No. _____

# In The
# Supreme Court of the United States

LONNY L. MAYS,

*Petitioner,*

v.

STATE OF MISSOURI,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Missouri Court Of Appeals Western District**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

This is the petitioner's direct appeal from a conviction for first-degree murder and sentence of life in prison without possibility of parole. He was accused of killing his neighbor by shooting the neighbor from his truck. He admitted the shooting but claimed self-defense. There were no other eyewitnesses, and no forensic evidence disproved self-defense.

The day after the shooting, after the petitioner had surrendered and was in custody, his truck was found lawfully parked and unoccupied in a space in a parking lot. The responding police officers had no warrant to seize the truck and had ample time to obtain one, but they opted to seize it anyway after having secured the area for several hours, later searching it and uncovering evidence that the prosecution used to argue motive. The Missouri Court of Appeals held the Fourth Amendment permitted this warrantless seizure because the truck was physically "mobile" and hours earlier people had been seen next to it, which it held were "exigent circumstances." The question presented is:

Whether, under *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), the Fourth Amendment allows police officers to seize a defendant's lawfully parked automobile from a parking lot without a warrant long after the defendant is in custody, the police are present to prevent anyone from moving the vehicle, and hours elapse between police securing the area and the seizure.

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## PETITION FOR A WRIT OF CERTIORARI

Lonny Mays respectfully petitions for a writ of certiorari to review the judgment of the Missouri Court of Appeals, Western District, in this case.

## OPINIONS BELOW

The final opinion of the Missouri Court of Appeals (App., *infra*, 1a-17a) is reported at 501 S.W.3d 484. The Missouri Court of Appeals' order denying rehearing or transfer to the Supreme Court of Missouri (App., *infra*, 18a) is unreported. The Supreme Court of Missouri's order denying transfer from the Missouri Court of Appeals (App., *infra*, 23a-24a) is unreported. The trial court's judgment (App., *infra*, 19a-22a) is unreported.

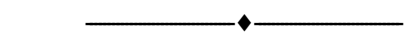
## JURISDICTION

The Missouri Court of Appeals entered its judgment on August 30, 2016 (App., *infra*, 1a). The Missouri Court of Appeals denied rehearing and transfer to the Supreme Court of Missouri on August 30, 2016 (App., *infra*, 18a). The Supreme Court of Missouri denied transfer on November 1, 2016 (App., *infra*, 23a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



## INTRODUCTION

46 years ago, in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), this Court held that the Fourth Amendment does not allow police officers to seize a murder suspect's vehicle without a warrant when it is parked regularly away from a public highway, the suspect already is in custody, there is ample time to obtain a warrant, and there is no indication that the vehicle is being used for any illegal purpose at the time of the seizure. State and federal courts faithfully have followed this directive ever since, recognizing that these circumstances are not and cannot be "exigent," and so the Fourth Amendment requires police to obtain a warrant to seize the vehicle.

In this case, despite being apprised of *Coolidge* and its progeny, but without addressing *Coolidge* at all, the Missouri Court of Appeals held that in virtually

identical circumstances to *Coolidge*, the Fourth Amendment permitted a warrantless seizure of a murder suspect's vehicle. It held this was because of the mere facts that the vehicle (like all vehicles) was physically "mobile" and that hours before the seizure police had seen people near the car.

*Coolidge* itself, however, rejected that either of these propositions constituted "exigency" sufficient to dispense with the Fourth Amendment's warrant requirement. For the 46 years since *Coolidge*, and as the Court recently reemphasized in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), the law of the United States uniformly has been that, especially in these circumstances, as the police had ample opportunity to obtain a warrant, the Fourth Amendment required them to do so before seizing the defendant's truck.

This Court now should grant its writ of certiorari to reexamine *Coolidge*, especially in light of *McNeely*, and correct the Missouri Court of Appeals' departure from them and resulting misinterpretation of the Fourth Amendment.

## STATEMENT

Lonny Mays and his wife lived in Sky Village, a retirement community in Benton County, Missouri, near the border with Henry County. Rudy Romdall was another resident of Sky Village. A great deal of hostility passed between Mr. Mays and Mr. Romdall. Mr. Mays said Mr. Romdall stalked and threatened him

and his wife and even had pointed guns at him. Other neighbors knew about this hostility and some also said they had similarly hostile interactions with Mr. Romdall. App., *infra*, 2a.

Carolyn Simmons, who lived across the street from Mr. Mays and was head of the Sky Village community association, said that on the morning of March 26, 2012, Mr. Mays yelled something at her as she put out her trash, appearing "irate." She ignored him and went to have coffee at another neighbor's house, where Mr. Romdall joined her. Afterward, Mr. Romdall followed Ms. Simmons back to her house in his grey pickup truck, because he was going to drive her to meet a gravel delivery. App., *infra*, 2a.

Ms. Simmons said that as she and Mr. Romdall were leaving her home in his truck, Mr. Mays again approached, yelling at them, so they left in the opposite direction. But Mr. Mays followed them in his own black pickup truck, and when she and Mr. Romdall stopped Mr. Mays did, too. He got out and yelled at them, knocking on Mr. Romdall's window. They ignored Mr. Mays and he got back into his truck and drove away, first driving by and giving them a "dirty look." App., *infra*, 2a-3a.

Around 11:20 a.m., video footage from a nearby Wal-Mart store showed Mr. Mays purchasing .30-.30 caliber rifle ammunition. He recently had borrowed a Winchester Model 94 .30-.30 caliber rifle from his brother, Donald, telling Donald it was for target shooting. App., *infra*, 3a.

Around 12:30 p.m., a farmer in Henry County saw Mr. Mays's truck beside a field five or six miles from Sky Village with a gate open to a highway. No one was in the truck, but eventually Mr. Mays emerged from the field, carrying a rifle. Mr. Mays told the farmer he unsuccessfully had been trying to shoot a coyote. Mr. Mays then left and turned back on the highway toward Sky Village. App., *infra*, 3a-4a.

Shortly before 1:00 p.m., Jean Bonrud, another Sky Village resident and a nurse, was at her house with her friend, Vicki Schmidt. Ms. Bonrud said she saw a "black small pickup" truck she recognized as Mr. Mays's traveling east on the highway by her house. Both women then heard two gunshots close in time. Ms. Schmidt looked out the window and saw two pickup trucks on the road: a grey one facing north and a black one facing south. She saw the black pickup leave and go south but then come back north "at a high speed" and leave. She said another man then pulled up behind the grey truck, got out, and yelled, "Rudy's been shot!" App., *infra*, 4a.

That man was Ronald Ferguson, another Sky Village resident, who had been on his way out of the community with his family and pulled up behind Mr. Romdall's truck. After waiting a while for Mr. Romdall's truck to move, he pulled alongside and saw a bullet hole by the door handle. He got out and saw Mr. Romdall slumped over with his cell phone in his hand. Mr. Ferguson could not feel a pulse and saw lots of blood. His wife called 9-1-1. Ms. Bonrud ran over and also saw Mr. Romdall slumped over in his seat with his

driver's side window rolled down and a cell phone open in his hand. He had a hole in his left side from which blood was streaming out. Mr. Romdall died from the gunshot wound. App., *infra*, 4a-5a.

At trial, Mr. Mays testified on his own behalf, and the jury was instructed on his theory of self-defense. He said that March 26, 2012 was only a week after Mr. Romdall last had pointed a gun at him, and that his attempts to talk to Mr. Romdall that morning were to settle the hostility between them. When his attempts were unsuccessful, he went hunting to calm himself, borrowing his brother's gun and purchasing some ammunition beforehand. On returning to Sky Village, he came upon Mr. Romdall's truck facing his with its driver-side window partially rolled down. As he approached in his truck, he saw Mr. Romdall pointing a gun at him – a ".38, small caliber revolver" – and "knew that [Mr. Romdall] was serious." He quickly took out his brother's rifle and, thinking he already had heard Mr. Romdall shoot at him, he shot a round at Mr. Romdall. Thinking he had missed because he saw no response, he loaded another round and fired it through Mr. Romdall's door. Mr. Romdall's hand went down, and Mr. Mays drove away. The .30-.30 rifle never was found, nor was a firearm found in or around Mr. Romdall's truck. App., *infra*, 11a-12a.

