East Baton Rouge
Filed Sep 14, 2026 4:24 PM
Catherine D. Brandon
Deputy Clerk of Court
E-File Received Sep 14, 2026 4:05 PM

DC-23-00925
G

STATE OF LOUISIANA

VERSUS

DESMOND CARTER
DA# 00339-23

NUMBER DC-23-00925 DIVISION G

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE'S OBJECTION TO DEFENDANT'S FILING OF MOTIONS UNDER SEAL WITHOUT AUTHORITY

NOW INTO COURT comes the State of Louisiana, through the undersigned Assistant District Attorney, who objects to the defendant's filing of a motion under seal without statutory authority and without an order from the Court permitting the filing to be sealed. Article 12, §3 of the Louisiana Constitution provides that "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." This provision must be construed liberally in favor of free and unrestricted access to records, and access may be denied only when a law specifically and unequivocally provides otherwise. Whenever there is doubt as to whether the public has the right to access certain records, the doubt must be resolved in favor of the public's right to see them. To allow otherwise would be an improper and arbitrary restriction on the public's constitutional rights. See Copeland v. Copeland, 2007-0177 (La. 10/16/07), 966 So. 2d 1040, 1044, citing Title Research Corp. v. Rausch, 450 So.2d 933, 936 (La. 1984). The defendant has sought no order from the Court to seal these filings, and no statutory provision requires this motion to be placed under seal. As such, the State attaches the defendant's motion to its response. *See Exhibit A.*

OPPOSITION TO DEFENSE MOTION IN LIMINE TO PRECLUDE REFERENCE TO ASSERTION OF 5TH AMENDMENT RIGHT AND STATE'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE STATEMENTS AND COMMUNICATIONS RECOVERED FROM DEFENDANT'S ACCOUNTS

NOW INTO COURT, comes the State of Louisiana through the undersigned Assistant District Attorney, who respectfully files this Opposition to Defense Motion in Limine to Preclude Reference to Assertion of 5th Amendment Right and requests that this Court deny defendant's motion to exclude communication recovered from the defendant's accounts.

I. INTRODUCTION

The defendant, Desmond Carter, was arrested by the East Baton Rouge Sheriff's Department under report number 23-002912 and was subsequently indicted on charges of First Degree Rape

(LSA-R.S. 14:42(A)(4)) and Third Degree Rape (LSA-R.S. 14:43(A)). This matter is set for Motions on September 17, 2026.

The State has evidence of text messages between the defendant and his co-defendants charged defendants, Casen Carver and Kaivon Washington and uncharged participant, Everett Lee. Defense seeks exclusion of at least the text messages listed below, where defendant states:

- "my momma told me don't say nun;"
- "my momma told me don't go to no station or not;"
- "yeah my momma told me just don't say nun rn;"
- "me neither my momma said just don't say nun bc they want us to be witnesses to make there job easier"
- "yeah bc my mom said she ain't lettin them talk to me unless i'm bein charged for sum;"
- "facts i don't wanna talk, but casen gave our names all of us;"
- "well idek if imma be talkin to them or not;"
- "my momma told me don't talk at all;" and
- "momma said they can't come talk to me bc i'm underage."

II. LAW AND ARGUMENT

A. Defense Counsel Misapplies the Fifth Amendment

The Fifth Amendment to the United States Constitution affords a person the right against self-incrimination. It is well established that the Fifth Amendment restriction against self-incrimination applies only to testimonial evidence. Identifying physical characteristics, such as fingerprints, blood, urine, breath, etc., are outside the protection afforded by this privilege. *State v. Taylor*, 442 So.2d 109, 116 (La. 1982), *cert denied*, 460 U.S. 1103, 103 S.Ct. 1803, 76 L.Ed.2d 367 (1983). *See also, State v. Robertson*, 509 So.2d 95, 07 (La. App. 1 Cir. 1987).

Defense argues that the text messages above constitute the defendant's intent to invoke his Fifth Amendment privilege in the future. This argument is meritless. The Fifth Amendment applies in custodial settings in conjunction with an accused's *Miranda* rights as well as in open court settings. This situation is not present in this case as the defendant was not in a custodial setting nor was he in an open court proceeding or grand jury proceeding.

Moreover, the text messages are nontestimonial in nature. The defendant is not being compelled to make these statements. These statements were made to either the defendant's friends, other participants of criminal offense, not police, and were made freely, voluntarily, and in an informal tone. No one coerced the defendant to make these statements, nor did the defendant have

any expectation that these statements may be of use later to help establish that he committed a crime.

Defense counsel's Motion in Limine to Preclude Reference to Assertion of 5th Amendment Right should be denied.

