IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SALVADOR RICARDO BLANCAS,
Petitioner,

v.

HON. RENEE BENNETT, JUDGE OF THE SUPERIOR COURT
OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF PIMA,
Respondent,

and

THE STATE OF ARIZONA,
Real Party in Interest.

No. 2 CA-SA 2022-0030
Filed September 26, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Spec. Act. 7(g), (i).

Special Action Proceeding
Pima County Cause No. CR20213972001

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Law Office of Hernandez & Hamilton PC
By Joshua F. Hamilton and Carol L. Lamoureux
Counsel for Petitioner

Laura Conover, Pima County Attorney
By Maile Belongie, Deputy County Attorney, Tucson
Counsel for Real Party in Interest

MEMORANDUM DECISION

Presiding Judge Eckerstrom authored the decision of the Court, in which Chief Judge Vásquez and Judge Espinosa[1] concurred.

E C K E R S T R O M, Presiding Judge:

¶1 In this special action proceeding, Salvador Blancas seeks review of the respondent judge's denial of his second motion to remand for a new determination of probable cause. He argues that, during the grand jury presentation, the prosecutor provided inadequate legal instructions and failed to present clearly exculpatory evidence. He further contends that the respondent abused her discretion and erred as a matter of law by concluding the presentation was fair and impartial. For the reasons discussed below, we accept special-action jurisdiction and grant relief.

Factual and Procedural Background

¶2 In August 2021, Blancas shot C.R. once in the chest in the parking lot of Eden Cabaret. C.R. died as a result.

¶3 The following month, in anticipation of the matter being referred to the grand jury, Blancas sent the prosecutor a *Trebus*[2] letter containing evidence he wanted presented. The letter was ten pages, with another more than 100 pages in attachments, including photographs, witness interviews, and C.R.'s criminal history. Blancas maintained he "was justified in using deadly force to defend himself" and there was no probable cause to believe he had committed a crime.

---

[1]The Hon. Philip G. Espinosa, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]*Trebus v. Davis*, 189 Ariz. 621 (1997).

¶4 In the letter, Blancas explained that C.R. had a "long, well-documented history of animosity" towards him because he "had dated a woman, [J.L.], with whom [C.R.] had previously been romantically involved." Blancas continued, "Things became especially heated in 2019 after [Blancas] informed . . . the mother of [C.R.'s] child" that C.R. "was cheating on her with another woman." Blancas described an incident that occurred about eighteen months prior to the shooting in which he "was jumped by four or five individuals as he walked under the Fourth Avenue underpass from Congress Street." Based in part on information from J.L., Blancas believed that C.R. was "behind the attack." J.L. also indicated to Blancas that C.R. "wanted to kill him," that C.R. "maintained a large knife collection and was fascinated by edged weapons," and that C.R. "had committed acts of domestic violence upon her." Blancas knew C.R. had a "history of combativeness towards others," was "a semi-professional mixed martial arts ('MMA') fighter," "frequently carried a weapon," and "had been arrested for violent behavior in the past."

¶5 Blancas also described a separate incident, which occurred about a week before the shooting, in which C.R. showed up at a bar where Blancas was working. Blancas "expressed concerns" to a coworker and warned staff over the radio, "[T]here's a guy who just came in who hates me." Blancas specifically told one coworker that he feared C.R. "might go off on him." That coworker believed Blancas "was always thinking about" it and feeling "stressed about" it. Another coworker noted "fear in [Blancas's] eyes." However, C.R. left the bar without incident.

¶6 In addition, Blancas provided evidence from several individuals who were with C.R. at Eden. They consistently described C.R. having "issues" with Blancas and conveying a desire "to get" Blancas. A bouncer similarly observed C.R. trying to "start up" with Blancas. The bouncer reported C.R. intentionally bumping into Blancas and trying to get Blancas to "go outside." Surveillance video showed Blancas exiting the club and running to his truck, with C.R. following behind.