Later that afternoon, Mr. Mays came to the home of a retired Pentecostal minister. After speaking with the minister about what had happened with Mr. Romdall, the minister allowed Mr. Mays to use his telephone to call for a ride. Someone then came and

picked up Mr. Mays. At 10:30 a.m. the next morning, Mr. Mays turned himself in to the Clinton Police Department and was transferred to the Benton County Jail. App., *infra*, 5a-6a.

Law enforcement responding to the shooting of Mr. Romdall quickly put out an all-points bulletin for Mr. Mays's black Ford Ranger pickup truck. On March 27, 2012, the day after the shooting, and at 1:45 p.m., more than three hours after Mr. Mays had turned himself in, Bryan Bethel, Park Superintendent of the Harry S. Truman State Park, found the truck lawfully parked in a space in a parking lot by the park's marina. He informed law enforcement. App., *infra*, 6a.

Mr. Bethel saw a young man with dark hair by the pickup truck talking on a cell phone and looking in the truck's windows. A blue car then pulled up and an elderly man and a woman got out and looked in the truck's windows and rear bed. A silver car then pulled up and the elderly man and the woman spoke to the people in that car. The elderly man then reached into the truck's bed and pulled out a stiff object about 18-20 inches long wrapped in a brown jacket. The elderly man and the woman then left in the silver car. App., *infra*, 6a-7a.

Henry County Deputy Sheriff Brian Bigler and another deputy then arrived, and other Benton County and Henry County officers arrived soon after. The young man came up to Deputy Bigler and Mr. Bethel and introduced himself as Mr. Mays's son. The blue car was Mr. Mays's wife's car. Deputy Bigler said he knew

the truck was Mr. Mays's from its license plate number and make and model. Deputy Bigler asked Mr. Mays's son to retrieve the truck's keys, and the son did so and gave them to the Deputy. Mr. Mays's son then left in the blue car, leaving no one else around except law enforcement. App., *infra*, 7a.

Deputy Bigler then said the "decision was made" that "we were to seize" the truck and take it to the Benton County Sheriff's Office. Hours later, a tow truck came and did so. Neither Deputy Bigler nor any other law enforcement had obtained a warrant to seize the truck. Deputy Bigler agreed this was a "seizure" under the Fourth Amendment, which did not allow him to seize just any car parked in public. He did not dispute that there had been time to obtain a warrant. And when asked how he had authority to seize Mr. Mays's truck without a warrant, he only responded, "I was ordered to." App., *infra*, 7a.

The next day, after the truck already had been seized, another law enforcement officer applied for and received a warrant to search the truck. Inside, investigators found no evidence any bullet had been fired at the truck, no DNA evidence, and no gunshot residue, and discovered cleaning agents, a "half used" "roll of paper towels," and a suitcase bearing the name Lonny Mays containing clothes and papers. App., *infra*, 7a.

Mr. Mays was charged in the Circuit Court of Benton County, Missouri, with one count of first-degree murder in violation of Mo. Rev. Stat. § 565.020 for killing Mr. Romdall and one count of armed criminal

action in violation of Mo. Rev. Stat. § 571.015 for doing so with a deadly weapon. The prosecution did not seek the death penalty. App, *infra*, 1a.

Before trial, Mr. Mays timely moved to suppress all the evidence obtained from the truck and photographs of the truck's search as having been obtained in violation of the Fourth Amendment. He argued that the truck was seized without a warrant, no exigent circumstances justified the seizure, and a search warrant only was sought after the illegal seizure. He also argued the search was invalid because the warrant application and the warrant itself were overbroad and lacked sufficient specificity. In its response, the prosecution addressed the *search*, defending it as allowed by (1) a valid warrant, (2) the "automobile exception to the search warrant requirement," or (3) good faith, but did not address the warrantless *seizure* of the truck at all. It did not articulate any lawful basis for the seizure. App., *infra*, 8a.

After an evidentiary hearing, the trial court summarily denied the defense's motion. Testimony and photographs of the seizure and search's fruits then were admitted at trial over a standing defense objection echoing the motion to suppress, and the prosecution used them in closing argument to argue motive, inferring that rather than self-defense, Mr. Mays deliberately had killed Mr. Romdall and then sought to cover it up and flee. App., *infra*, 8a, 14a.

A jury convicted Mr. Mays of both counts. The trial court then sentenced him to life in prison without possibility of parole, the only non-death sentence the law of Missouri allowed. *See* Mo. Rev. Stat. § 565.020.2. App., *infra*, 1a, 8a.

Mr. Mays then appealed to the Missouri Court of Appeals, Western District. Relying principally on this Court's decision in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), he argued that the trial court had erred in denying his motion to suppress the evidence obtained from the search of the truck, because the initial seizure of the truck without a warrant violated the Fourth Amendment. He argued that, per *Coolidge*, its progeny, and *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), no exigent circumstances existed to justify the warrantless seizure because the truck was regularly parked, he long had been in custody, and police had secured the area and had ample time to obtain a warrant. App., *infra*, 14a.

The appellate court affirmed. Without even mentioning *Coolidge*, any of its progeny, or *McNeely*, the court held that "exigent circumstances supported law enforcement's *seizure* of the pickup truck to a secured location while a *search* warrant was being obtained." (Emphasis in the original). It held this was because "[t]he truck was clearly mobile and had been moved in the few hours preceding its seizure," and Mr. Bethel had "observed several people milling about the truck and conversing amongst each other, coming and going, and one of the people removing at least one item from the bed of the truck that appeared to be something

matching the description of the wrapped up [*sic*] weapon." App, *infra*, 16a.

## REASONS FOR GRANTING THE PETITION

The Missouri Court of Appeals' decision conflicts with this Court's longstanding precedent that when a defendant's motor vehicle is suspected of having been used in a previous crime by that defendant and is regularly parked in public long after the defendant is in custody, and officers have time to obtain a warrant to seize it, the "automobile exception" to the Fourth Amendment's warrant requirement is inapplicable and no exigent circumstances justify a warrantless seizure. *See Coolidge v. New Hampshire*, 403 U.S. 443, 458-64 (1971). It also conflicts with this Court's recent reconfirmation that "where police officers can reasonably obtain a warrant, . . . the Fourth Amendment mandates they do so." *Missouri v. McNeely*, 133 S.Ct. 1552, 1561 (2013). Finally, it also conflicts with the uniformity of subsequent state and federal appellate decisions up through the present day unquestioningly following *Coolidge*.

Because the Missouri Court of Appeals' decision conflicts with *Coolidge*, its progeny, and *McNeely*, and is incorrect, this petition for certiorari should be granted.

### A. The decision below conflicts with prior decisions of this Court.

This Court has held that it "is beyond dispute that a vehicle is an 'effect' as that term is used in the [Fourth] Amendment." *United States v. Jones*, 132 S.Ct. 945, 949 (2012). So, generally, the Fourth Amendment requires that law enforcement must obtain a warrant before seizing an automobile, because it "protects property as well as privacy" and seizures as well as searches. *Soldal v. Cook Cnty.*, 506 U.S. 56, 62-64 (1992). And "a seizure of personal property" is "*per se* unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized." *United States v. Place*, 462 U.S. 696, 701 (1983) (citation omitted).

