IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

ALANA SAVELL,
Petitioner,

v. CASE NO. 1D19-136

STATE OF FLORIDA,
Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

The Respondent, the State of Florida ("State") responds to the Court's Order to Show Cause and states the following:

1. On 21 November 2016, Petitioner was involved in an altercation with both the male and female victim during which Petitioner shot both victims from behind; Petitioner was subsequently charged by information with two counts of aggravated battery armed with a deadly weapon causing great bodily harm. (Petitioner's Appendix-3).
2. On 29 March 2018, Petitioner moved to dismiss the charges. (Petitioner's Appendix-4).
3. On 13 July 2018, the trial court conducted a hearing on Petitioner's Motion to Dismiss. (Petitioner's Appendix-26).

   a. Testimony of the Female Victim

i. The female victim testified that on 21 November 2016 she and the male victim were invited to Petitioner's husband's home to watch football. (Petitioner's Appendix-40). The female victim never heard Petitioner or Petitioner's husband ask her to leave. (Petitioner's Appendix-41).

ii. When asked "when did you notice that something wasn't quite right," the female victim explained that she was on the sofa when she heard gunshots and the male victim cry out that he had been shot. (Petitioner's Appendix-41). The female victim noticed nothing out of the ordinary immediately before the shooting: "they'd been laughing . . . . There wasn't nothing out of the ordinary of anything." (Petitioner's Appendix-42).

iii. After the female victim heard the male victim state that he had been shot, she proceeded toward the door. (Petitioner's Appendix-43). When the male victim was shot, he was "at the door." (Petitioner's Appendix-53). "[A]s soon as I'm getting to the door, I felt a sting in my left leg. I just, it felt like, worse than a bumblebee sting." (Petitioner's Appendix-43). A bullet entered the back of the female victim's leg. Shortly after, the female victim fell over. (Petitioner's Appendix-43).

iv. When the female victim was shot, Petitioner was behind her and the male victim was already "outside standing by the steps." (Petitioner's Appendix-

43-44). After the female victim was shot, she heard two more shots and then the male victim dragged her to his vehicle. (Petitioner's Appendix-45).

v. The female victim denied ever having armed herself with a knife. (Petitioner's Appendix-54). The female victim further denied ever having any argument with Petitioner on the date in question. (Petitioner's Appendix-54-55). And, the female victim denied ever having an argument with the male victim on the date in question. (Petitioner's Appendix-55). When asked whether she was ever pushed by the male victim, the female victim responded negatively. (Petitioner's Appendix-55).

vi. Further, the victim testified that Petitioner never "g[a]ve one sign of it's getting late . . . we need to call this a night." (Petitioner's Appendix-55).

b. Testimony of the Male Victim

i. The male victim testified that at some point on 21 November 2016 he attempted to exit Petitioner's home to smoke a cigar. (Petitioner's Appendix-69). As the male victim was standing in the foyer, Petitioner "decided it was time for everybody to leave." (Petitioner's Appendix-70).

ii. The male victim announced that he was not leaving until the female victim came with him. (Petitioner's Appendix-70). Petitioner's husband, however, stated, "no, you gotta get . . . and was holding the door open." (Petitioner's

Appendix-71). The male victim repeated that he was not leaving without the female victim. (Petitioner's Appendix-71).

iii. The male victim then "started in . . . [told] [the female victim], come on . . . it's time to go . . . ." (Petitioner's Appendix-71). However, before the victims could make it to the door, the male victim was shot: "[r]ight there at the door abot to go, and just pow, just like that." (Petitioner's Appendix-72). The male victim was shot in the back of the leg. (Petitioner's Appendix-72).

iv. After the male victim was shot, he again told the female victim "it's time to go . . . ." (Petitioner's Appendix-70). The male victim then "made [his] way toward the door . . . push[ed] through [Petitioner's husband] and [arrived] at the bottom of the porch." (Petitioner's Appendix-72).

v. After the male victim stepped into Petitioner's carport, he again directed the female victim to leave the house. (Petitioner's Appendix-72). The male victim "waited on [the female victim] until she was trying to get out the door and several more shots rang out." (Petitioner's Appendix-72). When the female victim was "shot the last time," "she was right in the doorway." (Petitioner's Appendix-74).

vi. After the shooting, the female victim "could barely hold her weight," took one step, and then "spilled right into [the male victim's] arms off the porch, out the door." (Petitioner's Appendix-74).

