COURT OF APPEAL SECOND CIRCUIT

STATE OF LOUISIANA

NO. 55,626-CA

JARIUS BROWN
Plaintiff-Appellant

VERSUS

DEFENDANT JAVARREA POUNCY, ET AL.,
Defendant-Appellee

ON APPEAL FROM THE 42ND JUDICIAL DISTRICT COURT, PARISH OF DESOTO, HONORABLE CHIEF JUDGE AMY B. MCCARTNEY, DISTRICT JUDGE, DIVISION A, STATE OF LOUSIANA, DOCKET NO. 83,478

OPENING BRIEF OF PLAINTIFF-APPELLANT JARIUS BROWN

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment in a civil case. This Court has appellate jurisdiction pursuant to Article V, Section 10(A) of the Louisiana Constitution of 1974 and Article 2083 of the Code of Civil Procedure. This appeal was taken from a Judgment dated May 26, 2023. The Notice of Judgment was mailed by the Clerk of Court on May 31, 2023, and Plaintiff-Appellant timely filed his Motion for Appeal on July 21, 2023, in accordance with La.Code Civ.P. art. 2087(A)(1). The order granting the Motion for Appeal was signed by the district court on July 24, 2023. The case was lodged on October 19, 2023, and after an extension the appellate brief deadline was set for December 13, 2023. Therefore, this appeal has been timely filed pursuant to the orders of this Court.

STATEMENT OF THE CASE

On September 27, 2019, two officers of the DeSoto Parish Sheriff's Office brutally beat Plaintiff-Appellant Jarius Brown ("Plaintiff-Appellant" or "Mr. Brown") without provocation or justification. Within two years of the attack, on September 24, 2021, Mr. Brown brought federal civil rights claims in federal court, and also included a state law tort claim for battery under the supplemental jurisdiction of that court pursuant to 28 U.S.C. Section 1367(a). *See Brown v. Pouncy et al*., 5:21CV03415 (W.D. La. 2021). On September 29, 2022, the federal

court dismissed the federal civil rights claims and declined to exercise jurisdiction over the state law cause of action. Mr. Brown refiled his tort claim in state court the next day, thus bringing his Petition within the two-year prescription period set forth in La.Civ.Code art. 3493.10 ("Article 3493.10"). R. at 3.

In response to the Petition, Defendant-Appellee Javarrea Pouncy ("Defendant-Appellee" or "Mr. Pouncy") filed an exception of prescription asserting that Mr. Brown's claim was not timely filed because, as Defendant-Appellee argued, the beating that Mr. Brown meticulously detailed in his Petition did not qualify as a crime of violence for purposes of Article 3493.10 and thus did not trigger that provision's two-year prescription period. R. at 12. The district court ultimately sustained Defendant-Appellee's exception of prescription, finding in its Written Reasons for Ruling that law enforcement is permitted to use "reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained." R. at 118. The Court also based its ruling in part on the fact that Defendant-Appellee was "not arrested or otherwise charged with a crime relative to his interactions with plaintiff" and that Defendant-Appellee "was not indicted for any crime." R. at 118.

On appeal, Mr. Brown challenges the district court's grant of Defendant-Appellee's exception of prescription based on three legal errors. First, Article 3493.10 does not, as a matter of law, require formal criminal proceedings to be

brought against a defendant who engaged in conduct that would be defined as a crime of violence in order for the two-year prescriptive period to apply to a plaintiff's civil lawsuit for damages. Second, any doubt as to the applicability of Article 3493.10 here must be resolved in Mr. Brown's favor and against a reading of the statute that would prescribe his claim. Third, the district court erred by not accepting the facts as alleged in the Petition as true for purposes of determining prescription, which unmistakably demonstrate that Defendant-Appellee's conduct in brutally beating Mr. Brown was unreasonable, beyond any measure of acceptable reasonable force, and thus conduct aptly characterized as a crime of violence.

ASSIGNMENT OF ALLEGED ERRORS

A. Assignment of Error No. 1: The district court erred in finding formal criminal proceedings against a defendant were a prerequisite for a plaintiff to qualify for the two-year prescriptive period in Article 3493.10, which applies to civil suits arising out of conduct that fits the Criminal Code's definition of a crime of violence.

B. Assignment of Error No. 2: The district court erred by failing to apply Louisiana law that instructs courts in the face of uncertainty to strictly construe prescription statutes against prescription.