*Coolidge* is a watershed decision that put a stop to the runaway use of the so-called "automobile exception" to the Fourth Amendment's warrant requirement from *Carroll v. United States*, 267 U.S. 132 (1925), which otherwise would allow any warrantless search or seizure of any automobile simply because it is an automobile. Instead, the Court in *Coolidge* held that if law enforcement had the ability to obtain a warrant to seize an automobile, the Fourth Amendment required them to. 403 U.S. at 458-64.

In *Coolidge*, the Court addressed the warrantless seizure of an automobile that was parked in the defendant's driveway, which police suspected the

defendant had used days earlier while committing a murder. *Id.* at 445-46. After arresting the defendant in his house, and while he already was in custody, officers seized his car parked in the driveway outside the house. *Id.* at 447-48. The car subsequently was searched with a warrant, revealing evidence used against the defendant at his trial. *Id.* at 448.

The Court held that the warrantless seizure of the defendant's car, regardless of the search, violated the Fourth Amendment. *Id.* And the "automobile exception" from *Carroll* did not cure this. *Id.* at 458-64.

The Court noted that the "automobile exception" in *Carroll* was designed for seizing "contraband goods" known to be located inside the automobile. *Id.* But there was no contraband at issue in *Coolidge*. *Id.* at 460. Rather, "the police had known for some time of the probable role of the . . . car in the crime," the defendant was already in custody at the time of the seizure, "[h]e had ample opportunity to destroy any evidence he thought incriminating," there was "no suggestion" that "the car was being used for any illegal purpose" at the time it was seized, and it was "regularly parked. . . ." *Id.* "There was no way in which [the defendant] could conceivably have gained access to the automobile after the police" took him into custody. *Id.* And, at the time of the seizure, the automobile was being "guarded . . . by two policemen." *Id.* at 461.

Under these circumstances, the warrantless seizure of the automobile – rather than the subsequent search, but which led to the subsequent search – was

unconstitutional, regardless of the "automobile exception":

> ***The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears.*** And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll* . . . – no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized autobile [*sic*]. In short, by no possible stretch of the legal imagination can this be made into a case where 'it is not practicable to secure a warrant,' *Carroll*, supra, at 153, . . . and the 'automobile exception,' despite its label, is simply irrelevant.

*Id.* at 461-62 (emphasis added).

And as the seizure was unlawful, the subsequent "search at the station house was plainly illegal." *Id.* at 462. There may have been "probable cause, but no exigent circumstances justified the police in proceeding without a warrant." *Id.* "Even granting that the police had probable cause to search the car," that did not cure the initial *seizure* that led to the search. *Id.* at 458.

The same plainly is true here, and the Missouri Court of Appeals' decision to the contrary is in direct conflict with *Coolidge*. Just as in *Coolidge*, the police had known for some time of the probable role of Mr.

Mays's truck in the killing of Mr. Romdall. Indeed, at the time Mr. Bethel located it, an all-points bulletin had been out for it for some 24 hours. Moreover, just as in *Coolidge*, Mr. Mays already had been in law enforcement custody for more than three hours at the time the truck was located. Just as in *Coolidge*, there was no danger of flight. Just as in *Coolidge*, Mr. Mays already had ample opportunity to destroy any incriminating evidence. Just as in *Coolidge*, there was no suggestion the truck was being used for any illegal purpose at the time it was seized. Just as in *Coolidge*, the truck was not on a public highway. Instead, it was regularly, lawfully parked in a parking space in a parking lot. Just as in *Coolidge*, there was no contraband at issue. Just as in *Coolidge*, officers were guarding the truck. And to top it all off, Deputy Bigler did not dispute that there had been time to obtain a warrant. Other than a Nuremburg defense, he gave no excuse for failing to obtain one.

So, as in *Coolidge*, the police may have had probable cause to believe evidence of a crime could be found in Mr. Mays's truck (App., *infra*, 15a-16a), "but no exigent circumstances justified the police in proceeding without a warrant." 403 U.S. at 462. The "'automobile exception,' despite its label, [was] simply irrelevant." *Id.*

But despite being fully apprised of *Coolidge*, and without addressing the *Coolidge* doctrine at all, the Missouri Court of Appeals held exactly what *Coolidge* says the Fourth Amendment does not permit. Instead, it held there were "exigent circumstances" justifying

the seizure pending a search warrant *solely* for two reasons: (1) "[t]he truck was clearly mobile and had been moved in the few hours preceding its seizure"; and (2) people had been seen "milling about the truck," even removing an object that the prosecution surmised was the weapon with which Mr. Mays had killed Mr. Romdall.[1]

The first supposed "exigent circumstance" itself directly conflicts with *Coolidge*. All vehicles are "mobile." The defendant's car in *Coolidge* was capable of being moved, too. 402 U.S. at 445-46. The point to the Court's decision, though, was the fact that the "effect" being seized without a warrant is an automobile that physically is *capable* of being moved does not *ipso facto* mean "it is not practicable to secure a warrant." *Id.* at 462 (quoting *Carroll*, 267 U.S. at 153). Otherwise, the word "automobile" *would* be "a talisman in whose presence the Fourth Amendment fades away and disappears," *id.* at 461, the very evil that the Court in *Coolidge* sought to abolish in the first place.

The second supposed "exigent circumstance" does not fit the record. While *Coolidge* allowed for a possibility of exigent circumstances justifying a warrantless seizure where there were "confederates waiting to

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[1] It is hard to imagine how an object said to be a maximum of "twenty inches long" (App., *infra*, 7a) could be a Winchester Model 94 .30-.30 rifle (App., *infra*, 4a). Even the short version of that rifle is 38" long, nearly double the length of the object Mr. Bethel said he saw. *See* WINCHESTER REPEATING ARMS, *Model 94 Short Rifle*, http://www.winchesterguns.com/products/rifles/model-94/model-94-inline-catalog-production/94-short-rifle.html.

move the evidence," 403 U.S. at 462, there was no evidence of that here. Rather, by the time Deputy Bigler was "ordered" to seize Mr. Mays's truck, everyone who previously had been around the truck had left the scene, and Deputy Bigler himself was in possession of the truck's keys! In fact, from the time Deputy Bigler testified "the decision was made" that "we were to seize" the truck until a tow truck came and towed it away was a further *several hours*, during which only law enforcement was around it.

In both *Coolidge* and more recent decisions, this Court has made clear that the justification for the "exigent circumstances" exception is time-related: there must be ***both*** a "compelling need for official action ***and*** **no time to secure a warrant**." *McNeely*, 133 S.Ct. at 1559 (emphasis added).

In *McNeely*, for example, the Court reconfirmed the importance of the case-by-case analysis to determine whether exigent circumstances existed and refused to adopt a "categorical rule proposed by the State" that would allow law enforcement officials in any drunk-driving investigation warrantlessly to obtain a blood sample from the suspect. *Id.* at 1561. Though the Court acknowledged the unique circumstance in drunk-driving cases that the evidence of alcohol in a person's blood is "inherently evanescent," it still concluded that, "***where police officers can reasonably obtain a warrant*** before a blood sample can be drawn without significantly undermining the efficacy of the search, ***the Fourth Amendment mandates that they do so***." *Id.* (emphasis added).

To support this, the Court placed great weight on the ever-evolving technologies continually streamlining the warrant application process to make obtaining a warrant a quick, easy task:

> [An exigent circumstances analysis must] account for advances . . . that allow for the more expeditious processing of warrant applications. . . . The Federal Rules of Criminal Procedure were amended in 1977 to permit federal magistrate judges to issue a warrant based on sworn testimony communicated by telephone. As amended, the law now allows a federal magistrate judge to consider "information communicated by telephone or other reliable electronic means." States have also innovated. Well over a majority of States allow police officers or prosecutors to apply for search warrants remotely through various means, including telephonic or radio communication, electronic communication such as e-mail, and video conferencing. . . . [T]echnological developments that enable police officers to secure warrants more quickly, and do so without undermining the neutral magistrate judge's essential role as a check on police discretion, are relevant to an assessment of exigency.

