STATE OF LOUISIANA

VERSUS

JARRELL NEAL

NO. 25-K-158

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

May 19, 2025

Morgan Naquin
Deputy Clerk

IN RE JARRELL NEAL

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JACQUELINE F. MALONEY, DIVISION "D", NUMBER 23-4811

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Marc E. Johnson

WRIT GRANTED

Relator, Jarrell Neal, seeks review of the 24th Judicial District Court's February 21, 2025 ruling increasing his bond to $600,000 on each count (cash or commercial only) and March 12, 2025 ruling increasing his bond to $1 million (cash or commercial only) on each count. For the following reasons, we grant Relator's writ.

In 1998, Relator was indicted on two counts of first-degree murder; he was subsequently convicted of those charges and his death sentences became final in 2001. *State v. Neal*, 00-674 (La. 6/29/01), 796 So.2d 649, 651-52, *certiorari denied*, *rehearing denied*, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231, 70 USLW 3578, U.S. La., Mar. 18, 2002 (No. 01-7772). Relator's *Brady*[1] violation claims were relegated to post-conviction relief; he claimed that he remained in the vehicle while his uncle, Arthur Darby, and brother confronted the victims in

[1] *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963),

attempts to collect a drug debt, and the State withheld evidence that he could have used to impeach Darby, who turned State's witness. *See id.* at 652.

Relator filed an application for a writ of habeas corpus in the United States District Court for the Eastern District of Louisiana ("E.D. La.") in 2016. *Neal v. Vannoy*, 603 F.Supp.3d 310 (E.D. La. 2022), *adhered to*, 2022 WL2187415 (E.D. La. 2022), *aff'd*, 78 F.4th 775 (5th Cir. 2023). The federal district court's original 2022 order denied Relator's suppression of evidence claim, but granted relief as to his exhausted ineffective assistance of counsel claim. *Id.* The Court issued a supplemental order subsequent to the Supreme Court's decisions in *Brown v. Davenport*, -- U.S. --, 142 S. Ct. 1510, 212 L.Ed.2d 463 (2022) and *Shinn v. Ramirez*, -- U.S. --, 142 S. Ct. 1718, 212 L.Ed.2d 713 (2022). Pursuant to *Brown* and *Shinn*, the federal district court held that "under the facts and circumstances of [Relator's] case, the *law and justice require relief*." *Id.* at 781-82. (Emphasis added). The United States Fifth Circuit Court of Appeals ultimately affirmed the judgment, which granted Relator's petition for a writ of habeas corpus due to ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, and his convictions and sentences were ordered to be set aside. *Id.* at 779.

In October 2023, Relator's charges were dismissed, and the State indicted Relator again, this time on two counts of second-degree murder. At the bond hearing held immediately following the return of the indictment, Relator's mother, wife, and aunt testified about his character and their willingness to ensure that he would appear in court as required and use their property as surety for his bond. Relator also presented evidence regarding how he made use of his time on death row: certificates from classes and programs he completed and his State DOC Disciplinary Conduct Report. His counsel stressed that he only had one, non-violent, disciplinary infraction in 2011. The State submitted 10 exhibits, including

court filings and minutes, the opposition it filed in the federal district court, and the brief and reply brief to the federal Fifth Circuit. Relator urges that those exhibits described the facts of the case in great detail. The State also filed the federal district court's Order and Reasons for granting relator a new trial, along with forensic reports and Jefferson Parish Sheriff's Office documents.

At the end of the bond hearing, Relator requested that the court set his bond at $200,000 on each count; the State asked that he be held on a $750,000 bond on each count. The district court considered the exhibits, evidence, and arguments, and then set Relator's bond at $300,000, cash, commercial, or surety, on each count. The district court also ordered Relator to participate in the Gretna Home Incarceration Program, if he made bond. Relator's family posted bond the following week, mostly with property.

Relator avers that between October 2023 and February 21, 2025, he has had over a dozen court settings and he and his wife arrived early for each one. Further, his assigned home incarceration officer, Craig Dougherty, was subpoenaed for nearly every one of those court dates. Mr. Dougherty testified that Relator was compliant with every demand and requirement of the program.