vii. The male victim dragged the female victim into his truck, saw Petitioner's husband "had got shot too," and was told, "don't feel bad . . . I got shot too." (Petitioner's Appendix-73). The male victim responded, "well, okay" and then departed in his vehicle. (Petitioner's Appendix-73).

viii. The male victim further testified that he did not have an argument either with Petitioner or her husband and that he never pushed Petitioner. (Petitioner's Appendix-77). The male victim acknowledged that he consumed alcoholic beverages on the date in question. (Petitioner's Appendix-78).

c. Petitioner's Statements

i. In the early morning hours of 21 November 2016, Petitioner provided a sworn statement to law-enforcement officers. (Petitioner's Appendix-108). In that statement, Petitioner stated the following:

1. That earlier that night there had been an argument at her residence that "worked its way outside";
2. That Petitioner's husband and the male victim were "physically fight[ing]";
3. That, after the fight, Petitioner's husband returned inside and attempted to remove the female victim from the residence;

4. That the female victim was “pushing and flailing” and “drunk, [and] stumbling around the living room”;
5. That Petitioner’s husband attempted to remove the female victim from the residence;
6. That both victims “weren’t leaving and [the male victim] kept trying to come in”;
7. That the male victim “wouldn’t listen”;
8. That, consequently, Petitioner “went and got [her] gun”;
9. That Petitioner warned the male victim “several times”;
10. That Petitioner directed the male victim to leave “before [she] fired”;
11. That, while the male victim was standing in the doorway, he continued to attempt to reenter the home;
12. That Petitioner did not call 911 because she “wasn’t thinking”;
13. That because Petitioner “wasn’t thinking,” she retrieved her firearm;
14. That Petitioner armed herself “just to scare them away”;
15. That the male victim was “trying to come at [Petitioner’s husband]”;
16. That shooting the victims was “wrong”;
17. That Petitioner had been shooting at the ground;

18. That when Petitioner was asked whether she was “worried that [the male victim] was going to come fight [her] husband,” Petitioner responded, “I wasn't, wasn't worried, he was trying to. He'd already done it”;
19. That when asked whether she wanted to add or retract any statement, Petitioner responded negatively; and
20. That Petitioner had stated “the whole truth.” (Petitioner's Appendix-110-121).

d. Testimony of Petitioner’s Husband

i. Petitioner’s husband testified that on 21 November 2016 the female victim and the male victim were “bickering and being upset.” (Petitioner's Appendix-135). Petitioner had just beaten the male victim in an arm-wrestling contest, Petitioner’s husband had asked both the victims to leave. (Petitioner's Appendix-136).

ii. Petitioner’s husband “got the male victim outside” and “calmed down.” (Petitioner's Appendix-136). The male victim “understood” Petitioner’s husband and returned inside to gather his belongings. (Petitioner's Appendix-136).

iii. Petitioner’s husband then informed the female victim that she too “need[ed] to leave” because “they were just too loud.” (Petitioner's Appendix-136). However, the female victim repeatedly declared that she was not going to

leave. (Petitioner's Appendix-136). Shortly after, Petitioner's husband again "got [the male victim] outside"; however, shortly after, the male victim "came at the front door as [Petitioner's husband] was shutting [it]." (Petitioner's Appendix-136). While the male victim was attempting to reenter the home, the female victim continued yelling, "nagging" the male victim, and berating him because he "let the fat girl win." (Petitioner's Appendix-136-38).

iv. At some point, the male victim removed his shirt and began fighting Petitioner's husband. (Petitioner's Appendix-139). While fighting with the male victim, Petitioner's husband told Petitioner to "go get the gun because [Petitioner's husband] [was] about to fall over." (Petitioner's Appendix-139).

v. After Petitioner retrieved the firearm, Petitioner's husband told her "to shoot behind" him, after which Petitioner "put[] one shot at the ground." (Petitioner's Appendix-139). Petitioner's husband described the shot as a "warning shot." (Petitioner's Appendix-140). According to Petitioner's husband, the bullet went "through [his] leg and into [the male victim]." (Petitioner's Appendix-139).

vi. Petitioner's husband explained that during the "grappling" the male victim was still attempting to reenter Petitioner's residence, and Petitioner's husband "was losing." (Petitioner's Appendix-140).

