No. 2024-K-00761

In the
Supreme Court of Louisiana

STATE OF LOUISIANA,
Respondent,

v.

MICHAEL STEVEN WHITE,
Petitioner.

On Writ of Certiorari To
Court of Appeal First Circuit, No. 23-KA-0878,
Honorable McClendon, Hester, and Miller, presiding,
The 22nd Judicial District Court, St. Tammany Parish, No. 3984-F-2022,
Honorable Scott Gardner, presiding

AMICUS CURIAE BRIEF OF ATTORNEY GENERAL LIZ MURRILL

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INTRODUCTION

In the decision below, the First Circuit unanimously affirmed defendant Michael Steven White's "convictions, habitual offender adjudication, and sentences" in the face of a sufficiency of the evidence challenge. *State v. White*, 2023-0878 (La. App. 1 Cir. 6/4/24), 391 So. 3d 722, 725, 729, *writ granted*, 2024-00761 (La. 10/7/25). Rather than challenge the propriety of his convictions and sentences in the first instance, White, on appeal, argues only that the jury verdict form, which did not contain a responsive verdict of "Not Guilty," was incomplete and thus reversal is justified on that basis alone. The First Circuit below correctly held this assignment of error similarly "lack[ed] merit." *Id.* at 730. That decision—to refuse to excuse the lack of a contemporaneous objection to the verdict form at trial—relied on Louisiana Code of Criminal Procedure articles 920 and 841 and extensive case law from this Court mandating a contemporaneous objection to be lodged with the trial court to preserve the issue on appeal. *Id.* Because the First Circuit's analysis was sound, this Court should affirm across the board.

However, the First Circuit, in so holding, emphasized the "egregious omission" from the verdict form and the "troubling" fact that "the jurisprudential framework does not allow [that court] to distinguish this error from other charging errors since no contemporaneous objection was lodged." *Id.* at 731. That language appears to request this Court's reconsideration of *State v. Craddock*, 307 So. 2d 342 (La. 1975), and find that the error here constitutes an error patent subject to harmless error review, even in the absence of an objection. The Attorney General respectfully submits this brief to urge the Court to decline that request and instead abide by and re-emphasize the importance of the contemporaneous objection rule.

ARGUMENT

1. Louisiana's contemporaneous objection rule is clear and well settled: "An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence." La. Code Crim. P. art. 841(A). The rule accomplishes at least two important objectives. *First*, by requiring an immediate objection, the rule ensures

that the trial court "may [actually] correct the error," if correction is warranted. *State v. Vallo*, 2013-1369 (La. 1/10/14), 131 So. 3d 835, 835 (quoting *State v. Arvie*, 505 So. 2d 44, 47 (La. 1987)). *Second*, the rule "prevents defense counsel from 'sitting on' an error and gambling unsuccessfully on the verdict, and later resorting to appeal on an error which might have been corrected at trial." *Id.* (quoting *Arvie*, 505 So. 2d at 47). Together, these objectives confirm that the contemporaneous objection rule is sound and must be faithfully administered.

To be sure, the rule is not ironclad. For example, in one often-cited case, this Court permitted appellate review of an erroneous jury charge that wrongly rewrote "the very definition of the crime" of conviction—even though the defendant did not contemporaneously object. *See State v. Williamson*, 389 So. 2d 1328, 1331 (La. 1980). That unique error, the Court explained, was "of such importance and significance as to violate fundamental requirements of due process." *Id.* In numerous post-*Williamson* cases, however, the Court has "warned" that *Williamson* was an extreme exception to the contemporaneous objection rule. *Vallo*, 131 So. 3d at 836 (citing cases). The Court has stressed that "*Williamson* did not establish the equivalent of a federal 'plain error' rule." *Id.* And it has reminded the lower courts that "*Williamson* should not be construed as authorizing appellate review of every alleged constitutional violation and erroneous jury instruction urged first on appeal without timely objection at occurrence." *State v. Thomas*, 427 So. 2d 428, 435 (La. 1982).

The lower courts, however, have often overlooked this Court's directives. *Vallo* presents a good example. In that case, the lower court reversed a defendant's conviction "on the basis that his Sixth Amendment right to confrontation was violated"—even though he did not contemporaneously object on that ground. 131 So. 3d at 835. That court excused the defendant's failure to object by tracing its precedents back to *Williamson* and "appl[ying] a 'plain error' rule derived from federal jurisprudence to consider the confrontation clause claim." *Id.* at 836. This Court reversed, noting that "*Williamson* has never been applied in the context of a claimed confrontation violation," which itself is "subject to harmless-error analysis." *Id.* And

the Court criticized the lower court for improperly "extend[ing] the principle originating in *Williamson* to reach an unobjected-to confrontation violation and appl[ying] what amounts to a 'plain error' rule to relieve the defendant from the necessity of contemporaneously objecting to a claimed confrontation violation." *Id.* at 837.

2. The First Circuit here correctly declined to follow the example of the circuit court in *Vallo*. The court first correctly noted that Louisiana Code of Criminal Procedure art. 920(2) permits review of an error patent on appeal—"[a]n error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence." *White*, 391 So. 3d at 730. But, the court went on, "g]enerally, [] any alleged error concerning the sufficiency of the list of responsive verdicts given the jury is not reviewable under Article 920(2) and may not be considered unless objection is made in the trial court in time for the trial judge to correct the error." *Id.* (citing *State v. Craddock*, 307 So. 2d 342 (La. 1975) and collecting cases).