¶7 The letter also pointed out that, after the shooting, Blancas drove to a police station and voluntarily sat down with detectives to explain what had happened. Blancas told the detectives that he had tried to leave Eden when C.R. was not looking but C.R. followed him. C.R. then asked, "[W]hy are you running?" in a "threatening" tone. Blancas also told the detectives he was "scared," thought C.R. was chasing him to "attack him," and grabbed his firearm to defend himself.

¶8 Blancas directed the prosecutor to the justification statutes, A.R.S. §§ 13-404 and 13-405. He asked that the grand jury be advised of them because "it would be unfair and inappropriate to rely on standard empanelment instructions, given at the outset of the grand jury's service." He also asked the prosecutor to present any other exculpatory evidence that was in the state's possession and to provide the *Trebus* letter to the grand jury.[3]

¶9 In October 2021, the grand jury returned a true bill, by a 9-5 vote, indicting Blancas for second-degree murder. In January 2022, Blancas filed a motion to remand for a new determination of probable cause. At a hearing in February 2022, the respondent judge granted the motion. It explained that "justification is . . . central to this case" and that "the absence of [Blancas's] statements regarding his state of mind are material" and "reasonably could have impacted the decision of the grand jury." The court noted:

> The part I'm concerned is lacking is some of the evidence that would have gone to [Blancas's] mental state as far as whether he reasonably perceived a danger. Specifically, the things that concerned me were the previous incident where he could have been very, very seriously injured by a group of individuals and was told by somebody that [C.R.] was behind that.
>
> His reaction to seeing [C.R.] a couple weeks or a week before where his reaction was I want to get out of sight I want to avoid conflict I want to get out of here, I believe this guy is going to be seriously violent with me. . . .
>
> The fact that he knew [C.R.] had been in possession of weapons, previously had engaged in some violent behavior . . . , that he didn't

[3] In *Trinh v. Garcia*, 251 Ariz. 147, ¶ 27 (App. 2021), this court determined that the state "was required to notify the grand jury of [the accused's *Trebus*] letter." Our supreme court, however, denied review in *Trinh* and ordered the court of appeals' opinion depublished.

> know whether he was carrying a weapon at that time, that he wasn't sure if [C.R.] was going to be joined by his other friends possibly because of the incident where he was jumped by a group of people, he wasn't sure of the status of the people standing next to the car, and I think that portion, which really wasn't brought up during the investigation, but really was just raised in the *Trebus* letter, it seems like there's a hole in the presentation with regard to that.

¶10 Two days later, Blancas sent the prosecutor an addendum to the *Trebus* letter. He again asked the prosecutor to "provide case-specific legal instructions to the grand jury during the re-presentment regarding the specific statutes implicated," including § 13-404 and § 13-405. Citing the manslaughter statute, A.R.S. § 13-1103(A)(2), and the definition of adequate provocation in A.R.S. § 13-1101(4), Blancas also requested that the grand jury "be instructed that, in Arizona, where a person commits second degree murder 'upon adequate provocation by the victim' the crime is reduced to manslaughter by operation of law." In addition, Blancas asked that the jury be told C.R. had Xanax in his system and a .270 blood-alcohol concentration at the time of his death, as well as the fact that C.R. was "a head taller" and about fifty pounds heavier than Blancas.

¶11 Later that month, the grand jury returned a true bill, by a 14-0 vote, again indicting Blancas for second-degree murder. Blancas filed a second motion to remand for a new determination of probable cause. At a hearing in May 2022, the respondent judge denied that motion. The respondent explained, in part, that the prosecutor had complied with the *Trebus* requirements to present potentially exculpatory evidence, the instructions were "accurate and complete," the presentation was fair and impartial, and Blancas's due process rights were not violated. The court further found that any "error in the presentation of evidence was harmless" because Blancas was not prejudiced and the probable cause determination would not have changed. This petition for special action followed.