vii. When the female victim was shot, Petitioner's husband was in the carport but did not witness the shooting. (Petitioner's Appendix-141-42). When asked why two shell casings were found outside of the residence, Petitioner's husband explained that Petitioner "was panicked" and "flipped the script . . . and threw everything outside for some reason." (Petitioner's Appendix-142).

viii. Petitioner's husband further testified that he had three cameras: one filming the front door, another filming the back of the carport, and a third elsewhere in the carport. (Petitioner's Appendix-142). According to Petitioner's husband, he reviewed the video, but subsequently "lost it," explaining that he incorrectly believed that he could access the footage for up to thirty days after it was recorded. (Petitioner's Appendix-142). In fact, Petitioner's husband had only eleven days; consequently, Petitioner and her husband "missed it by a day, yeah, so . . ." (Petitioner's Appendix-143).

ix. Petitioner's husband further explained that he was "unable to save [the videos]." (Petitioner's Appendix-144). When Petitioner's husband was asked what was depicted in the videos, the State objected; the trial court sustained the objection.

x. When asked whether he ever informed a law-enforcement officer about the video, Petitioner's husband initially equivocated: "I think I had told the

officer I was riding with. I'm not sure." (Petitioner's Appendix-152). When asked whether he ever gave the videos to a law-enforcement officer, Petitioner's husband stated, "we didn't even remember it." (Petitioner's Appendix-152). Petitioner's husband acknowledged that it was important to tell law-enforcement officers about the video.

e. Testimony of Petitioner's Witness Gregory Asa Paul

i. Paul testified that on 21 November 2016 he went to Petitioner's husband's home. (Petitioner's Appendix-196). Paul explained that he is a "combat medic with 22 years of experience." (Petitioner's Appendix-197). Mr. Paul further testified that he did "see the video that was played," but he was not permitted to testify as to what he saw. (Petitioner's Appendix-197-98).

4. On 27 July 18, the trial court entered an order denying Petitioner's Motion to Dismiss. In its order, the trial court concluded that Petitioner was not entitled to immunity under Florida's Stand-Your-Ground law, finding the following:

a. The male victim was shot in the back of the leg. (Petitioner's Appendix-227).

b. The male victim was not trying to reenter the home when he was shot. (Petitioner's Appendix-227).

c. Both victims were shot from behind. (Petitioner's Appendix-43, 45, 72, 227).

d. The female victim was never seen in possession of a knife. (Petitioner's Appendix-228).

e. In her sworn statements to law-enforcement officers, Petitioner failed to mention a knife. (Petitioner's Appendix-228).

5. On 10 January 2019, Petitioner filed a writ of prohibition in this Honorable Court.

6. On 1 February 2019, this Honorable Court issued an order directing the State to show cause as to why Petitioner's writ should not be granted; this response timely follows.

Argument

1. The Best Evidence Rule, codified at Section 90.952, Florida Statutes, requires that an original writing, recording, or photograph be used to prove the contents of the writing, recording, or photograph. McKeehan v. State, 838 So. 2d 1257 (Fla. 5th DCA 2003); Griem v. Zabala, 744 So. 2d 1139 (Fla. 3d DCA 1999); State v. Eubanks, 609 So. 2d 107 (Fla. 4th DCA 1992); In the Interest of J.H. v. State, 480 So. 2d 680 (Fla. 1st DCA 1985); Sun Bank of St. Lucie County v. Oliver, 403 So. 2d 583 (Fla. 4th DCA 1981).

2. "[I]f the original evidence or a statutorily authorized alternative is available, no evidence should be received [that] is merely "substitutionary in nature." Liddon v. Bd. of Pub. Instruction for Jackson County, 175 So. 806, 808 (1937); Sun Bank of St. Lucie County v. Oliver, 403 So. 2d 583, 584 (Fla. 4th DCA 1981).

3. An original, however, is not required and other evidence of the contents of the original is admissible, if "all originals are lost or destroyed, *unless the proponent lost or destroyed them in bad faith*." § Fla. Stat. 90.954(1) (emphasis added). Secondary evidence is not admissible when the proponent destroyed the original in bad faith, or when there is some genuine question about the authenticity of the original. State Farm Mutual Automobile Insurance Co. v. Resnick, 636 So. 2d 75 (Fla. 3d DCA 1994).
4. The best evidence rule requires either production of the original writing or an adequate explanation for its absence. Williams v. State, 386 So.2d 538, 540 (Fla.1980).
5. Unless otherwise excused by the evidence code, the original must be produced *unless it is shown to be unavailable for a reason other than the serious fault of the proponent*. Williams, 386 So. 2d at 540; Firestone Serv. Stores, Inc. of Gainesville v. Wynn, 131 Fla. 94, 179 So. 175 (1938); McKeehan v. State, 838 So. 2d 1257 (Fla. 5th DCA 2003). The best evidence of the contents of a writing consists in the actual production of the instrument itself, and the general rule is that secondary evidence of its contents cannot be admitted until the non-production of the original has been satisfactorily accounted for. Firestone, 179 So. 175 at 178.

