

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #068

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 30th day of October, 2009, are as follows:

PER CURIAM:

2009-CC-0420 EVANGELINE PORTER, HOWARD BARDELL, JR. AND THOMAS PORTER v. HARRY LEE IN HIS CAPACITY AS SHERIFF OF THE PARISH OF JEFFERSON, THE STATE OF LOUISIANA AND LEO MITCHELL (Parish of Jefferson)

Judge Benjamin Jones, of the Fourth Judicial District Court, assigned as Justice Pro Tempore, participating in the decision.

Accordingly, we recall our order granting certiorari and deny the State's application.

WRIT RECALLED. APPLICATION DENIED. CASE REMANDED FOR FURTHER PROCEEDINGS.

WEIMER, J., dissents and assigns reasons.

10/30/09

SUPREME COURT OF LOUISIANA

NO. 09-CC-420

**EVANGELINE PORTER, HOWARD BARDELL, JR. AND THOMAS
PORTER**

VERSUS

**HARRY LEE, IN HIS CAPACITY AS SHERIFF OF THE PARISH OF
JEFFERSON, THE STATE OF LOUISIANA AND LEO MITCHELL**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL FIFTH
CIRCUIT, PARISH OF JEFFERSON**

Per Curiam*

After certiorari was granted on the State's application, we determined the evidence relied upon by the State was not properly made a part of the record. Thus, we are not able to properly consider this case. Accordingly, we recall our order granting certiorari and deny the State's application.

**WRIT RECALLED. APPLICATION DENIED. CASE REMANDED FOR
FURTHER PROCEEDINGS.**

*Judge Benjamin Jones, of the Fourth Judicial District Court, assigned as Justice *Pro Tempore*, participating in the decision.

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SUPREME COURT OF LOUISIANA

No. 09-CC-420

**EVANGELINE PORTER, HOWARD BARDELL, JR.
AND THOMAS PORTER**

VERSUS

**HARRY LEE, IN HIS CAPACITY AS SHERIFF OF THE PARISH OF
JEFFERSON, THE STATE OF LOUISIANA AND LEO MITCHELL**

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

WEIMER, J., dissents

I respectfully dissent from the majority's decision to recall the writ. It is clear from the record that the State failed to properly introduce certain evidence to support its motion for summary judgment. However, having granted the writ, I would resolve this case on the merits based upon the record before this court.