B. Defense Counsel Misapplies La. C.Cr.P. Art. 771

Defense counsel cites La. C.Cr.P. Art. 771 as well as State *v. Robinson*, 2004-964 (La. App. 5 Cir. 2/15/05), 896 So.2d 1115, 1126, as its basis for why the text messages above cannot be referenced in trial. Both Article 771 and the *Robinson* case, however, refers to "post-arrest silence." The text messages that defense seeks to exclude occur while the defendant and his co-defendants try to get there story straight *before* any custodial questioning or interrogation has even occurred for the defendant. Thus, Article 771 does not apply and this Court should not extend its scope to include pre-arrest intent to remain silent sometime in the future.

C. Defendant's communications in his records are admissible.

Defendant seeks to characterize relevant communications made before, during, and after the charged criminal conduct as either inadmissible because it is merely statements made to "friends", or statements purportedly protected by Miranda v. Arizona because Defendant was seventeen years old at the time.

The defendant's characterization conflates distinct constitutional and evidentiary doctrines. The communications at issue were not statements elicited through custodial interrogation by law enforcement. They were communications voluntarily made by the Defendant to private individuals, including persons whom the evidence establishes were themselves participants in, or persons with contemporaneous knowledge of the events surrounding the charged offense.

Defendants' own statements are admissible against him under Louisiana Code of Evidence Article 801(D)(2)(a). Other portions of the conversations are independently admissible where they constitute statements of co-participants made during and in furtherance of concerted criminal activity, where they are offered not for their truth but to place Defendant's own statements in context or show their effect upon him, or where other applicable evidentiary rule permits their admission. Louisiana Code of Evidence Article 801(D)(2)(a) expressly provides that a statement is not hearsay when the statement is offered against a party and is his own statement, in either his individual or representative capacity. The communications authorized by or participated in by the defendant therefore do not require a a hearsay exception. The State is offering the Defendant's

own words against the Defendant. They need not constitute a complete confession. They only need to satisfy the ordinary requirements of relevance and authentication.

Statements revealing facts from which guilt may be inferred, knowledge of circumstances surround the crime, an explanation of his actions, intent preparation, participation, knowledge possessed by Defendant, post-offense conduct, concealment, or consciousness of guilt remain admissible party statements.

The defendant's characterization of these communications as casual statements to "friends" materially UNDERSTATES THEIR EVIDENTIARY SIGNIFICANCE. The State intends to establish through the evidence that certain persons in these communications were themselves present for, participated in, assisted with, discussed, facilitated, observed, or possessed contemporaneous knowledge concerning material portions of the criminal transaction. Their identity and role matter.

The communications should be considered in the factual context in which they occurred, rather than artistically characterized as unrelated private conversation. The communications that are connected to preparation, transportation or location, who was present, who participated, the intent, the condition of the victim, the conduct occurring contemporaneously with the offense, coordination among the participants before, during, and after the events, communications immediately following the acts, efforts to determine who knows what, discussions concerning what the participants should and should not say, concealment or destruction of information or evidence, efforts to minimize or mischaracterize what occurred or other circumstances bearing on the defendant's knowledge or participation, have direct evidentiary significance and are not collateral conversations.

The communications are relevant under Articles 401 and 401 because they bear directly upon the circumstances preceding, accompany, and following the charged offenses, including as applicable, Defendant's knowledge, intent, preparation, plan, opportunity, participation, relationship with the other actors, contemporaneous understanding of the events, subsequent conduct, attempts to conceal or characterize what OCCURRED, AND CONSCIOUSNESS OF GUILT.

The defense request for categorical exclusion should be **DENIED**.

WHEREFORE, the State prays the Defendant's Motion in Limine to Preclude Reference to Assertion of 5th Amendment Right be DENIED.

RESPECTFULLY SUBMITTED:

HILLAR C. MOORE, III
DISTRICT ATTORNEY

BY: _____

Sonya Cardia Porter #28519
Assistant District Attorney
222 St. Louis Street, 5th Floor
Baton Rouge, LA 70802
Phone (225) 389-3445
sonya.cardiaporter@ebrda.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above was emailed to Defendant's attorney's (jwheat@opdbr.org) and (cfowlkes@opdbr.org) on this 14th dat of September, 2026.

_____
Sonya Cardia Porter

STATE OF LOUISIANA **DOCKET NO. DC-23-00925 DIV. G**

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

DESMOND CARTER **STATE OF LOUISIANA**

ORDER

IT IS ORDERED that the Defendant's Motion in Limine to Preclude Reference to Assertion of 5th Amendment Right is hereby **DENIED.**

SIGNED, at Baton Rouge, Louisiana on this the _____ day of _____, 2026.