6. Since —at a minimum— in the instant case it cannot reasonably be maintained that "the non-production of the original has been satisfactorily accounted for," secondary evidence of the contents of the home-security footage was inadmissible. Accordingly, the trial court did not abuse its discretion.[1] Since there was no satisfactory accounting for the destruction of the home-security footage, no secondary evidence of the contents of the video was admissible.
7. Petitioner had to establish that the non-production of the original was satisfactorily accounted for. § 90. 954, Fla. Stat. (1983); Valcin v. Public Health Trust of Dade County, 473 So. 2d 1297 (Fla. 3d DCA 1985) (Ordinarily where a party in possession loses or destroys crucial record evidence a burden is imposed on that party to prove that the loss or destruction was not in bad faith); Dyer v. State, 26 So. 3d 700, 702–04 (Fla. 4th DCA 2010) (the burden is on the proponent of secondary evidence "to convince the trial judge that as a matter of fact one of the enumerated excuses for the non-production of an original exists.").
8. In the instant case, the non-production of the original has never been satisfactorily accounted for.

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[1] An appellate court reviews a trial court's ruling on evidentiary issues for abuse of discretion. England v. State, 940 So. 2d 389, 400 (Fla. 2006).

a. If the truth of the immediately-preceding contention were not self-evident, the testimony of Petitioner's husband about the home-security footage establishes that there has never been a satisfactory accounting for the destruction of Petitioner's home-security footage.

b. Petitioner's husband —who knew that his spouse was being investigated for shooting two persons— swore under oath that he "didn't even remember" to give law-enforcement officers the video on the night that they came to his residence. (Petitioner's Appendix-153). Even though his spouse was being investigated in a shooting with multiple victims, Petitioner's husband did not proactively provide law-enforcement officers with the supposedly favorable video evidence. Rather than bringing such evidence to the attention of investigators, Petitioner's husband simply "*figured [the] investigators would see three cameras in plain sight, big ones.*" (Petitioner's Appendix-154) (emphasis added).

c. When asked whether he ever actually informed any law-enforcement officer about the existence of the cameras, Petitioner's husband claimed, "*it slipped [his] mind*," attempting to explain "[t]here was lot more in [his] mind than that, you know, the family [he] ha[s]. . . . *cameras were the last thing in [his] thing*." (Petitioner's Appendix-154) (emphasis added). Petitioner's husband noted that law-enforcement officers did not initially ask for the home-security

footage. (Petitioner's Appendix-142). Petitioner's husband added that he "th[ought] [he] had told the officer [he] was riding with"; however, Petitioner's husband was "not sure" whether he had mentioned the video to the police. (Petitioner's Appendix-152).[2]

d. The State respectfully argues that the claim of Petitioner's husband is at best highly implausible: the highly favorable video evidence[3] was "the last thing in [his] thing" when his wife was facing a mandatory-minimum sentence of twenty-five years in the Department of Corrections for shooting two persons. (Petitioner's Appendix-154).

e. Petitioner's husband attempts to satisfactorily account for the destruction of the video evidence by claiming that he was "unable to save [the videos]." Importantly, however, the video in question was recorded in late 2016, well into the age in which cell phones and cell phone cameras are ubiquitous. Tracey v. State, 152 So. 3d 504, 524 (Fla. 2014) (noting that "[c]ell phones,

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[2] Notably, when asked whether he recalled Petitioner mentioning a video, Sergeant Strickland responded negatively, and the law-enforcement officer did not recall Petitioner "encouraging [him] to go collect the video. . . ." (Petitioner's Appendix-99-100). Importantly too, the Sergeant testified that if he had been informed about a video, he would have included such in his report. (Petitioner's Appendix-100). Likewise, an investigator who worked the case "had no idea" there was any video evidence.