Special-Action Jurisdiction

¶12 Special-action jurisdiction is discretionary but appropriate when a party has no "equally plain, speedy, and adequate remedy by appeal." Ariz. R. P. Spec. Act. 1(a); *see also Dominguez v. Foster*, 243 Ariz. 499, ¶ 5 (App. 2018). A defendant's only avenue for review of the denial of

a motion to remand for a new determination of probable cause is by way of special action. *Dominguez*, 243 Ariz. 499, ¶ 5. In addition, "the proper instruction of grand juries on justification defenses is a recurring issue of statewide importance." *Cespedes v. Lee*, 243 Ariz. 46, ¶ 4 (2017); *see also Willis v. Bernini*, ___ Ariz. ___, ¶ 11, 515 P.3d 142, 146 (2022) (describing meaning of "clearly exculpatory evidence" and denial of motion to remand as recurring issues of statewide importance). Finally, special-action jurisdiction is appropriate where the respondent judge has abused her discretion or exceeded her legal authority. *See State v. Wein*, 242 Ariz. 372, ¶ 7 (App. 2017). For all these reasons, we exercise our discretion and accept special-action jurisdiction.

Discussion

¶13 Blancas challenges the respondent judge's denial of his second motion to remand for a new determination of probable cause. He argues the prosecutor failed to present adequate legal instructions and clearly exculpatory evidence to the grand jury. Blancas further contends the respondent abused her discretion and erred as a matter of law by concluding the "presentment was fair and impartial and did not violate [his] substantial procedural rights." We review the denial of a motion to remand for an abuse of discretion. *Black v. Coker*, 226 Ariz. 335, ¶ 16 (App. 2011). However, an "error of law constitutes an abuse of discretion." *Willis*, ___ Ariz. ___, ¶ 14, 515 P.3d at 147 (quoting *State v. Lietzau*, 248 Ariz. 576, ¶ 8 (2020)).

¶14 The grand jury's primary function is to determine "whether probable cause exists to believe that a crime has been committed and that the individual being investigated was the one who committed it." *State v. Baumann*, 125 Ariz. 404, 408 (1980); *see also* A.R.S. § 21-413. The prosecutor's role before the grand jury is not to act as an advocate but as a "minister of justice," assisting the jurors in their inquiry. *Maretick v. Jarrett*, 204 Ariz. 194, ¶ 10 (2003) (quoting Ariz. R. Sup. Ct. 42, ER 3.8 cmt.). The prosecutor, therefore, has a duty to provide the grand jury with a fair and impartial presentation of the evidence and to instruct the grand jury on the applicable law, including justification defenses. *Bashir v. Pineda*, 226 Ariz. 351, ¶ 15 (App. 2011); *Cespedes*, 243 Ariz. 46, ¶ 9. The prosecutor must, even in the absence of a specific request, present clearly exculpatory evidence. *Willis*, ___ Ariz. ___, ¶ 2, 515 P.3d at 145. The failure to advise the grand jury fairly and impartially amounts to the denial of a substantial procedural right guaranteed by the Arizona Constitution. *Id.* ¶ 23, 515 P.3d at 149.

Legal Instructions

¶15 Blancas first contends the legal instructions deprived him of a substantial procedural right because the prosecutor failed "to instruct the grand jury that second-degree murder committed 'upon adequate provocation by the victim' is reduced to manslaughter by operation of law." He maintains that the "specific facts of [this] case" and a grand juror's question about the different types of murder "triggered the prosecutor's duty to provide more specific instructions."

¶16 In support of his argument, Blancas analogizes this case and *State v. Lua*, 237 Ariz. 301 (2015), to *Dominguez*, 243 Ariz. 499, and *State v. Thompson*, 204 Ariz. 471 (2003). In *Thompson*, the Arizona Supreme Court created an expanded definition of premeditation that it concluded must be given to trial juries in first-degree murder cases. 204 Ariz. 471, ¶ 32. The court explained that the statutory definition was confusing and "might mislead the jury." *Id.* ¶¶ 23, 27, 32. Several years later in *Dominguez*, this court determined that the expanded definition of *Thompson* must also be provided in the grand-jury context. 243 Ariz. 499, ¶¶ 13, 16. We explained that the same risk identified in *Thompson* was also present with a grand jury. *Id.* ¶ 12.