*Id.* at 1562-63 (internal citations and quotation marks omitted).

The Missouri Court of Appeals' decision that the circumstances here in any way were "exigent" conflicts with both *Coolidge* and *McNeely*. As in both cases, the

police plainly had "time to obtain a warrant," so "the Fourth Amendment mandate[d] that they do so." *Id.* at 1559. On Deputy Bigler's request, Mr. Mays's son gave him the keys to the truck. Then, Mr. Mays's son left. There was no one else around the truck besides law enforcement. Only then, with police having secured the area around the truck, Mr. Mays long in custody, the truck regularly parked in a parking space, and no possible danger that anyone was going to move the truck, did Deputy Bigler's superiors make the decision to seize the truck. And it was not actually seized until several hours later, when a tow truck arrived and towed it to an impound.

The Fourth Amendment presumes warrantless seizures are unreasonable. Under this Court's express holdings in *Coolidge* and *McNeely*, these were not and could not have been exigent circumstances in which there was no time to secure a warrant. The police had to obtain a warrant to seize Mr. Mays's truck, and their warrantless seizure renders the later search invalid.

### B. The decision below conflicts with decisions of federal appellate courts and other states' courts of last resort.

The Missouri Court of Appeals' decision also creates a conflict with other states' courts of last resort and federal appellate courts. Post-*Coolidge* state and federal authorities uniformly agree that circumstances like those here are not and cannot be exigent and do not excuse law enforcement from obeying the Fourth

Amendment's warrant requirement to seize an automobile.[2]

In *State v. LeJeune*, 576 S.E.2d 888, 893 (Ga. 2003), the suspect's car was found legally parked in a space in a parking lot, the suspect already was in custody, and police had secured the area around the car, but police "seized the automobile without a warrant . . . and hauled it away to be searched at a later date." Citing *Coolidge*, the Supreme Court of Georgia agreed that these were not exigent circumstances and held that the trial court erred in failing to suppress the evidence obtained from the seizure of the car. *Id.*

In *People v. Lewis*, 601 N.Y.S.2d 943, 943 (App. Div. 1993), *leave to appeal denied*, 627 N.E.2d 524 (N.Y. 1993), after the suspect already was in custody, his car was found legally parked in the driveway of his sister's home, but police seized it without a warrant. Citing *Coolidge*, the New York Supreme Court, Appellate Division, held that this violated the Fourth Amendment, because "none of the 'automobile exceptions' to the warrant requirement" applied, and "there were no exigencies . . . to obviate the need for a warrant." *Id.*

In *State v. Davis*, No. CA89-03-016, 1989 WL 149413 at *3 (Ohio Ct. App. Dec. 11, 1989), *appeal dismissed*, 555 N.E.2d 316 (Ohio 1990), after the defendant had been arrested from his home and several

[2] Most of these authorities are several decades old. This just goes to show that after *Coolidge*, law enforcement officers generally have been properly trained to obtain warrants when seeking to seize vehicles in situations like this case.

police officers remained to secure the premises, the police seized his car from the driveway without a warrant. Citing *Coolidge*, the Ohio Court of Appeals held that "the warrantless seizure must be deemed unreasonable." *Id.* "[T]here was no indication that [the car] was being used for any illegal purposes at the time of the seizure," "the opportunity to search the automobile was not 'fleeting' and there was little danger that appellant or a confederate would remove or destroy any incriminating evidence." *Id.*; *see also State v. Sprague*, No. 88-05-037, 1989 WL 36301 at *3 (Ohio Ct. App. Apr. 17, 1989), *appeal dismissed*, 545 N.E.2d 1278 (Ohio 1989) (same).

In *State v. Bennett*, 516 So.2d 964, 965-66 (Fla. Dist. Ct. App. 1987), *review denied*, 528 So.2d 1183 (Fla. 1988), after the defendant already was in custody, a police officer seized his legally parked car without a warrant. Citing *Coolidge*, the District Court of Appeal of Florida held that this violated the Fourth Amendment and rendered the subsequent search invalid. *Id.* at 965. There was no "unplanned, unanticipated arrest of an occupant, or recent occupant, of a motor vehicle – thereby confronting the arresting officer with an exigent circumstance which he had not created." *Id.* Instead, per *Coolidge*, the "officer created the exigency by his failure to apply for a search warrant, despite having ample opportunity to do so," and he had no "legal basis to seize" the car without a warrant. *Id.* at 965-66.

In *Lavicky v. Burnett*, 758 F.2d 468, 475 (10th Cir. 1985), *cert. denied sub nom. Moore v. Lavicky*, 474 U.S.

1101 (1986), after the defendant already was in custody for allegedly stealing a pickup truck, the police seized without a warrant a pickup truck that they suspected was the stolen article, which was parked legally near his home. Citing *Coolidge*, the Tenth Circuit held that this violated the Fourth Amendment. *Id.* The "automobile exception" did not apply because the truck was "not on a public way," "was not taken into custody at the time of arrest," and was not being used in any crime at the time of its seizure. *Id.*

In *State v. Camargo*, 498 A.2d 292, 296-97 (N.H. 1985), after the defendant already was in custody, police seized his car legally parked in a space in a parking lot without a warrant, later searching it and uncovering evidence that elevated the defendant's misdemeanor offense to a felony offense. Citing *Coolidge*, the Supreme Court of New Hampshire held that the warrantless seizure violated the Fourth Amendment and rendered the subsequent search invalid and the admission of the evidence error. *Id.* "Although probable cause existed, the exigency exception was not met because the automobile was parked ***and was therefore not mobile***," and "police could have obtained a search warrant . . . before seizing the vehicle, and could have avoided incurring undue risk of the vehicle being moved by simply assigning an officer to observe the lot and automobile while they obtained the warrant." *Id.* (emphasis added).

In *State v. Ercolano*, 397 A.2d 1062, 1065-66 (N.J. 1979), after the defendant was in custody, police seized his legally parked and locked car from a parking space

on a street in front of an apartment building without a warrant and took it to an impound lot, where a search discovered evidence against the defendant. Citing *Coolidge*, the Supreme Court of New Jersey held that the warrantless seizure violated the Fourth Amendment. *Id.* "Leaving the properly parked and locked car on the street where defendant had left it, for a reasonable period of time, presented no more danger to the car and its contents than if defendant had been on a legitimate visit to a tenant in the apartment house." *Id.* at 1066. "In the meantime," police had to obtain a warrant to seize it, and "[a]bsent such action by the police, their seizure of the car was illegal, and so must be the inseparable concomitant thereof, the later search of the vehicle." *Id.*

In *United States v. Kelly*, 547 F.2d 82, 83-85 (8th Cir. 1977), after the defendant was arrested in a motel room, the police seized his car legally parked in a parking space in the parking lot outside without a warrant, leading to a search and recovery of evidence used against him. Citing *Coolidge*, the Eighth Circuit held that the warrantless seizure violated the Fourth Amendment and reversed and remanded for a new trial. *Id.* "Even if probable cause did exist, that alone [was] not enough to justify a warrantless car" seizure, as "[n]o exigent circumstances were present here." *Id.* at 84. "The car was unoccupied and parked," there was no showing that anyone was waiting to move the car, and there was no reason that the police could not have obtained a warrant. *Id.*