[3] According to Petitioner's witness, the video evidence showed "the couple charging the house" and "attacking . . . ." (Petitioner's Appendix-199).

many of which are 'smartphones,' are ubiquitous and have become virtual extensions of many of the people using them for all manner of necessary and personal matters." (Petitioner's Appendix-144). Tellingly, Petitioner's husband does not explain why he could not have spared a few moments to use a cell phone camera to video record the home-security footage, especially since doing so would have preserved crucial evidence in a criminal case of the utmost seriousness.

f. Petitioner's witness (G.A. Paul[4]) asserts —without providing any specifics— that Petitioner and Petitioner's husband "tried *very hard* to preserve [the video evidence]"; however, Petitioner and Petitioner's husband "could not" — despite having had eleven days[5]— complete the simple and non time-

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[4] The same witness also claimed to have told law-enforcement officers about the video of the incident. Importantly, however, when shown his statement to police and asked why it lacked any indication that he had informed police of the video, Paul acknowledged that "it's not in here . . . . we talked for a good while." (Petitioner's Appendix-200).

[5] Petitioner maintains that he made efforts to preserve the recording, but claims "they could not repull it . . . ." (Petitioner's Appendix-143). Although Petitioner's husband claims to have reviewed the video, he subsequently "lost it," explaining that he incorrectly believed that he could access the footage for up to thirty days after it was recorded. (Petitioner's Appendix-142). In fact, Petitioner's husband had only eleven days; consequently, Petitioner and her husband "missed it by a day, yeah, so . . ." (Petitioner's Appendix-143).

consuming task of copying the video. (Petitioner's Appendix-199) (emphasis added).

g. Given the foregoing, the State respectfully maintains that it is apparent that the non-production of the video has never been satisfactorily accounted for; that is, Petitioner lost the video evidence in bad faith.

i. Accordingly, the original was required, and therefore the trial court did not err in excluding testimony pertaining to the contents of the video. § Fla. Stat. 90.954(1) (An original is not required and other evidence of the contents of the original is admissible, if "all originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith.")

9. The cases to which Petitioner cites are either (a) readily distinguishable or (b) not relevant to the issue at hand.

a. First, Petitioner cites to Yero v. State, 183 So. 3d 1179 (Fla. 3rd DCA 2014), a case that is distinguishable insofar as it involved a video that was lost or destroyed without the proponent's bad faith.

i. In Yero, the defendant was charged with third-degree grand theft stemming from the theft of a woman's wallet in a restaurant. Id. at 1181.

ii. At trial, the State offered testimony describing the content of the deleted video. Id. On the date in question, the victim and her fiancé were seated at a bar. Id. The victim hung her purse over the back of her chair. Id. The purse

contained a wallet of the type that does not fold and is long enough to hold a checkbook. Id. The victim and her fiancé were approached by only one patron that night, Yero. Id. At one point, Yero stood between the couple's chairs by the victim's purse. Id. He later excused himself for a few minutes before returning to buy the couple drinks, pay his bar tab, and leave. Id. The victim noticed that her wallet was missing approximately five minutes after Yero left the bar. Id.

iii. The victim and the Deputy Sheriff testified to the contents of the video. Id. at 1182. According to the state witnesses, the video showed that Yero did not at first have a bulge in his left pocket, but that, after he had positioned himself between the victim and her fiancé with his arm near the victim's purse, he had a bulge in his left pocket matching the size and shape of the victim's wallet. Id.

iv. The video was not played at trial because it had been overwritten by the restaurant's security system. Id. The deputy described his efforts to preserve the video recording. Id. He unsuccessfully attempted to obtain the video on the same night of the incident. Id. The deputy was not informed that the recording would be automatically overwritten within five days. Id. By the time the deputy followed up on his request approximately nine days later, the recording had been overwritten. Id. Additionally, the Deputy Sheriff

attempted to retrieve the video recording on another occasion, but he was again informed that the recording had been overwritten. Id.

v. After Yero was found guilty, he appealed, arguing, that the State's failure to preserve the surveillance video warranted a reversal. Id. However, the court rejected Yero's argument, noting that (since the contents of the video were incriminating rather than exculpatory) he had failed to establish a due process violation and emphasized that there was no bad faith on the part of the State. Id. The Deputy Sheriff, after all, requested a copy of the video recording on the night of the incident and was assured that it would be made available. Id. When the deputy requested the video on the night of the incident, he was not informed that the recording would be automatically overwritten by new footage within five days, and the deputy followed up on his request on more than one occasion. Id.