¶17 In *Lua*, the Arizona Supreme Court determined that, in second-degree murder cases, "when there is evidence that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim," the court must give a special instruction on provocation manslaughter.[4] 237 Ariz. 301, ¶ 20. The court

[4]The instruction provides:

> If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter rather than second-degree murder.

explained, "This instruction ensures that the jury will consider whether the circumstance differentiating second-degree murder from provocation manslaughter is present, thus justifying a finding of guilt on the less serious offense." *Id.* Now, similar to the extension of *Thompson* in *Dominguez*, Blancas asks us to extend the provocation-manslaughter instruction of *Lua* to the grand-jury context. There are two problems with his argument.

¶18 First, unlike the statutory definition of premeditation, the statutory definitions of manslaughter and adequate provocation are not confusing or misleading. *See* A.R.S. §§ 13-1101(4) (adequate provocation), 13-1103(A)(2) (manslaughter resulting from adequate provocation). Indeed, these are the precise definitions that Blancas asked the prosecutor to provide to the grand jury.

¶19 Second, in *Lua*, our supreme court was expressly concerned with a trial jury's consideration of whether the circumstances of a given case would warrant "a finding of guilt on the less serious offense." 237 Ariz. 301, ¶ 20; *see also State v. Wall*, 212 Ariz. 1, ¶ 14 (2006) (instruction on lesser-included offense required when offense is lesser included and evidence is sufficient to support giving instruction). But the prosecutor is not required to instruct a grand jury on all lesser-included offenses. *State v. Coconino Cnty. Superior Court*, 139 Ariz. 422, 425 (1984). Instead, "[i]f an indictment is supported by probable cause, and the state makes a fair and impartial presentation of the evidence and law, the state need only instruct the grand jury on the highest charge supported by the evidence." *Id.* (citation omitted).

¶20 Nevertheless, as Blancas points out, he requested that the prosecutor reinstruct the grand jury on manslaughter, and a grand juror asked for clarification on the different types of murder. Under such circumstances, the prosecutor could not rely solely on the instructions given during the empanelment phase. *See Bashir*, 226 Ariz. 351, ¶ 13 (upon receipt of *Trebus* letter, prosecutor must consider whether fair and impartial presentation requires informing grand jury of defendant's version of facts and legal instructions concerning possible justification and affirmative defenses); *O'Meara v. Gottsfield*, 174 Ariz. 576, 578 (1993) (due process requires asking grand jurors if they want any statutes reread or clarified). But the prosecutor here also directed the jurors to relevant statutes after the presentation of evidence upon the juror's question. *See Willis*, ___ Ariz. ___, ¶ 41, 515 P.3d at 153 (prosecutor not required to reinstruct grand jury on all

---

Lua, 237 Ariz. 301, ¶ 20.

relevant statutes after presenting case). Specifically, the prosecutor explained that "Chapter 11 of the criminal code" contains "the different classifications of homicide," including manslaughter under § 13-1103 and second-degree murder under § 13-1104. The prosecutor also directed the jurors to the definition for "adequate provocation."

¶21 In sum, we need not extend *Lua* to the grand-jury context, and Blancas was not entitled to the specially crafted provocation-manslaughter instruction. In addition, because the grand jury was properly instructed on the different types of homicide, including provocation manslaughter in § 13-1103(A)(2), he was not denied a substantial procedural right.

¶22 Blancas next contends the prosecutor failed to instruct the grand jury on the crime-prevention statute, A.R.S. § 13-411(A). He relies on *Korzep v. Superior Court*, 172 Ariz. 534, 540-41 (App. 1991), for the proposition that, "Because A.R.S. § 13-411 extends justification further than do A.R.S. §§ 13-404 and -405, and could conceivably lead the grand jury to eschew an indictment, the grand jury should [be] allowed to consider A.R.S. § 13-411 along with those more traditional justification statutes." Blancas admits that he did not request this instruction in his *Trebus* letter, but he maintains the prosecutor had "an independent duty—even absent a request by a defendant—to properly instruct the grand jury on the applicable law."