In *Fuqua v. Armour*, 543 S.W.2d 64, 68 (Tenn. 1976), after the defendant committed narcotics offenses, the police arrested him and then seized his legally parked car from the driveway of his home without a warrant. Citing *Coolidge*, the Supreme Court of Tennessee held that the warrantless seizure violated the Fourth Amendment. *Id.* "If the automobile had been seized and the defendant . . . arrested at the time of either of the sales of narcotics disclosed in the record, such seizure and arrest in our view probably would have been valid without warrants. But, there were no exigent circumstances here. We cannot countenance a seizure without a warrant of an automobile from the owner's premises when the officers had" sufficient time "within which to obtain a warrant." *Id.*

In *Freeman v. State*, 527 S.W.2d 909, 915-16 (Ark. 1975), *overruled on other grounds by Oxford v. Hamilton*, 763 S.W.2d 83 (Ark. 1989), police suspected that the defendant had used his car in a murder, and after his arrest they seized it without a warrant from a legal parking space in front of his residence, later taking photographs of it that were used against the defendant at trial. Citing *Coolidge*, the Arkansas Supreme Court held that the warrantless seizure violated the Fourth Amendment and reversed and remanded for a new trial. *Id.* At the time of the seizure, the car "was not at the time being used for any illegal purpose," "[t]here was no way that [the defendant] could have had access to the car after he was arrested," "[t]here was no indication that there was any danger" that anyone else "might remove the vehicle from the premises before a

warrant for its seizure could be obtained and executed." *Id.* at 916. Even if there somehow were such a danger, "no reason appears why the two officers . . . could not have maintained a guard sufficient to prevent the removal of this evidence, or why additional officers could not have been summoned to lend assistance in this respect." *Id.* In short, "The precepts of *Coolidge* prevent . . . holding that exigent circumstances justified the seizure." *Id.*

Finally,[3] in *United States v. McCormick*, 502 F.2d 281, 287 (9th Cir. 1974), after the defendant was arrested from his home, Secret Service agents seized his car parked regularly in his driveway without a warrant, uncovering evidence used against him at trial. Citing *Coolidge*, the Ninth Circuit held that the warrantless seizure violated the Fourth Amendment and reversed and remanded for a new trial. "[T]he second sine qua non of Carroll, exigent circumstances, is here absent." *Id.* "There was no indication [the car] was then being used for any illegal purpose," the defendant already was in custody and "could not have driven [the

[3] Besides the state court-of-last-resort decisions discussed in this section, many state intermediate appellate courts also have echoed that these circumstances are not "exigent" and do not dispense with the Fourth Amendment's warrant requirement, and review was not sought in a higher court. *See Farrell v. State*, No. CA CR 90-277, 1992 WL 42390 at *5 (Ark. Ct. App. Mar. 4, 1992); *State v. Russell*, 376 S.E.2d 458 (N.C. Ct. App. 1989); *People v. Brink*, 529 N.E.2d 1, 5 (Ill. App. Ct. 1988); *Commw. v. Landamus*, 482 A.2d 619, 623 (Pa. Super. Ct. 1984); *Phillips v. State*, 305 S.E.2d 918, 921 (Ga. Ct. App. 1983).

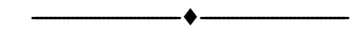
car] away," particularly "because a police car was blocking the driveway." *Id.*

The Missouri Court of Appeals' decision conflicts with all these equally on-point state and federal authorities confirming that regardless of probable cause, the circumstances here were not and could not have been exigent and excuse the police's failure to obtain a seizure warrant. As in *Coolidge* and these decisions:

- Mr. Mays already was in custody hours before his truck was seized, so it was impossible for him to move the truck;
- The truck was unoccupied, was locked, and was parked legally in a regular parking space, and so was not mobile;
- The truck was not located on a public highway;
- The truck was not being used for any illegal purpose at the time of its seizure;
- At the time they decided to seize the truck, police officers had secured the area and no one else was in a position to move the truck;
- Even if it somehow was possible that someone else could have arrived and sought to move the truck, there was no reason why Deputy Bigler and his fellow officers could not have maintained a guard to prevent its removal while they obtained a warrant;
- Many hours elapsed both between Mr. Mays's surrender and Mr. Bethel locating the truck, and between the police deciding to seize the

> truck and its actual seizure, allowing more than sufficient time – especially given modern technology – for Detective Bigler and his colleagues to obtain a warrant for the seizure.

For the 46 years since *Coolidge*, the law of the United States uniformly has been that these were not "exigent circumstances." The police plainly had "time to obtain a warrant," so "the Fourth Amendment mandate[d] that they do so." *McNeely*, 133 S.Ct. at 1559. They did not do so. Whether the Fourth Amendment now should excuse their failure in these circumstances warrants further review.



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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[SEAL]

MODIFIED
08/30/2016

**IN THE MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

| | | |
|---|---|---|
| **STATE OF MISSOURI,** | ) | |
| **Respondent,** | ) | **WD78417** |
| **v.** | ) | **OPINION FILED:** |
| **LONNY LEROY MAYS,** | ) | **July 26, 2016** |
| **Appellant.** | ) | |

**Appeal from the Circuit Court of Benton County, Missouri The Honorable Mark B. Pilley, Judge**

**Before Division IV:** Alok Ahuja, Presiding Judge, Mark D. Pfeiffer, Chief Judge, and J. Dale Youngs, Special Judge

Mr. Lonnie Mays ("Mays") appeals the judgment of the Circuit Court of Benton County, Missouri ("trial court"), convicting him, after a jury trial, of one count of first-degree murder and one count of armed criminal action. On appeal, Mays claims that the trial court erred in refusing to exclude the testimony of a witness due to the clergy-communicant privilege and in refusing to suppress evidence found in his vehicle that he claims was obtained in violation of the Fourth Amendment. We affirm.

**Factual and Procedural Background**

Mays and his wife lived in a retirement community called Sky Village, which is located near the junction of the Henry and Benton County lines. On the morning of March 26, 2012, Carolyn Simmons, who lived across the street from Mays, was putting her trash out when Mays began "holler[ing] some things" at her; he appeared to be "a little irate." Ms. Simmons ignored Mays and went on to the house of another neighbor, Jeannie Fair, for coffee. Ms. Fair lived two houses down from Ms. Simmons. Also joining the coffee group was Rudy Romdall, who had had numerous runins with Mays over the years.

After coffee, Mr. Romdall followed Ms. Simmons back to her house in his gray pickup truck, because Mr. Romdall was going to accompany Ms. Simmons, who was head of the Sky Village community association, to meet a man delivering gravel for the community's streets. As they were leaving Ms. Simmons's house, Mays was in the middle of the street yelling at them, so Ms. Simmons told Mr. Romdall to exit the neighborhood in the direction opposite Mays. They did, but Mays followed them in his own black pickup truck. Ms. Simmons and Mr. Romdall parked just outside of the Sky Village community to wait for the gravel delivery person, and Mays stopped his truck in front of them on the road, got out of his truck, and started yelling, knocking on Mr. Romdall's truck window, and gesturing for Mr. Romdall to roll down his window. Ms. Simmons asked Mr. Romdall to ignore Mays because she was afraid. They ignored Mays, and he got back into

his truck and drove away. Several minutes later, Mays again drove by Mr. Romdall and Ms. Simmons, gave them a dirty look, and drove away. Ms. Simmons did not see Mays again that day. After finishing with the gravel delivery person, Ms. Simmons and Mr. Romdall returned to the Sky Village community where one neighbor had called the police to tell them about Mays's behavior. The police came out to speak to them, and then went to the Mays house to speak to Mays.

At around 11:20 a.m., video footage from a Wal-Mart store nearby shows Mays purchasing "Winchester Super X Power Point .30-30 caliber ammunition." Mays had recently borrowed a .30-30 rifle from his brother, Donald Mays ("Donald"); at the time, Mays told Donald that he was borrowing the rifle for target practice.