C. Assignment of Error No. 3: The district court erred by not accepting all well-pleaded facts in the Petition as true for purposes of determining

prescription and in making the attendant factually-unsupported finding that the officers' use of force was "reasonable" under La.Code Crim.P. art. 220 and therefore did not constitute conduct that would qualify as crime of violence under Article 3493.10.

LISTING OF ISSUES PRESENTED FOR REVIEW

A. Whether, as a matter of law, the district court erred in interpreting Article 3493.10 to require a formal criminal charge or conviction against a defendant for a plaintiff to be entitled to the applicable two-year prescriptive period?

B. Whether, under Louisiana law, the district court erred in construing a prescription statute with different plausible interpretations in favor of prescribing Mr. Brown's claim?

C. Whether, accepting all well-plead facts alleged in Mr. Brown's complaint as true, the district court erred in finding that the officers' use of force was "reasonable" under La.Code Crim.P. art. 220 and thus that their conduct in brutally beating him did not constitute a crime of violence under Article 3493.10?

STATEMENT OF FACTS

The facts in this appeal are relatively simple, astonishing, and not seriously in dispute. On September 27, 2019, Mr. Brown was arrested by the Louisiana State Police for nonviolent traffic offenses. R. at 3. He was transported to the DeSoto Parish Sheriff's office for booking. As part of the booking process, Mr. Brown was instructed by deputy Javarrea Pouncy and another DeSoto Parish officer (now known to be DeMarkes Grant) to disrobe and change into a prison jumpsuit. R. at 6. However, once Mr. Brown undressed, both officers began to beat Mr. Brown without warning. R. at 6. The officers hit Mr. Brown multiple times in the face and torso, until he collapsed to the ground. R. at 6. Mr. Brown did not provoke the attack, and he did not retaliate or pose a threat to the officers during the incident. R. at 7.

Mr. Brown suffered severe injuries from the assault, including an orbital fracture on the left side of his face, fracture to his nasal bones, and abrasions on his left eyelid. R. at 7. Mr. Brown was then left unattended in an unoccupied cell before he was eventually transported—bruised and bloodied—to Ochsner LSU Health Shreveport-LA. R. at 7. Mr. Brown suffered mentally and physically from the incident and has struggled to adjust to life since his this incident. R. at 3.

After a federal court declined to retain jurisdiction over Mr. Brown's state law cause of action for battery, Mr. Brown immediately brought the current Petition,

relying on the two-year prescription period as set forth in Article 3493.10 for tort suits arising from conduct qualifying as a crime of violence. The district court ultimately determined that the attack on Mr. Brown did not constitute a crime of violence under Article 3493.10, and thus Mr. Brown's battery claim was prescribed.

On September 6, 2023, four months after the district court issued its decision, the United States Department of Justice indicted Mr. Pouncy on two counts of deprivation of rights under color of law and one count of falsification of records arising from his attack on Mr. Brown. *See* Indictment*, United States v. Pouncy*, No. 5:23-cr-00210-SMH-MLH (W.D. La. Sept. 6, 2023), attached as Exhibit A to Appellant's Mot. for Judicial Notice (hereinafter "Pouncy Indictment"). A day earlier, on September 5, 2023, DeMarkes Grant ("Mr. Grant"), the other officer who attacked Mr. Brown, pled guilty to Obstruction of Justice in violation of 18 U.S.C. § 1519 for attempting to conceal the former officers' unreasonable use of force and assault of Mr. Brown. *See* Plea Agreement, *United States v. Grant,* No. 5:23-cr-00207-SMH-MLH (W.D. La. Sept. 5, 2023), attached as Exhibit B to Appellant's Mot. for Judicial Notice (hereinafter "Grant Plea Agreement"); *see also* Factual Basis for Plea, *United States v. Grant,* No. 5:23-cr-00207-SMH-MLH (W.D. La. Sept. 5, 2023), attached as Exhibit C to Appellant's Mot. for Judicial Notice (hereinafter "Grant Factual Basis for Plea"). Mr. Grant was referred to as "John Doe #1" in Mr. Brown's district court complaint. R. at 5.

The stipulated statement of facts in Mr. Grant's guilty plea strikingly mirrors the allegations set forth in Mr. Brown's Petition. Specifically, Mr. Grant admitted that he and his supervising officer, Mr. Pouncy, punched Mr. Brown 50 times in the face, head, and stomach, using "lethal force." Grant Factual Basis for Plea at 3–4. Mr. Grant acknowledged that Mr. Brown did not pose a threat to either officer. *Id.* Although there were clear opportunities to suspend the use of force, both officers beat Mr. Brown continuously until he fell to the ground. *Id.* Mr. Grant admitted that the use of force was unjustified, and that "more force than was reasonably necessary to control the situation" was used. *Id.* at 3.