¶23 Blancas is correct that the prosecutor has a duty to instruct the grand jury on all relevant justification defenses. *See Cespedes*, 243 Ariz. 46, ¶ 9. However, after providing the relevant instructions during the empanelment phase, the prosecutor "is not required to reinstruct the grand jury on all relevant statutes after presenting its case and immediately before the grand jury votes on whether to indict." *Willis*, ___ Ariz. ___, ¶ 41, 515 P.3d at 153. Instead, the prosecutor need only "remind the grand jury of relevant justification statutes." *Id.*

¶24 Here, the crime-prevention instruction was provided to the grand jury during the empanelment phase. After the presentation of evidence, the prosecutor also directed the grand jury to the "affirmative defenses" in "Chapter 4," which includes § 13-411(A). Accordingly, the prosecutor properly instructed the grand jury on the crime-prevention statute, and Blancas was not denied a substantial procedural right.[5] *See Willis*, ___ Ariz. ___, ¶ 41, 515 P.3d at 153.

[5]After the prosecutor referred the grand jury to the "affirmative defenses" in "Chapter 4," he directed them specifically to § 13-404 and

Clearly Exculpatory Evidence

¶25 Blancas makes two separate arguments about the "fair and impartial presentation" and "clearly exculpatory evidence." First, he asserts, "The respondent judge abused her discretion and erred as a matter of law by concluding that the state's presentation of the evidence was fair and impartial, despite the detective's misleading and incorrect testimony and the prosecutor's failure to correct it." Second, he argues, "The prosecutor withheld clearly exculpatory information from the grand jury and interfered with its ability to consider evidence that would explain away the contemplated charge." Because these arguments overlap, we address them together.

¶26 In the recent *Willis* opinion, the Arizona Supreme Court clarified a prosecutor's duty to present clearly exculpatory evidence. As stated above, for a "fair and impartial presentation," a prosecutor must "present evidence that is clearly exculpatory." *Willis*, ___ Ariz. ___, ¶¶ 23, 26, 515 P.3d at 149-50. "Absent this duty, the grand jury could be thwarted in fulfilling its duty to 'inquire into every offense which may be tried within the county.'" *Id.* ¶ 26, 515 P.3d at 150 (quoting A.R.S. § 21-407(A)). "Clearly exculpatory evidence is evidence of such weight that it would deter the grand jury from finding the existence of probable cause." *Id.* ¶ 32, 515 P.3d at 151 (quoting *Coconino Cnty. Superior Court*, 139 Ariz. at 425). However, the prosecutor need not present evidence that is not clearly exculpatory, including evidence relating solely to witness credibility or factual inconsistencies. *Id.* ¶ 45, 515 P.3d at 154; *see also Trebus v. Davis*, 189 Ariz. 621, 625 (1997). In essence, the prosecutor must "present the grand jury with an accurate picture of the substantive facts." *Herrell v. Sargeant*, 189 Ariz. 627, 631 (1997).

¶27 In *Willis*, a grand jury indicted Willis and Portillo for attempted second-degree murder and other charges. ___ Ariz. ___, ¶¶ 7-9, 515 P.3d at 146. Willis filed a motion to remand, which the trial court denied, and this court declined special-action jurisdiction. *Id.* ¶¶ 10-11. On review, however, our supreme court determined that a statement made by

---

§ 13-405. Although we do not think this amounted to error here, particularly given that those were the justification statutes requested by Blancas in his *Trebus* letter, prosecutors should be mindful not to highlight certain justification defenses to the exclusion of other relevant ones. *See Willis*, ___ Ariz. ___, ¶ 41, 515 P.3d at 153.

Portillo's girlfriend—"the older white male tried to grab [Portillo's] gun"—was improperly withheld from the grand jury because it was "relevant to whether Willis was justified in shooting the victim to defend Portillo." *Id.* ¶¶ 36-37, 515 P.3d at 152. The court also determined that the statement by "Portillo's girlfriend that Portillo told her he 'shot the male and then he shot the ground,' is also clearly exculpatory" because it "provides further information about the reasonableness of Portillo's use of deadly physical force in determining whether Willis was justified in defending him." *Id.* ¶ 38. The court concluded the error was not harmless because the "grand jurors were exploring the possibility that Portillo acted in self-defense" and the omission of the statements and "the detective's unwillingness to expound on the limited evidence that was presented hindered the grand jury's ability to engage in further inquiry." *Id.* ¶ 39, 515 P.3d at 152-53.