At around 12:30 p.m. on March 26, 2012, Jared Lawler, a farmer in Henry County, noticed a field off of Highway 7 had an open gate that was always supposed to be closed, so he stopped to close it. Mr. Lawler noticed a black Ford Ranger pickup in an adjoining field, so he "knew someone was in there." No one was inside the truck, so Mr. Lawler "walked around the truck, wrote the license number down, and kind of hung around there for a little bit to see if [he] could see anybody in there hunting." When Mr. Lawler was about to leave, he "saw a gentleman in the tree line along 7 Highway." The man (later determined by Mr. Lawler to be Mays) emerged from the tree line, and they "walked together back to the truck." Mr. Lawler described the man as "an older gentleman, had glasses, had a hat on

that said . . . something about being a veteran," and he was wearing "a kind of plaid looking shirt, jeans," carrying a Winchester Model 94 .30-30 rifle. Mr. Lawler asked the man what he was doing, and the man said he had unsuccessfully been trying to shoot a coyote. Mr. Lawler introduced himself to the man, and they shook hands. Mr. Lawler said the man left and turned east toward Highway 7. Mr. Lawler did not remember the man's name, but identified him as Mays at trial. Mr. Lawler said the field was located "five to six" miles from County Line Road, which is adjacent to Sky Village.

At "a little before 1 p.m.," Jean Bonrud and her friend, Vicki Schmidt, were at Ms. Bonrud's Sky Village house. Ms. Bonrud, a nurse, knew Mays but did not know Mr. Romdall. Ms. Bonrud saw a "black small pickup" truck traveling east on Highway 7 by her house and assumed that it was Mays on his way home. Shortly thereafter, the women heard two gunshots close in time. Looking out the window, Ms. Schmidt saw two pickup trucks: a gray one facing north and a black one facing south. She saw the black pickup leave and go south "over a little knoll." The women then saw the black pickup coming back north "at a high speed." After the black pickup left, another man she did not recognize pulled up behind the gray truck, "got out and went up to the pickup and yelled that . . . Rudy's been shot."

Ms. Bonrud walked out to see if she could help. She noticed a bullet hole in the side of the truck's door and saw what proved to be Mr. Romdall "slumped over to

the side" in his seat. His driver's side window was rolled down, and a cell phone was open in Mr. Romdall's hand on his leg. The man's wife called 9-1-1 and handed the phone to Ms. Bonrud. Ms. Bonrud told the 9-1-1 dispatcher that Mr. Romdall was non-responsive. She took Mr. Romdall's pulse and noticed he was gasping for breath. He had a hole in his left side with blood streaming out.

The other man on the scene was Ronald Ferguson, a Sky Village neighbor. He had seen Mr. Romdall at around 11:45 a.m. earlier in the day when Mr. Romdall stopped by to see Mr. Ferguson's mother. Later, when he and his family were on their way out of town, he saw Mr. Romdall's truck stopped at the intersection near the edge of the neighborhood. He pulled up behind Mr. Romdall's truck, but after waiting for a while, he pulled up to the side of Mr. Romdall's truck. He noticed a bullet hole by the door handle, so he got out of his car and went to the driver's side of the truck. Mr. Ferguson saw Mr. Romdall slumped over with his cell phone in his hand and his dog next to him. Mr. Ferguson could not feel Mr. Romdall's pulse, and he saw lots of blood. He put Mr. Romdall's truck in park and told his wife to call 9-1-1. Mr. Ferguson did not see any handguns inside the truck's interior.

Mr. Romdall died from his injuries.

Later that afternoon, Mays pulled up to the home of Joseph Rhodes, a retired Pentacostal minister. Mr. Rhodes was mowing his grass, but shut the mower off when Mays drove up and exited his truck. Mays, who

had never met Rhodes before, asked Rhodes if he was a minister; Mr. Rhodes responded that he was, but was retired. Mays then asked Mr. Rhodes if he was a veteran, and Mr. Rhodes responded that he was. Mays then told Mr. Rhodes that he thought he had killed someone by shooting him with a .30-30 rifle in the chest. Mr. Rhodes agreed that such a gunshot with that weapon would have killed the other person. The two walked up to Mr. Rhodes's porch and Mays told Mr. Rhodes that he and the other man had had troubles for some time, and that the man had been "bugging the fire out of him." Mays subsequently asked to make a phone call with Mr. Rhodes's land line telephone and Mr. Rhodes complied. Mays made some phone calls, told Mr. Rhodes that someone would be coming to pick him up, then went down near the lake behind Mr. Rhodes's house to wait for his ride.

Mays turned himself in to police the next morning, March 27, 2012.

On March 27, 2012, Bryan Bethel, Park Superintendent of the Harry S Truman State Park was on duty. He had been advised to look for a black Ford Ranger pickup truck with a specific license plate that was wanted in a criminal investigation. Mr. Bethel and a park ranger performed sweeps of the park, looking for the vehicle. Mr. Bethel found the truck at approximately 1:45 p.m., at the park marina, and called the sheriff's office.

As Mr. Bethel waited for law enforcement to show up, he saw a young man with dark hair talking on a

cell phone standing at the back of the pickup truck and looking into it. Then a blue car pulled up, and an elderly gentleman with a cowboy hat and a woman got out of the car and began to mill around the truck, looking in the windows and the back of the truck. Next, a silver car appeared and the elderly gentleman and the woman talked to the people in the silver car. The man and the woman looked around the truck once more, and then the elderly gentleman reached into the bed of the pickup and pulled out what appeared to be a brown jacket wrapped around a stiff object about eighteen to twenty inches long. The elderly gentleman and the woman left in the silver car. The younger man on the cell phone went to the houseboat area of the marina.

When Deputy Sheriff Brian Bigler arrived, he met with Mr. Bethel, who took them to the pickup truck. Another deputy sheriff was there with a park ranger. Deputy Bigler was told by the sheriff to seize the pickup truck and tow it to the impound lot. Deputy Bigler got the keys to the truck from Mays's son. Mays's wife's car was also at the marina.

After the truck was recovered, Sergeant Greg Martin of the Highway Patrol drafted an affidavit for a search warrant for the truck. The search warrant was issued and Sgt. Martin executed the warrant on March 29, 2012. The search of the truck did not yield a weapon. It revealed no evidence that a bullet might have been fired into the truck. A green suitcase was found in the truck containing clothing and paperwork.

Before trial, Mays's counsel filed a motion in limine to exclude any testimony regarding any communication Mays had with Mr. Rhodes. Mays also filed a motion to suppress the evidence obtained in the search of the pickup truck since the truck was seized prior to a warrant having been obtained. Both motions were ultimately denied, and the evidence was admitted at Mays's trial. The jury found Mays guilty on all counts.

This appeal follows.

**Clergy-Communicant Privilege**

Mays's first point on appeal is that the trial court erred in admitting the testimony of Mr. Rhodes because he argues that the clergy-communicant privilege in section 491.060(4) applies to Mays's conversation with Mr. Rhodes on the day of Mr. Romdall's homicide.

The trial court has broad discretion in ruling on the admissibility of evidence. *State v. Joyner*, 458 S.W.3d 875, 880 (Mo. App. W.D. 2015). We thus review the trial court's decisions regarding the admission of the evidence for an abuse of that discretion. *Id.* "The trial court abuses its discretion if its ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Id.* The "trial court's admission of evidence will be sustained as long as it is sustainable under any theory." *State v. Merrill*, 990 S.W.2d 166, 170 (Mo. App. W.D. 1999).