In April, 2024, a new judge, the Honorable Jacqueline Maloney, was elected to Division "D" in the 24th Judicial District Court for Jefferson Parish, and became the new presiding judge over Relator's case. According to the writ application, among the earliest motions the new judge ruled upon were a Motion to Prohibit Improper Testimony and "Thin Blue Line" Argument and a Motion in Limine to Exclude Testimony and Argument Regarding Post-Homicide Conduct. Relator states both motions explicitly and nearly exclusively reference the allegations that Mr. Neal shot at police officers after the homicides occurred, and his counsel informed the judge that those facts were considered in the federal Fifth Circuit opinion, which the previous judge considered before he set bail. At the hearings

held before Judge Maloney, Officer Dougherty continued to testify that Relator did what was asked of him, without exception. At the end of the suppression hearing, the court, *sua sponte*, raised Relator's bond to $600,000 per count and restricted satisfaction to cash or commercial only. The court also set a bond hearing for March 10, 2025, and warned that the bond may be increased further pending the State's presentation of evidence.

At the March 10, 2025 bond hearing, four character witnesses and Officer Dougherty testified on Relator's behalf. Officer Dougherty testified Relator was constantly monitored via a GPS tracking bracelet and he occasionally left the house to go to church, grocery shopping, attorney visits, or medical appointments – – after first requesting permission. The medical appointments were necessary as he was diagnosed with cancer after his release from Angola. The State presented no witnesses, but resubmitted evidence regarding the 404B evidence it intended to introduce at trial and the exhibits from the prior bond hearing. The court stood in recess for two days to consider the evidence.

On March 12, 2025, the parties presented their arguments. Relator asked the court to re-instate the previous bond of $300,000 on each count, and the State asked the court to raise it to $750,000 on each count. At the end of the hearing, the court raised Mr. Neal's bond to $1 million on each count, expressing "grave concern" for the safety of Relator's uncle who is expected to testify as a witness in the case.

Relator maintains that a bond, once set, can only be raised for good cause under La. C.Cr.P. art. 319. Further, "'good cause' is often triggered by an incident that has occurred since the defendant has been out on bond or an otherwise intervening change in circumstance since the original bond was set." Although the current judge may not have been aware of all of the facts of the case, no new post-release information was presented to the court before or during the bond hearing.

Relator also points out that the new judge previously denied at least two motions that squarely asked the court to prevent the State from using these allegations at trial, and they were discussed during the 404B hearing that had been held several weeks before the bond hearing, so the new trial court judge should have been aware of these facts.

Relator argues in his writ application the alleged late discovery, by a new judge with the duty to be impartial, of facts already in evidence, cannot support the "good cause" needed to raise bond. La C.Cr.P. art 316 makes clear the court has two considerations when affixing the appropriate amount of bail: the safety of the community, and ensuring the presence of the defendant in court. He also argues the judge erred in twice raising his bond based on "improper and punitive considerations rather than the appropriate legal standard."

Further, Relator urges the court's concern for Darby's safety is simply not supported by the record. He disagrees with the court's assertion that he suddenly became aware that Darby would be testifying against him in his upcoming trial during the February 2025 hearing – as each party and the court in this case has acknowledged, Darby's testimony is the primary evidence against Mr. Neal, and "the lynchpin to [the State's] case". Relator maintains the court has no evidence before it that Relator had ever attempted to *contact* Arthur Darby since 1998, or specifically, since he was out on home incarceration. He contends the court's mistaken belief that Darby is in danger, without any supporting evidence, is error.

La. C.Cr.P. art. 319 allows the court to modify bail on its own motion *for good cause* – such as the re-arrest of defendant on new charges, while out on bail.

> Bail must be set according to the factors listed in La. C.Cr.P. art. 316, which include the following:
>
> > (1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.
> > (2) The weight of the evidence against the defendant.

> (3) The previous criminal record of the defendant.
> (4) The ability of the defendant to give bail.
> (5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
> (6) The defendant's voluntary participation in a pretrial drug testing program.
> (7) The absence or presence in the defendant of any controlled dangerous substance.
> (8) Whether the defendant is currently out on a bail undertaking on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.
> (9) Any other circumstances affecting the probability of defendant's appearance.