¶28 Here, Blancas points to five categories of evidence that he maintains the prosecutor had a duty to inform the grand jury of:

> (1) [A.D., C.R.'s] former roommate, said [C.R.] hated Blancas, had mentioned more than once that "if he ran into [Blancas] he's gonna instigate something or try to fight him," and "his character would change almost like 180" when he drank;
>
> (2) [J.L.], who dated both [C.R.] and Blancas, told Blancas that [C.R.] hated him, that [C.R.] was responsible for having him jumped under the Fourth Avenue Underpass, that [C.R.] had been physically abusive towards [J.L.], and that [C.R.] was violent and carried weapons;
>
> (3) [C.R.] had a reputation at Blancas' place of employment, of which Blancas was aware, of being "sloppy," "verbally violent," and "very intoxicated";
>
> (4) Witnesses at Eden described [C.R.] as appearing very intoxicated and his autopsy revealed a BAC of .270 and the presence of Xanax in his system; and

> (5) A frame-by-frame analysis of the video depicting the shooting showed that [C.R.'s] hands were not up "to the level of his chest" before being shot.

Much of this evidence can be summarily rejected as not clearly exculpatory or as being harmlessly omitted, as the respondent judge found.

¶29 First, there is no evidence that Blancas knew C.R. had been drinking or had taken Xanax that night; as such, neither A.D.'s statement about C.R.'s character changing when he was drunk nor the BAC and Xanax findings are relevant to Blancas's state of mind. Although such evidence could arguably have probative value in corroborating that C.R. presented a dangerous demeanor to Blancas in the moments before the shooting, such testimony was supplementary in light of other evidence presented about C.R.'s behavior in that time window. Second, A.D.'s additional statement that C.R. was going to "instigate something" if he saw Blancas was cumulative of—and arguably less damaging than—other statements made by C.R.'s acquaintances at Eden on the night of the shooting. *Cf. State v. Carlos*, 199 Ariz. 273, ¶ 24 (App. 2001) (error in precluding defense witness's testimony harmless where "testimony would have been merely cumulative of other evidence in the case"). Third, statements describing C.R. as "sloppy" and "verbally violent," while probative, were minor in light of the other evidence presented as to C.R.'s demeanor on the night of the homicide. Any error in failing to present such evidence was harmless. *See Herrell*, 189 Ariz. at 631. Finally, although the detective erroneously stated that C.R.'s hands were at his chest before being shot during the first grand jury presentation, he made no such statement during the second presentation, and the video was available for the grand jury to watch.

¶30 However, the second category of evidence—C.R.'s history of physical violence and carrying weapons—is clearly exculpatory and should have been presented to the grand jury. In his *Trebus* letter, Blancas stated that he knew C.R. to "have a violent history." In addition, the letter explained:

> [J.L.] also intimated to [Blancas] that [C.R.] wanted to kill him. [Blancas] was made aware that [C.R.] had been arrested for violent behavior in the past and that [C.R.] frequently carried a weapon. [J.L.] also told [Blancas] that

> [C.R.] maintained a large knife collection and was fascinated by edged weapons, and that [C.R.] had committed acts of domestic violence upon her. As a result of this information, [Blancas] was particularly fearful that [C.R.] would try to hurt or kill him if given the opportunity.

¶31 In granting the first motion to remand, the respondent judge suggested that the prosecutor needed to present evidence to the grand jury that Blancas "knew [C.R.] had been in possession of weapons, previously had engaged in some violent behavior . . . , [and] didn't know whether [C.R.] was carrying a weapon at that time." But no such evidence was presented at the second grand jury presentation. The respondent judge apparently overlooked this when ruling that the prosecutor "hit everything that had caused [her] concern before."