Even if we conclude that the trial court has erroneously admitted certain evidence, we will not consider such evidence reversible error unless its admission was "so prejudicial that it deprived the defendant of a fair trial." *State v. Ward*, 473 S.W.3d 686, 696 (Mo. App. W.D. 2015). This level of prejudice is established when the error in admitting the evidence was "outcome determinative." *Joyner*, 458 S.W.3d at 880. A "finding of outcome-determinative prejudice expresses a judicial conclusion that the erroneously admitted evidence so influenced the jury that, when considered with and balanced against all of the evidence properly admitted, there is a reasonable probability that the jury would have reached a different conclusion but for the erroneously admitted evidence." *Id.* (internal quotation omitted).[1] To address the question of whether a defendant

[1] Mays's brief asserts that the standard for outcome-determinative prejudice is whether "it can be said beyond a reasonable doubt that the improperly admitted evidence failed to contribute to the jury's verdict." Mays cites *State v. Barton*, 936 S.W.2d 781, 786-87 (Mo. banc 1996). *Barton*, which does not involve erroneously admitted evidence, but examines a trial court's erroneous ruling limiting the defendant's closing argument, does not require a finding of no prejudice "beyond a reasonable doubt." Rather, *Barton* discusses the standard for prejudice at length, and holds expressly that "the proper standard for reversing a case due to an abuse of discretion in closing argument should be stated as whether the abuse 'prejudiced' the defendant's case; that is, whether there is a reasonable probability that, in the absence of the abuse, the verdict would have been different." *Id.* at 786. Though we have found cases that require a finding of a lack of prejudice beyond all reasonable doubt, those cases involve trial court error that affects the defendant's *constitutional* rights; *see, e.g.*, *State v. Driscoll*, 55 S.W.3d 350, 356 (Mo. banc 2001). Here,

has suffered outcome-determinative prejudice, we must "review the whole record, keeping in mind that the state [is] not entitled to the benefit of all reasonable inferences from the evidence, as in a review for the sufficiency of the evidence." *State v. Driscoll*, 55 S.W.3d 350, 357 (Mo. banc 2001). Here, even were we to find error with the trial court's evidentiary ruling relating to the admission of Mr. Rhodes's testimony at trial,[2] there simply is no outcome-determinative prejudice in this case that could warrant reversal.

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conversely, the error claimed by Mays on appeal involves a privilege granted by *statute* and his point relied on expresses no claim of constitutional violation by the trial court.

[2] Section 491.060(4) provides that "[a]ny person practicing as a minister of the gospel, priest, rabbi or other person serving in a similar capacity for any organized religion, concerning a communication made to him or her in his or her professional capacity as a spiritual advisor, confessor, counselor or comforter" is incompetent to testify about the privileged communication. Though there are instances where a retired minister could still qualify as a "practicing" minister, whether Mr. Rhodes was a "practicing" minister or not does not dispense with the requirement that the communication by the "communicant" be within the "clergy's" professional capacity as a "spiritual advisor, confessor, counselor or comforter." *See State v. Gerhart*, 129 S.W.3d 893, 898 (Mo. App. W.D. 2004). Here, Mays did not ask for spiritual guidance, prayer, absolution, forgiveness, or anything of the like from Mr. Rhodes – a person whom he had never met before; instead, after confirming that Mr. Rhodes was both a retired pastor *and* a veteran, he explained how he had just shot another person, needed a phone to call someone to pick him up, and then he left. That said, we need not and do not rule upon the correctness of the trial court's evidentiary ruling as to whether the clergy-communicant privilege was applicable or not.

First, Mr. Rhodes's testimony regarding Mays's admissions to him tends to prove facts that were otherwise already in the case. When there is "other evidence before the court which establishe[s] the same facts," no prejudice is shown. *Merrill*, 990 S.W.2d at 171. *See also Trident Group, LLC v. Miss. Valley Roofing, Inc.*, 279 S.W.3d 192, 199 (Mo. App. E.D. 2009) ("A complaining party is not entitled to assert prejudice if the challenged evidence is cumulative to other related admitted evidence."). Mr. Rhodes testified that Mays appeared upset and that Mays admitted to shooting Mr. Romdall, in the chest, with a .30-30 rifle, and that Mr. Romdall had been "bugging the fire out of him." Mays himself testified that he had been upset the day he shot Mr. Romdall, and that he had to go take a walk to calm down. Mays admitted that he shot Mr. Romdall (in self-defense), and several witnesses saw a truck that looked like Mays's going up and down the street at the time that they heard gunshots and later found Mr. Romdall in his own truck dying from a gunshot wound. Mays testified that he borrowed his brother's gun, which his brother testified was a Winchester .30-30 rifle, and the surveillance camera at Wal-Mart showed Mays buying ammunition for a .30-30 rifle. Mays testified about his contentious relationship with Mr. Romdall, as did several neighbors. Accordingly, the facts that Mr. Rhodes's testimony tended to prove were also established by other evidence properly admitted at trial.

Next, Mr. Rhodes's testimony was not inconsistent with Mays's theory of the case – that he shot Mr.

Romdall in self-defense. Mr. Rhodes did not testify that Mays had admitted that the shooting was premeditated nor of such a nature that he needed forgiveness for his actions. In fact, Mays did not ask Mr. Rhodes to pray for him on the day of the shooting and, likewise, did not ask Mr. Rhodes for any spiritual comfort whatsoever. Rhodes's account was that Mays simply appeared at his home, asked if he was a minister, asked if he was a veteran, admitted to shooting another man with a .30-30 rifle, stated that this other man had been bothering him to an extreme level, and then asked him to use the telephone. None of this is inconsistent with Mays's theory of the case, that Mr. Romdall, who had been severely bothering him for some time, and by whom he felt physically threatened for his life, appeared to have a gun on March 26, 2012, while he was in his truck, that Mr. Romdall shot at Mays, and that Mays shot Mr. Romdall in self-defense. "As such, the [testimony] at issue, here, would not seem to lend any greater weight to the State's theory of the case than it would the defense theory." *State v. Tripp*, 168 S.W.3d 667, 679 (Mo. App. W.D. 2005). This weighs against a finding that the testimony in question caused prejudice warranting reversal. *Id.*

Finally, even if we view the record without Mr. Rhodes's testimony, the overwhelming evidence in this case supported the jury's finding of guilt. Several witnesses testified that Mays and Mr. Romdall had a history of conflict, and some neighbors testified that Mays had threatened to kill Mr. Romdall, although they did not take his threats seriously. Ms. Simmons testified

that on the day of the shooting, Mays was behaving aggressively and followed Mr. Romdall. Ms. Simmons, who was with Mr. Romdall, was frightened, and Mays's behavior caused the police to be called by another neighbor. Mays testified that he was so upset after confronting Mr. Romdall and Ms. Simmons that he had to go walk around to calm down. Mays testified that he later went to borrow his brother's gun, ostensibly for "target practice." Wal-Mart surveillance footage shows Mays buying ammunition for his brother's gun. Immediately before the shooting, several witnesses testified to seeing a truck matching the description of Mays's truck driving down the road near where the shooting occurred. Several witnesses heard gunshots, and Vicki Schmidt and Jean Bonrud saw the black truck, which Ms. Bonrud believed belonged to Mays, speed off away from the scene of the shooting. There was no weapon in Romdall's truck; there was only a cell phone in his hand.

The next day, Mays turned himself in to police, and his truck was found at the marina near Truman Lake. No weapon was found in Mays's truck, despite his admission that he shot Mr. Romdall with his brother's .30-30 rifle. There was also no evidence in Mays's truck that a bullet had been fired at it, although Mays had claimed that Mr. Romdall shot at him.

Considering Mr. Rhodes's testimony, when balanced against all of the evidence properly admitted at trial, we conclude that there is not a reasonable probability that the jury would have reached a different conclusion but for Mr. Rhodes's testimony, even were

we to conclude that it had been erroneously admitted. Accordingly, Mays cannot demonstrate that the admission of Mr. Rhodes's testimony at trial was so prejudicial as to deprive him of a fair trial and, hence, Mays has failed to point to error warranting reversal.