Given the indictment of Mr. Pouncy and guilty plea of Mr. Grant, shortly after the docketing of this appeal, Mr. Brown moved to remand the action to the district court so that it may consider in the first instance this information in assessing the applicability of Article 3493.10. Respectfully, no reasonable construction of the facts as alleged in the Petition and confirmed by the Pouncy Indictment and Grant criminal plea would permit any outcome other than the full applicability of the two-year prescription period of Article 3493.10. The Court has not yet acted on Mr. Brown's motion to remand, and he has thus now also moved for this court to take judicial notice of these developments for purposes of this appeal. *See* Appellant's Mot. for Judicial Notice 1.

SUMMARY OF ARGUMENT

The Louisiana legislature has determined that victims of serious, violent attacks are entitled to up to two years to seek civil redress for damages arising from conduct qualifying as a "crime of violence" under Article 3493.10. When DeSoto Parish sheriff officers assaulted Mr. Brown, he was left bloodied, beaten, and in need of immediate medical attention. This unprovoked attack easily qualifies as a second-degree battery under La.R.S. 14:2 and, accordingly, a crime of violence as specifically delineated under Article 3493.10. As a victim of such violence, Mr. Brown was entitled to this two-year prescriptive period under Article 3493.10 to give him time to recover and process his physical and mental trauma before having to rush to the courthouse.

In granting Defendant-Appellee's exception of prescription, the district court made three legal errors. First, the court incorrectly pointed to the absence of any criminal proceedings instituted against the assailants as proof that the attack did not qualify as a crime of violence. In doing so, the district court's order departed from the plain text of Article 3493.10, its legislative history, and a commonsense reading of that statute—all of which indicate that there is no such requirement. Because the two-year prescriptive period runs from the time a plaintiff suffers *injury*, it makes no logical sense to require a predicate criminal indictment or conviction against a defendant before a plaintiff can bring a *civil* claim. Criminal proceedings take time

and may not occur before the two years expire, or may not occur at all if the government exercises its discretion not to prosecute. This case is starkly illustrative: it ultimately took the United States Department of Justice roughly four years from Mr. Brown's beating to bring its indictment against Mr. Pouncy and secure the guilty plea from Mr. Grant.

Second, even if any uncertainty remained regarding the applicability of Article 3493.10 to the institution of formal criminal proceedings against a defendant, the district court erred by not applying Louisiana law instructing courts to strictly construe prescription statutes against prescription. Under Louisiana's rules of statutory construction, where there are two plausible interpretations of the statute, a court must find in favor of maintaining the action.

Third, and perhaps most fundamentally, the district court failed to accept the facts as they were alleged in Mr. Brown's Petition as true for the purpose of determining prescription. Instead, the court summarily concluded without any record evidence that the officers' use of force was "reasonable" under La.Code Crim.P. art. 220 ("Article 220")—an argument that Defendant-Appellee himself never raised. Had the court properly accounted for the undisputed facts as alleged in the Petition (and subsequently confirmed by Mr. Grant's guilty plea)—that Mr. Brown was fully compliant, did not provoke the assailant officers' actions, and posed no threat to the officers—it would have found that nothing about the attack Mr.

Brown suffered was "reasonable." The intentional, violent assault on Mr. Brown sufficiently qualified as a crime of violence under Article 3493.10 to trigger the two-year prescription period.

Because Mr. Brown's claim, as alleged in his Petition, indicates that he suffered damages from an assault that is sufficient to qualify as a crime of violence under Louisiana law, the district court erred in granting Defendant-Appellee's exception of prescription. That decision should now be reversed, and the matter remanded so the lawsuit can proceed.

STANDARD OF REVIEW

The assignments of error in this case are reviewed *de novo*. "[W]hen there is no dispute regarding material facts and only the determination of a legal issue, then appellate courts apply a de novo standard of review and no deference is afforded to the trial court's legal conclusions." *See Sylvan v. BRFHH Monroe, LLC*, 54,202, p. 5 (La.App. 2 Cir. 4/13/22), 338 So.3d 576, 581 (applying the *de novo* standard of review in a case challenging the lower court's grant of prescription).