State v. Halverson, 21-1592 (La. 12/21/21), 329 So.3d 276, 277.

Upon review, we find that the district court committed error when it restricted possible satisfaction of the bond to cash or commercial only. Bail is the *security* given by a person to assure his appearance before the proper court. La. C.Cr.P. art. 311. (Emphasis added). The Official Revision Comments to that article state that the term "*security given* covers every conceivable type of bail, whether it be ... a surety ... or a deposit of money or securities." *State v. Golden*, 546 So.2d 501, 502 (La. App. 2d Cir. 1989), *writ denied*, 547 So.2d 365 (La. 1989). (Emphasis in original). Excessive bail shall not be required. *Before and during trial* a person shall be *bailable by sufficient surety*, except when ... charged with a capital offense and the proof is evident and the presumption of guilt great. *Id*., *citing* Louisiana Constitution Article I § 18. (Emphasis in original).

Notwithstanding the restrictions mandated by La. C.Cr.P. art. 321[2], the "cash [or commercial] only" rule is a violation of a defendant's right to secure bail

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[2] La. C.Cr.P. art. 316 A. provides for five types of bail:

> (1) Bail with a commercial surety.
> (2) Bail with a secured personal surety.
> (3) Bail with an unsecured personal surety.
> (4) Bail without surety.
> (5) Bail with a cash deposit.

Subsection C. (1) prohibits a defendant convicted of a crime of violence from being released on his own personal undertaking, or under an unsecured personal surety.

through a surety under the State Constitution. *See Ass'n of Louisiana Bail Underwriters v. Johnson*, 615 So.2d 1345, 1347 (La. App. 5th Cir. 1993), *writ denied*, 617 So.2d 1184 (La. 1993). In this case, Relator is now charged with second degree murder. Further, there is scientific evidence that challenges the credibility of the witness who testified that Relator shot and killed the victims. The scientific evidence also does not conflict with Relator's version of events, or the testimony of any eyewitness other than Darby. The conditions that allow the one exception provided by law to "the guarantee of pre-trial bail by *sufficient surety*" are not present in this case. *See Golden*, *supra* at 503. (Emphasis in original).

Further, here, there is no evidence of wrongdoing, or of Relator being a danger to society while he was out on bail for over a year prior to the February hearing. *See State v. Collins*, 19-429 (La. App. 5 Cir. 10/25/19), 2019 WL 5538575, at *1-2. No proof was presented of Relator being a danger to Darby, the State's primary witness, at any time during either case, and the officer monitoring him on house arrest testified that he has never seen Relator around any controlled dangerous substances or weapons. With due consideration of the serious nature of the offenses charged (two counts of second degree murder), and other offenses alleged (shooting at police officers), we recognize that Relator has already spent over twenty-two years on death row. However, the federal courts have found the convictions underlying Relator's death sentence could not stand as Relator has satisfied the standards of both *Strickland*, *supra*, and the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA[3]"), in "proving there is a

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[3] *See Neal v. Vannoy*, 78 F.4th 775, 782–83 (5th Cir. 2023).

> To overcome AEDPA's relitigation bar, a prisoner's claim must satisfy one of its narrow exceptions, listed in Section 2254(d):
>
> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim —

reasonable probability that his convictions and death sentence were prejudiced as a result of his counsel's deficient performance." *Neal*, 78 F.4th at 796.

Accordingly, we find that the district court abused its discretion in modifying Relator's bail. Under the circumstances, Relator's conduct to date shows the amount is excessive, and therefore, in violation of the Eighth Amendment of the United States Constitution and La. Const. art. I, § 18. *See Halverson*, *supra*. Further, the court erred in restricting Relator's bond to cash or commercial surety only.

Based on the foregoing, the writ is granted. The district court's judgments raising Relator's bail are vacated and we remand the matter for further proceedings consistent with this disposition.

Gretna, Louisiana, this 19th day of May, 2025.

MEJ
FHW
JGG

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(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

Additionally, a state court's factual determinations are entitled to a mandatory presumption of correctness set out in Section 2254(e)(1):

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a state court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

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25-K-158

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Erica L. Navalance (Relator)
Russell D. Barksdale (Relator)
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