Point I is denied.

**Evidence Obtained from Warrantless Seizure of Truck**

Mays's second point on appeal is that the trial court erred in denying his motion to suppress evidence taken from his truck on March 27, 2012, the day following Mr. Romdall's shooting. The truck was *seized* by police without a warrant, but a warrant was obtained *before* the truck was *searched*.

When a motion to suppress is denied, we review both the evidence presented at the motion hearing and at the trial, and view the facts and reasonable inferences from those facts in the light most favorable to the trial court's ruling. *State v. Selvy*, 462 S.W.3d 756, 760 (Mo. App. E.D. 2015). "Review is limited to determining whether the decision is supported by substantial evidence." *State v. Walker*, 460 S.W.3d 81, 85 (Mo. App. W.D. 2015). However, analysis of whether the Fourth Amendment has been violated is a legal issue that this court reviews *de novo*. *Id.*

The Fourth Amendment to the United States Constitution and article 1, section 15 of the Missouri Constitution both guarantee the right of people to be free

from unreasonable searches and seizures. *State v. Humble*, 474 S.W.3d 210, 215 (Mo. App. W.D. 2015). A warrantless search or seizure is presumed to be unreasonable unless one of "a few specifically established and well-delineated exceptions" applies. *Id.* (internal quotation omitted). The "automobile exception" is one of those established exceptions to the warrant requirement. *Id.*

"Under the automobile exception to the warrant requirement, police may search a vehicle and seize [evidence] found if there is probable cause to believe that the vehicle contains [evidence] and exigent circumstances necessitate the search." *Walker*, 460 S.W.3d at 85 (internal quotation omitted). Here, there was both probable cause to believe that evidence relevant to the homicide would be found in the truck and that exigent circumstances required that the truck be seized to prevent further removal of evidence from the truck.

Several witnesses had seen Mays argue with and harass Mr. Romdall on the day of his death and had seen a vehicle that looked like the one Mays drove in the area of Mr. Romdall's own vehicle immediately prior to the shooting, a location where witnesses had heard multiple gunshots fired. Further, Mays had turned himself in to law enforcement the morning before his truck was impounded. Therefore, the black truck that law enforcement believed belonged to Mays – substantiated by the fact that the keys to the truck were provided by Mays's brother – was part of the crime scene; thus, the officers had probable cause to

believe that evidence of the crime would be found within the truck.

Likewise, exigent circumstances supported law enforcement's *seizure* of the pickup truck to a secured location while a *search* warrant was being obtained. The truck was clearly mobile and had been moved in the few hours preceding its seizure. And, in mere minutes between Park Superintendent Bethel's discovery of the vehicle and law enforcement's arrival, Mr. Bethel observed several people milling about the truck and conversing amongst each other, coming and going, and one of the people removing at least one item from the bed of the truck that appeared to be something matching the description of a wrapped up weapon. These exigent circumstances justified law enforcement's preemptive seizure of the truck to a secure location where it could be searched later, pursuant to the warrant that law enforcement obtained.

The trial court did not commit error in admitting the evidence found in the pickup truck.

Point II is denied.

**Conclusion**

The judgment of the trial court is affirmed.

/s/ Mark D. Pfeiffer
Mark D. Pfeiffer, Chief Judge

Alok Ahuja, Presiding Judge, and J. Dale Youngs, Special Judge, concur.

**Missouri Court of Appeals**
WESTERN DISTRICT

**August 30, 2016**

**IMPORTANT NOTICE**

To: All Attorneys of Record

Re: STATE OF MISSOURI, RESPONDENT,

vs.

LONNY LEROY MAYS, APPELLANT.

WD78417

Please be advised that Appellant's motion for Rehearing is **OVERRULED** and motion for transfer to Supreme Court is **DENIED**. See Rule 83.04. Opinion modified on courts own motion. Copy of modification attached.

/s/ Terence G. Lord
Terence G. Lord
Clerk

cc: KAREN LOUISE KRAMER
JONATHAN STERNBERG

[SEAL] **IN THE 30TH JUDICIAL CIRCUIT COURT, BENTON COUNTY MISSOURI**

| | |
|---|---|
| **Judge or Division:**<br>MARK BRANDON PILLEY (43291) | **Case Number:**<br>**12BE-CR00120-01**<br>☐ Change of Venue from |
| | Offense Cycle No :<br>OCN NOT ON FILE |
| State Of Missouri vs.<br>Defendant:<br>LONNY LEROY MAYS (MAYLL0214)<br>557 SE 1291<br>CLINTON, MO 64735 | Assistant Attorney General/<br>MO Bar No:<br>STEVEN RAY BERRY (48586)<br>Defense Attorney/<br>MO Bar No:<br>PATRICK W PETERS (34017) |
| DOB: 30-Mar-1944<br>[redacted]<br>SEX: M | |
| | Appeal Bond Set Date:<br>Amount: |
| **Judgment** | |

| | Charge # | Charge Date | Charge Code | Charge Description |
|---|---|---|---|---|
| **Original Charge:** | 1 | 26-Mar-2012 | 1002100 | Murder 1st Degree **(Felony A RSMo: 565.020)** |
| **Disposition:** | 26-Sep-2014 | | Guilty Plea | |
| **Order Date:** | 25-Nov-2014 | **Sentence or SIS:** | | Incarceration DOC |
| | | **Start Date:** | | 25-Nov-2014 |
| **Text:** | LIFE SENTENCE WITHOUT PAROLE | | | |

| | Charge # | Charge Date | Charge Code | Charge Description |
|---|---|---|---|---|
| **Original Charge:** | 2 | 26-Mar-2012 | 3101000 | Armed Criminal Action **(Felony Unclassified RSMo: 571.015)** |
| **Disposition:** | 26-Sep-2014 | | Guilty Plea | |
| **Order Date:** | 25-Nov-2014 | **Sentence or SIS:** | | Incarceration DOC |
| **Length:** | 15 Years | **Start Date:** | | 25-Nov-2014 |
| **Text:** | 15 YEARS | | | |

The court informed the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

Defendant has been advised of his/her rights to file a motion for post conviction relief pursuant to Rule 24.035/29.15 and the court has found **No Probable Cause** to believe that defendant has received ineffective assistance of counsel.

The court orders:

The clerk to deliver a certified copy of the judgment and commitment to the sheriff.

The sheriff to authorize one additional officer/guard to transport defendant to Department of Corrections.

The Court further orders:

**25-Nov-2014 Defendant Sentenced**

AUTHORIZE ADDITIONAL OFFICER – Yes; DELIVER CERTIF COPY OF JUDMT – Yes; 24.035/29.15 INEFFECT COUNSEL – No; ALLOCUTION – Yes; LIFE WITHOUT PAROLE – Yes

**25-Nov-2014 Defendant Sentenced**

AUTHORIZE ADDITIONAL OFFICER – Yes; DELIVER CERTIF COPY OF JUDMT – Yes; 24.035/29.15 INEFFECT COUNSEL – No; ALLOCUTION – Yes

**So Ordered on: 12BE-CR00120-01 ST V LONNY LEROY MAYS**

11-26-14 /s/ Mark B. Pilley
Date Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

(Seal of Circuit Court)

Issued on: 11-26-14 /s/ Kim Amer

Date Judge

**Supreme Court of Missouri**
**en banc**
SC95941
WD78417

September Session, 2016

State of Missouri,
Respondent,

vs. (TRANSFER)

Lonnie Leroy Mays,
Appellant.

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Bill L. Thompson, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session, 2016, and on the 1st day of November, 2016, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 1st day of November, 2016.

/s/ Bill L. Thompson Clerk

/s/ Christina Vinson Deputy Clerk