Where an exception of prescription is decided without the taking of evidence, as occurred here, "the exception of prescription must be decided on the facts alleged in the petition, which are accepted as true." *Anding o/b/o Anding v. Ferguson*, 54,575, p. 8–9 (La.App. 2 Cir. 7/6/22), 342 So.3d 1138, 1145. In Louisiana, "prescription statutes are strictly construed against prescription and in favor of the

claim sought to be extinguished by it." *Cormier v. Martin*, 20-302, p. 2 (La.App. 3 Cir. 2/10/21), 312 So.3d 307, 309 (reversing judgment of the trial court sustaining an exception of prescription). Because this exception of prescription involves the interpretation of a statute, the *de novo* standard of review applies. *See Anding*, 342 So.3d at 1146 ("Because this particular exception of prescription involves the interpretation of a statute, which is a question of law, we review this matter using the de novo standard of review.").

ARGUMENT

The district court's decision to grant Defendant-Appellee's exception of prescription rests on three flawed premises: (1) that Mr. Pouncy was not arrested, charged, or indicted with a crime, which it determined was required to trigger the applicability of Article 3493.10; (2) that Article 3493.10 could only be interpreted in a way that prescribed Mr. Brown's claim rather than preserving it; and (3) that the two law enforcement officials here exercised reasonable force pursuant to Article 220, and that, therefore, the damages suffered by Mr. Brown did not stem from a crime of violence. As set forth below, each of these premises is faulty.

I. The District Court Erred in Finding That Article 3493.10 Requires a Criminal Prosecution or Conviction.

Article 3493.10 does not require actual criminal proceedings—whether it be an investigation, indictment, or conviction—against a defendant for a plaintiff to qualify for the two-year prescriptive period. To begin, nothing in Article 3493.10's

statutory text or legislative history counsels reading such a requirement into the law. Further, there are no Louisiana cases that compel courts to read into Article 3493.10 such a requirement, and the only court to squarely consider the question has expressly rejected it. *See Bowman v. Ouachita Parish Sheriff Office, et al.*, 20-2498, p. 6 (La. 4 Jud. Dist. Ct. 10/6/2023) (unpublished opinion) (attached for the Court's convenience as Exhibit C). Accordingly, any interpretation of Article 3493.10 that necessitates a criminal proceeding is, as a matter of law, inconsistent with the statute itself.

A. Neither the Statutory Language Nor Intent of Article 3493.10 Requires a Criminal Prosecution or Conviction.

Nothing about the text of Article 3493.10 requires that a defendant be indicted, convicted, or otherwise charged in order for that person's conduct to be defined as a crime of violence for the purpose of applying the two-year prescriptive period to a plaintiff's civil claim. Article 3493.10 reads in full:

> "Delictual actions which arise due to damages sustained as a result of an act *defined as* a crime of violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, except as provided in Article 3496.2, are subject to a liberative prescription of two years. This prescription commences to run from the day injury or damage is sustained."

Article 3493.10 (emphasis added). Simply put, nothing in this text requires an arrest, indictment, or conviction for a defendant's conduct to qualify as a crime of violence.

In fact, Article 3493.10 asks only whether a plaintiff has suffered damages "as a result of an act *defined* as" a crime of violence under Louisiana law (emphasis added). Specifically, a "crime of violence" is defined under La.R.S. 14:2 as "an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force . . . may be used in the course of committing the offense . . . ." Further, La.R.S. 14:2 enumerates a number of offenses that qualify as crimes of violence, including second degree battery. Second degree battery, in turn, is defined as "a battery when the offender intentionally inflicts serious bodily injury." La.R.S. 34.1. There is little doubt that Mr. Brown's beating as alleged in the Petition (and confirmed by the federal criminal proceedings) reflects the officers' intentional infliction of serious bodily injury. There is nothing in La.R.S. 14:2 that imputes a criminal proceedings requirement into Article 3493.10.

The notion that Article 3493.10 requires some formal criminal proceeding is also inconsistent with the statute's legislative history. As a threshold matter, the Louisiana legislature could have made a criminal indictment or conviction a prerequisite, but it did not. In fact, in drafting the bill, the legislature explicitly considered and rejected such a proposition. In hearings regarding the passage of Article 3493.10, then-Senator Art Lentini testified in support of the bill, stating that it "sets a two year prescriptive period, the time within which you can file a suit for

damages when the damages arise from a crime that *is defined as* a crime of violence in the criminal code." *See* R. at 61. Senator Lentini clarified that the legislature "contemplated doing a suspension of prescription," which would tether the prescriptive period to the outcome of a criminal proceeding, but they decided against it because that "would leave it open too long" if the perpetrator "may not have been apprehended." *Id*. The two-year prescriptive period was thus designed as a limited amount of time to bring suit after an act defined as a crime of violence occurred, but potentially before charges were brought or the perpetrator even apprehended.