That reference to and reliance on *Craddock* was not only appropriate, but necessary. This Court in *Craddock* made clear that "absent an objection, a defendant may not on appeal complain of the judge's charge to the jury, even though the charge may happen to appear in the record." *Id.* This Court continued, holding that "the alleged error concerning the sufficiency of the list of responsive verdicts given the jury, like error in the judge's charge to the jury, was not reviewable under Article 920(2) and could not be considered unless an objection was made in the trial court in time for the trial court to correct the error." *Id.* (citing *Craddock*, 307 So. 2d at 343). Thus, without the required objection, the Court affirmed the defendant's conviction. *Craddock*, 307 So. 2d at 343. The First Circuit's adherence to *Craddock*, and refusal to impose some *Williamson*-esque exception here, should be affirmed.

The First Circuit also correctly held that the verdict form, though certainly missing the "Not Guilty" responsive verdict, did not violate White's fundamental right

to due process because "the trial court orally instructed the jury that if they were not convinced beyond a reasonable doubt of the defendant's guilt, they should return a not guilty verdict." *White*, 391 So. 3d at 730. The First Circuit got it right: "[W]hen coupled with the trial court's oral instruction to the jury, the lack of a 'Not Guilty' responsive verdict on the jury form was not structural and, as such, did not violate fundamental requirements of due process." *Id.* Thus, the First Circuit correctly determined that White's "assignment of error lacks merit" where he failed to contemporaneously object and so give the trial court an opportunity to correct the error. *Id.*

3. That open-and-shut analysis is correct on every front and should be affirmed under a straightforward application of *Craddock*. That is so for at least three reasons.

One, the error on the jury verdict form here is comparable to and does not require a departure from *Craddock*. In *Craddock*, the Court made clear that an error's "mere presence in the record transmitted to this Court is not sufficient, by itself, to allow this Court to review for error under Article 920(2)." *Craddock*, 307 So. 2d at 343. Thus, while errors such as "the caption, a statement of time and place of holding the court, the indictment or information with the endorsement, the arraignment, the plea, mention of the impaneling of the jury, verdict and judgment of the court" are errors patent typically reviewable under article 920(2), errors regarding "the judge's charge to the jury, even though the charge may happen to appear in the record" cannot be complained of on appeal "[a]bsent an objection." *Id.* This Court minced no words: "We hold that alleged error concerning the sufficiency of the list of responsive verdicts given the jury, like error in the judge's charge to the jury, *is not reviewable* under Art. 920(2) and may not be considered unless objection is made in the trial court in time for the trial judge to correct the error." *Id.* (emphasis added).

There is no real distinction between the error in *Craddock* and the error below that would mandate a different result here. The error in White's case "concern[ed] the sufficiency of the list of responsive verdicts given the jury," just as in *Craddock*. *Id.* That "the list of responsive verdicts *did not conform* to the trial court's correct

charge to the jury" (District Attorney Br. 12) is a distinction without a difference, and should not excuse defense counsel's failure to object at the appropriate time. Ultimately, both the facts and the underlying purpose of the *Craddock* holding apply with equal measure here—and it would be dangerous to hold otherwise, opening the door for further minute distinctions until the exceptions end up swallowing the rule. This case simply does not fall within the scope of error patent review and thus the Court should not excuse White's failure to contemporaneously object.

Two, appellate courts across Louisiana already mistakenly expand *Williamson* in run-of-the-mill cases, creating exceptions to the contemporaneous objection rule where none are warranted. *See supra* p.3–4. To prevent further departure from this Court's precedent and the clear mandates of the Code of Criminal Procedure, the Court should decline to invite further exceptions here—especially where the First Circuit correctly held that White's fundamental due process rights faced no threat of violation under the totality of the circumstances. *See White*, 391 So. 3d at 730.

Three, as the District Attorney correctly explains (at 14–15), in White's case the outcome would not change even if the Court considered the issue under harmless error review. Given the First Circuit's holding as to the sufficiency of the evidence—affirming White's convictions and sentences based on the evidence presented at trial, *White*, 391 So. 3d at 729—it is unlikely that the outcome would be different if the "Not Guilty" response had been correctly listed on the jury verdict form. And as the District Attorney correctly points out, the error here did "not affect the trial 'from beginning to end.'" District Attorney Br. 14 (quoting *State v. Langley*, 06-1041 (La. 5/22/07), 958 So. 2d 1160, 1168). The error arose at a discrete, late-stage moment in time, and the error was significantly minimized by the trial court's additional instructions regarding the "Not Guilty" responsive verdict. Even if the Court were inclined to revisit *Craddock*, therefore, this case presents no practical opportunity for the Court to do so. For, even under harmless error review, the Court must affirm White's convictions and sentences.

CONCLUSION

The Court should affirm the judgment below.

Dated: November 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has this date been served upon all parties to this proceeding by email or by mailing same to each by First Class United States mail, properly addressed and postage paid, on this 21st day of November, 2025.

/s/ Caitlin Huettemann
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