_____

HONORABLE JUDGE GAIL HORNE RAY

19TH JUDICIAL DISTRICT COURT

EXHIBIT A

STATE OF LOUISIANA

VERSUS

DESMOND CARTER

DOCKET NUMBER: DC-23-00925; DIV G

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

TO BE FILED UNDER SEAL

MOTION IN LIMINE TO PRECLUDE
REFERENCE TO ASSERTION OF 5TH AMENDMENT RIGHT

NOW INTO COURT, through undersigned counsel, comes defendant **DESMOND CARTER** in the above captioned matter who requests this Court issue an Order precluding the State from referencing or introducing evidence which references Mr. Carter's invocation and assertion of his right against self-incrimination. In support of this motion, Mr. Carter provides the following:

1. Desmond Carter was charged by grand jury indictment with one count of first-degree rape and one count of third-degree rape for the alleged sexual assault of MB. Trial in this matter is currently set for August 17, 2026.
2. The State has tendered discovery to the Defendant which includes text messages sent by Mr. Carter which refer to his intent to invoke his 5th Amendment right against self-incrimination. (Exhibit A).
3. A prosecutor cannot make reference to the fact an accused exercised his constitutional right to remain silent, after he had been advised of the right, solely to ascribe a guilty meaning to his silence or to undermine, by inference, an exculpatory version related by the accused for the first time at trial. *State v. Robinson*, 2004-964 (La. App. 5th Cir. 2/15/05), 896 So.2d 1115, 1126; *State v. Arvie*, 505 So.2d 44, 45 (La. 1987).
4. Under Louisiana Code of Criminal Procedure article 771, when the prosecutor or a witness makes reference to a defendant's post-arrest silence, the trial court is required, upon the request of the defendant or the State, to promptly admonish the jury. The trial court may, at its discretion, grant a mistrial upon determination that an admonition is not sufficient to assure the defendant a fair trial. *Robinson*, 896 So.2d 1115, citing *State v. Kersey*, 406 So.2d 555, 569 (La. 1981). A brief reference to a defendant's post-arrest silence does not mandate a mistrial or reversal when the trial, as a whole, was fairly conducted, the proof of guilt is

strong, and the prosecution made no use of the silence for impeachment purposes. *Id.*

5. Here, the evidence tendered by the State does not constitute a brief reference to Mr. Carter's post-arrest silence. Rather, the text exchange includes several statements made by Mr. Carter wherein he indicates that his mother advised him not to speak to the police. Notably, Mr. Carter was seventeen years old and a juvenile at the time of the exchange. Furthermore, Mr. Carter did in fact invoke his right to remain silent when he was questioned by law enforcement. Accordingly, any statements made by Mr. Carter referencing his right to remain silent are an impermissible comment by the State for the purpose of using Mr. Carter's intent to remain silent as an indication of guilt.
6. Accordingly, Mr. Carter respectfully requests this Court grant his motion in limine to exclude from evidence Mr. Carter's statementS related to his mother's advice and/or his intent to remain silent when questioned by law enforcement. These statements are not relevant to Mr. Carter's guilt or innocence and, if offered as evidence by the State, constitute knowing and intentional commentary by the State on the Defendant's decision to exercise his constitutional rights. This is both improper and irrelevant and should be prohibited.

WHEREFORE, Mr. Carter respectfully prays this Court issue an order precluding the State from introducing evidence regarding Mr. Carter's intent to invoke his Fifth Amendment right to remain silent.

Respectfully Submitted,

OFFICE OF PUBLIC DEFENDER
Caitlin T. Fowlkes #35152
Jeanna G. Wheat #39384
222 St. Louis Street, Suite 707
Baton Rouge, LA 70802
Telephone: (225) 389-3150
Fax: (225) 389-5418
cfowlkes@opdbr.org

CERTIFICATE OF SERVICE

I certify that I have delivered a copy of the foregoing pleading to Assistant District Attorney Sonya Cardia-Porter or her representative, this 10th day of August, 2026, in Baton Rouge, Louisiana.

Caitlin T. Fowlkes

STATE OF LOUISIANA | **DOCKET NUMBER: DC-23-00925; DIV G**

19th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

DESMOND CARTER | **STATE OF LOUISIANA**

ORDER

Considering the foregoing motion:

IT IS ORDERED that the State of Louisiana show cause on the ___ day of _____, 2026, at 9 o'clock a.m. why the motion and the relief sought should not be granted.

Baton Rouge, Louisiana, this _____ day of _____, 2026.

_____

JUDGE, 19TH JUDICIAL DISTRICT COURT