Finally, interpreting Article 3493.10 to require criminal proceedings before the two-year prescription period becomes applicable defies common sense. The statute is clear that the prescriptive period begins "from the day injury or damage is sustained," not from some later indictment or conviction. Reading the requirement of criminal proceedings into the statute would lead to illogical results. For a case where the assailant was on the lam for two years before being apprehended, the prescription period would expire before the supposed prerequisite criminal indictment might even issue. Likewise, a complicated investigation that might take more than two years (as occurred here with respect to the federal criminal investigation) would mean that the prescription period would run before it was even applicable.

Often, criminal proceedings may not occur at all if the government decides to exercise prosecutorial discretion, even if the conduct clearly qualifies as a criminal act. A plaintiff who suffers damages from a violent attack should not be blocked from seeking *civil* redress simply because the government decided not to pursue, or delayed in bringing, *criminal* charges. It simply does not follow that a plaintiff's ability to bring a civil claim under Article 3493.10 is contingent on whether a criminal case—which is subject to different considerations and burdens of proof—is brought, much less resolved.

Mr. Brown's case illustrates precisely how incongruous such a reading would be. Here, the DeSoto Parish District Attorney initially convened a grand jury to investigate Mr. Brown's beating. After a change of District Attorneys, no charges were brought, although Mr. Pouncy subsequently resigned from the Sheriff's Office. R. at 3. After further investigation, federal criminal charges were brought nearly four years after the date of the assault. *See* Pouncy Indictment. Yet, according to the plain text of Article 3493.10, Mr. Brown's claim accrued on September 27, 2019, "the day injury or damage [was] sustained." If those criminal developments were a prerequisite for Mr. Brown, his claim would have been prescribed by virtue of the length of criminal investigation alone.

The court's careful decision in *Bowman* recognized both the absence of any textual support for such a prerequisite and the logical incongruity of imposing one.

As the court reasoned, "Article 3493.10 of the Civil Code does not contain any language or requirement that any officer be charged with or prosecuted for a crime of violence before a party may avail himself of its two year prescriptive period . . . . " *Bowman*, 20-2498, p. 5. As such, imposing such a requirement would "ask nearly the impossible." *Id.*

B. Louisiana Case Law Does Not Impose a Criminal Proceedings Requirement for Conduct to Qualify as a Crime of Violence.

Beyond the fact that the requirement of criminal proceedings finds no support in the text of Article 3493.10, there is likewise no Louisiana case law that commands such a reading. The Louisiana Supreme Court has made clear that, in determining whether conduct qualifies as a crime of violence under Article 3493.10, the analysis revolves around the specific acts of the conduct itself.

In interpreting Article 3493.10, the Louisiana Supreme Court has never imposed a criminal proceedings requirement, and has instead instructed courts to assess whether *the facts* of the specific conduct alleged rise to the level of a crime of violence. In *Creighton v. Evergreen Presbyterian Ministries, Inc.*, for example, the court reversed a decision not to apply the two-year prescriptive period, remanding the matter so that the district court could "allow the parties to fully address the applicability of La. C.C. art. 3493.10." 2016-2012, p. 1 (La. 1/9/17), 214 So.3d 860, 861. There, because the factual record had not yet been fully developed, the

Supreme Court instructed the lower court to evaluate the applicability of Article 3493.10 based on the alleged acts in question; had a crime of violence prosecutorial charging decision been a prerequisite, which did not occur in that case, there would have been no need for the court to remand.[1]

As noted, the only court Mr. Brown has found squarely on point is Judge Johnson's decision in *Bowman*. The court there considered the precise question in this appeal: is a criminal charge against a police officer a necessary prerequisite to the applicability of Article 3491.10? The court found the fact that the officers there were not charged was "irrelevant and immaterial." *Bowman*, 20-2498, p. 5. Rather, just as the Supreme Court instructed in *Creighton*, the court looked to the character of the officers' conduct as alleged: "What matters is whether their action and conduct meet the definition of a crime of violence as defined by R.S. 14:2(B)." *Id.* In that case, the "nature, duration and severity" of the officers' attack easily qualified it as a crime of violence. *Id*.

