

SUPREME COURT OF LOUISIANA

No. 18-KK-0368

STATE OF LOUISIANA

VERSUS

JOSHUA EVERY

**ON SUPERVISORY WRITS FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT, PARISH OF JEFFERSON**

Genovese, J., would grant and assigns reasons:

I strongly disagree with this Court's denial of Defendant's application for a supervisory writ in this capital case. Defendant seeks a reversal of the trial court's ruling which denies him the right to present his evidence first on eleven (11) motions for which he has the burden of proof. In my view, the trial court abused its discretion under the guise of La. C. Cr. P. art. 17, which allows the court "to so control the proceedings that justice is done." Justice is not done when a defendant in a death-penalty case is not allowed to fully present his defense.

In this case, the trial court refused to allow the Defendant, on motions filed by him and upon which he has the burden of proof, to call his own witnesses first, with cross examination by the State, and then to be able to question these witnesses again in rebuttal. This deviation from traditional trial procedure allows the State, not the court and surely not the defendant, to control the proceedings. The State, on a motion not filed by it, but by the Defendant, upon which that Defendant has the burden of proof, will have the right and opportunity to call whatever witness it wishes first and to question that witness on whatever it wishes first, all to the disadvantage of the Defendant. And, just what specifically is Defendant's right of

rebuttal in this unorthodox procedure? This disrupts the orderly progression of trial to the detriment of Defendant in a capital case. Thus, Defendant has the burden, and the State runs the show. The violation of such a cardinal rule of trial procedure constitutes an abuse of discretion and a violation of due process.

I would grant this writ, reverse the trial court's ruling, and remand the case for further proceedings consistent herewith.