vi. Given that in Yero (which involved a much less serious offense) the proponent of the secondary evidence acted in good faith and made multiple, reasonable attempts to obtain the evidence (which was in someone else's possession and control), that case is readily distinguishable. After all, the instant case involves a video in Petitioner's control, and, unlike Yero, there were no reasonable steps taken to preserve the evidence. Petitioner very easily could have mentioned the video to law-enforcement officers or made

a copy of the video. However, despite the ease with which the evidence could have been preserved, the importance of the evidence, and the gravity of the offense charged, Petitioner did nothing to keep the video from being overridden. The State respectfully argues that such conduct was clearly a deliberate choice to have the recording overridden so that the State would have a weaker case when prosecuting Petitioner.

b. Like Yero, State v. Hampton, 113 So. 3d 109, 110 (Fla. 5th DCA 2013), involved a law-enforcement officer who acted in good faith by making multiple, reasonable attempts to obtain the evidence (which was in someone else's control). Accordingly, like Yero, Hampton is readily distinguishable from the instant case. "[T]he sheriff's office had requested a copy of the videotape at the time of [the defendant's] arrest and the store was to make it available." Id. at 110. When the arresting deputy returned to the store to retrieve the surveillance video on more than one occasion, however, "he was told that there was no tape and any tape would have been erased within 24 hours." Id. The defendant moved to dismiss the case as a result of the State's failure to preserve the evidence, and the trial court granted the motion. Id. However, the Fifth District reversed, holding that the defendant failed to show bad faith on the part of the State.

c. Russell v. State, 844 So. 2d 725, 726–28 (Fla. 5th DCA 2003) is not appropriately cited since that case, unlike the instant case, involved a witness who *was* permitted to testify as to the content of a 7-Eleven videotape. The court ruled that defense counsel's best-evidence objection should have been sustained, though the error was harmless.

d. Like Russell and unlike the instant case, T.D.W. involved a witness who was permitted to testify as to the content of a video. T.D.W. v. State, 137 So. 3d 574, 575 (Fla. 3d DCA 2014). The issue in that case was whether appellant was adequately identified as one of the three boys who burgled a home. The identification was based in part on the testimony of a detective who described what she saw on a surveillance videotape she viewed outside the courtroom. The crucial camera angle upon which the detective based her identification did not appear on the copy of the surveillance video offered into evidence at trial. Because the detective's testimony identifying appellant on the surveillance video violated the Best Evidence Rule, the court reversed. Id. Because the detective was permitted to testify to secondary evidence about the video, T.D.W. is not relevant.

e. Nor is J.J. v. State, 170 So. 3d 861 (Fla. 3d DCA 2015) relevant given that the issue therein was whether the Best Evidence Rule is violated where a party introduces testimony describing live observation of a subject that is

concurrently being recorded. Id. at 863.[6] Specifically, the detective's testimony (that she saw a better camera angle, not present on the video in evidence, that clearly depicted appellant's face) was held to violate the Best Evidence Rule.

10. Finally, even if the trial court had erred in refusing to admit secondary evidence of the content of the video, the trial court's refusal to admit such testimony did not prejudice Petitioner.

a. Petitioner's husband, after all, had personal knowledge of whatever would have been depicted on the video.

b. Moreover, whatever Petitioner's witnesses would have testified to, the male victim was still shot from behind. Accordingly, Petitioner's claim that she shot the male victim as he tried to force his way back into the home was belied by the physical evidence: he was shot from behind.

c. Likewise, whatever Petitioner's witnesses would have testified to, the female victim too was shot from behind, and, accordingly Petitioner's claim that she is entitled to immunity was refuted by the physical evidence. Notably, there was no evidence that the female victim ever threatened anyone with a knife.

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[6] Answering the question in the negative, the court held that the mere existence of a recording of what a witness perceives live does not make testimony thereon subject to the best evidence rule. Id.

d. Finally, nothing to which Petitioner's husband or Mr. Paul could have testified would have prevented the State from proving that Petitioner was not entitled to immunity.

11. Given the foregoing, the State respectfully requests that this Honorable Court deny Petitioner's writ.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing response has been furnished by email to Rudolph Sheppard at staff@panamacityattorney.com on this 30th day of April 2019.

Respectfully submitted and served,
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