes a person’s second amendment rights. He asserted that the constitution “doesn’t say six months” and that it provides a right to a jury trial.

The judge stated there was already a ruling from a higher court but that defense counsel could make his record. The judge noted that he already denied it. The prosecutor similarly explained that the matter was already ruled on by this Court. She stated that while counsel might not like the law, it is what it is. The judge then denied the motion for new trial.

“Under the doctrine of the ‘law of the case,’ an appellate court will generally decline to consider its own rulings of law on a subsequent appeal in the same case.”¹⁵ *State v. Perilloux*, 21-448 (La. App. 5 Cir. 12/20/23), 378 So.3d 280, 308, writ denied, 24-104 (La. 9/4/24), 391 So.3d 1055. One reason for imposition of the doctrine is the avoidance of indefinite re-litigation of the same issue, but it will not be applied in cases of palpable former error. *State v. Sly*, 23-60 (La. App. 5 Cir. 11/2/23), 376 So.3d 1047, 1079, writ denied, 23-1588 (La. 4/23/24), 383 So.3d 608. The law of the case doctrine is discretionary. Reconsideration of a prior ruling is warranted when, in light of a subsequent trial record, it is apparent that the determination was patently erroneous and produced unjust results. *Perilloux*, 378 So.3d at 308.

We find that, by this assignment of error, Defendant seeks to have this Court reconsider its prior ruling finding that she was not entitled to a jury trial. However,

¹⁵ The instant matter is not a subsequent appeal; rather, it is a writ for a misdemeanor conviction.

Defendant's writ application does not allege new facts or additional jurisprudence. Therefore, we find that Defendant has not shown that, in light of a subsequent trial record, reconsideration is warranted or that this Court's prior determination was patently erroneous or produced unjust results. As such, we find that this assignment of error lacks merit.

Errors Patent Discussion

Generally, an errors patent review is not conducted on misdemeanor convictions. Nevertheless, this Court has on occasion considered a "misdemeanor appeal" as an application for supervisory review of the case and has conducted an errors patent review. *See State v. Jones*, 12-640 (La. App. 5 Cir. 10/30/13), 128 So.3d 436, 443 n.4.¹⁶

A review for errors patent according to La. C.Cr.P. art. 920;¹⁷ *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5th Cir. 1990), was conducted on the record presented before us.

La. R.S. 14:35.3(C) states that at least 48 hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. The sentencing transcript does not indicate that the trial court restricted benefits for any period of time.

Generally, when a trial court does not mention the restriction of benefits, such conditions are deemed to exist by operation of law under La. R.S. 15:301.1. *State v. Cepriano*, 21-262 (La. App. 5 Cir. 3/30/22), 339 So.3d 32, 47; *State v. Williams*, 00-1725 (La. 11/28/01), 800 So.2d 790, 801. However, in this case, the trial court's failure to impose the statutory restrictions is not cured by La. R.S. 15:301.1 because the portion of the sentence to be served without benefits is left to

¹⁶ *See also State v. Dufrene*, 20-290 (La. App. 5 Cir. 12/9/20), 307 So.3d 1182.

¹⁷ La. C.Cr.P. art. 920(2) states that an errors patent is "[a]n error that is discoverable by an inspection of the pleadings and proceedings and without inspection of the evidence."

the discretion of the trial court. *See State v. Smith*, 23-399 (La. App. 5 Cir. 12/27/23), 380 So.3d 109, 117.¹⁸

Accordingly, we remand the case for resentencing with instructions to the district court to impose Defendant's sentence in accordance with the provisions of La. R.S. 14:35.3(C), as it relates to the restriction of benefits. *See State in Interest of J.R.*, 22-339 (La. App. 5 Cir. 11/30/22), 354 So.3d 172, 179-80 (where J.R. admitted to the allegations of battery of a dating partner, in violation of La R.S. 14:34.9. This Court found that the juvenile court failed to order that at least 48 hours of the disposition be served without the benefit of parole, probation, or suspension of sentence as set forth in the statute. Because the language of the sentencing provision gave the trial judge discretion in determining the exact length of time that benefits are to be restricted, this Court remanded this matter and instructed the juvenile court to impose at least 48 hours of the disposition without the benefit of parole, probation, or suspension of sentence.).

Additionally, the transcript does not show that Defendant was advised pursuant to La. C.Cr.P. art. 930.8. If a trial court fails to advise, or provides an incomplete advisal, pursuant to La. C.Cr.P. art. 930.8, the appellate court may correct this error by informing the defendant of the applicable prescriptive period for post-conviction relief by means of its opinion. *State v. Little*, 24-82 (La. App. 5 Cir. 10/30/24), 398 So.3d 846, 858. Accordingly, we advise Defendant by way of its opinion, that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the

¹⁸ In *Smith*, 380 So.3d at 117, this Court applied La. R.S. 15:301.1 to a "misdemeanor appeal" wherein the sentence required that at least 48 hours of the sentence be imposed without the benefit of parole, probation, or suspension of sentence. The court sentenced the defendant to serve six months in the parish prison with all but 48 hours suspended and further placed the defendant on active probation with certain conditions. However, the sentencing transcript reflected that the trial court did not specify the period of time during which the defendant's sentence was imposed without the benefit of parole. As such, this Court remanded the matter and instructed the trial court to impose at least 48 hours of the sentence without the benefit of parole.

provisions of La. C.Cr.P. arts. 914 or 922. *See Smith*, 380 So.3d at 117.

DECREE

For the foregoing reasons, we affirm Defendant's conviction. We remand the matter to the district court for imposition of Defendant's sentence in accordance with the provisions of La. R.S. 14:35.3(C), as it relates to the restriction of benefits.

CONVICTION AFFIRMED;
REMANDED WITH INSTRUCTIONS

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 12, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

25-KP-312

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)		
HON. LEE V. FAULKNER, JR. (DISTRICT JUDGE)		
A. BRUCE NETTERVILLE (RELATOR)	DARREN A. ALLEMAND (RESPONDENT)	THOMAS J. BUTLER (RESPONDENT)

MAILED

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