¶32 Pursuant to § 13-405(A), a "person is justified in threatening or using deadly physical force against another" (1) "[i]f such person would be justified in threatening or using physical force against the other under § 13-404," and (2) "[w]hen and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force." And, pursuant to § 13-404(A), "a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force." The relevant question is "whether a reasonable person in the defendant's circumstances would have believed that physical force was 'immediately necessary to protect himself.'" *State v. King*, 225 Ariz. 87, ¶ 12 (2010) (quoting § 13-404(A)).

¶33 Evidence of Blancas's knowledge that C.R. had a history of physical violence and frequently carried weapons—neither of which the state has disputed—is relevant to establishing whether Blancas reasonably believed that "deadly physical force [was] immediately necessary to protect himself against [C.R.'s] use or attempted use of unlawful deadly physical force" under § 13-405. Simply put, Blancas's specific basis for believing that C.R. was going to attack—and that he frequently carried and used weapons—bore directly on the reasonableness of Blancas's use of deadly physical force against C.R. As Blancas points out, "Where, as here, a central inquiry for the grand jury is the reasonableness of an individual's actions,

the source of one's beliefs is very exculpatory." This evidence was therefore relevant to whether Blancas was justified in shooting C.R. in self-defense, *see* § 13-404, and is thus clearly exculpatory, *see Willis*, ___ Ariz. ___, ¶¶ 37-38, 515 P.3d at 152.

¶34 We must next determine whether the omission of this evidence was harmless. *See id.* ¶ 39, 515 P.3d at 152-53; *see also Maretick*, 204 Ariz. 194, ¶ 15. The error is harmless only if we are "confident beyond a reasonable doubt that the error had no influence on the jury's judgment." *Maretick*, 204 Ariz. 194, ¶ 15.

¶35 As the respondent judge found, the detective and the prosecutor accurately conveyed to the grand jury many aspects of the *Trebus* letter, including that C.R. had possibly attempted to have Blancas jumped under the Fourth Avenue underpass about eighteen months prior and that, on the night of the shooting, C.R. had repeatedly expressed having "issues" with Blancas and wanting to go outside and jump him. But that evidence did not establish that Blancas knew C.R. to be physically violent himself or that Blancas knew C.R. to frequently carry a weapon.

¶36 Like in *Willis*, the transcript shows that the grand jury was considering a justification defense. The jurors asked questions about who knew martial arts, why Blancas "ran to his car," whether C.R. was "pursuing" Blancas, whether Blancas had "intended to kill" C.R., and what Blancas's "thought process" had been when running outside and retrieving his gun. As Blancas points out, the detective's response to the last question is concerning insofar as the detective failed to describe Blancas's statements during his police interview that he was "panicking," "scared," and trying to flee from a "very angry" C.R. Although the prosecutor may have introduced other evidence of Blancas's "fear" of C.R. generally, as the state counters, there was no evidence of how that fear affected Blancas's "thought process" in the moments leading up to the shooting. In addition, the detective stated that C.R. had been patted down before entering Eden, suggesting that Blancas should have known C.R. did not have a weapon and negating Blancas's knowledge that he frequently carried one. Because we cannot be confident beyond a reasonable doubt that the omission of evidence showing Blancas's knowledge of C.R.'s physically violent past and frequent carrying of weapons had no influence on the grand jury's indictment, we cannot say the error was harmless. *See Maretick*, 204 Ariz. 194, ¶ 15.

¶37 Given the prosecutor's failure to present this clearly exculpatory evidence, Blancas was deprived of a substantial procedural right to a fair and impartial presentation of evidence. *See Willis*, ___ Ariz. ___, ¶ 40, 515 P.3d at 153. The respondent judge therefore erred as a matter of law in denying Blancas's second motion to remand for a new determination of probable cause. *See id.* ¶¶ 14, 40, 515 P.3d at 147, 153.

Disposition

¶38 We accept special-action jurisdiction and grant relief. We vacate the respondent judge's order denying the second motion to remand for a new determination of probable cause and remand the matter for proceedings consistent with this decision.