The district court below cited to the Second Circuit's decision in *Byrd v. Bossier Parish Sheriff*, 54,914 (La.App. 2 Cir. 3/1/23), 357 So.3d 582, and two similar cases where courts found tort actions against police officers prescribed. *See*

[1] The defendant was charged with abuse of the infirm, not one of the enumerated crimes of violence charges under La.R.S. 14:2. *See Creighton v. Evergreen Presbyterian Ministries, Inc.*, 2015-1867, p. 5 (La.App. 1 Cir. 10/28/16), 205 So.3d 964, 968, *writ granted, judgment rev'd*, 2016-2012 (La. 1/9/17), 214 So.3d 860.

Vallery v. City of Baton Rouge, 2011-1611 (La.App. 1 Cir. 5/3/12) (unpublished opinion), *writ denied*, 2012-1263 (La. 9/28/12), 98 So.3d 837; *Edwards v. Lewis*, 2022-56 (La.App. 3 Cir. 9/28/22), 348 So.3d 269. But a close look at those cases demonstrates that none of them are applicable here.

First, as a starting principle, they all agree that one must look to the character of the conduct as set forth in the petition to determine the applicability of Article 3492.10. *See, e.g., Edwards,* 348 So. 3d at 273 ("[T]he petition must sufficiently allege an act, which in this case is second degree battery, defined as a 'crime of violence[.]'"); *Vallery*, 2011-1611, p. 1 ("For Article 3493.10 to apply, the petition must sufficiently allege an act defined as a *crime* of violence."); *Byrd*, 357 So.3d at 586 ("The nature of a cause of action must be determined before it can be decided which prescriptive period is applicable").

Second, in all three of those cases, the officers' conduct as alleged bears little resemblance to the conduct here. In each case, the courts examined the facts as alleged in the respective plaintiffs' complaints, finding that the defendant officers' use of force was reasonable under Article 220 and thus the *actual conduct* of the officers did not constitute a crime of violence. *See, e.g.*, *Vallery*, 2011-1611, p. 2 (noting that plaintiff resisted arrest before being struck by police with a baton); *Edwards,* 348 So.3d at 274–76 (noting that plaintiff's efforts to strangle himself prompted police tasering).

Third, while each of the cases mention the absence of criminal proceedings against the officer, none of them expressly hold that such a criminal charge was a prerequisite to the applicability of Article 3493.10 to a police officer's conduct.

Judge Johnson's opinion in *Bowman* directly rejects any such suggestion that these cases impose such a requirement. After a lengthy recitation of the law from *Byrd*, the *Bowman* court found that the violent and excessive use of police force in that case distinguished *Byrd* and other cases, where the conduct could more aptly be described as police negligence as opposed to unjustified excessive force. *Bowman*, 20-2498, p. 5 ("In all, if not most of those cases . . . the alleged facts of excessive police force sounded more in ordinary negligence as opposed to crimes of violence as defined by R.S. 14:2(B) . . . .").

The *Bowman* court expressly rejected the argument, which Defendant-Appellee presses here, that *Byrd* and the other "case law interpreting this codal provision [Article 3493.10]" requires "that any officer be charged with or prosecuted for a crime of violence before a party may avail himself of its two year prescriptive period." *Bowman*, 20-2498, p. 5. To be sure, as the *Bowman* court states, such criminal proceedings against the offending officer "would perhaps help a party establish a much stronger case for the applicability of" Article 3493.10, but "it is not a requirement of law." *Id.* As Judge Johnson concluded, "any language in the

jurisprudence referencing officers being charged, in the Court's view, is simply obiter dictum." *Id.*

The *Bowman* court's conclusion is consistent with a long line of cases where other Louisiana courts have likewise not imposed a criminal proceedings requirement when determining whether the alleged conduct of a tortfeasor qualifies as a crime of violence. *See, e.g.*, *Lewis v. Par.*, 51,064 (La.App. 2 Cir. 1/11/17), 212 So.3d 1186; *Richard Atkins, Dentistry, L.L.C. v. Hoke*, 2010-1464 (La.App. 1 Cir. 2/11/11) (unpublished opinion); *Raymond v. Orleans Par. Sch. Bd.*, 2003-0560, (La.App. 4 Cir. 9/3/03), 856 So.2d 27. Accordingly, the district court erred in concluding that criminal charges were a requirement for triggering Article 3493.10 and in thus determining that the attack on Mr. Brown did not constitute a crime of violence providing for a two-year prescription period.

II. The District Court Erred in Interpreting Article 3493.10 in Favor of Prescription.

To the extent there were any uncertainty as to whether formal criminal proceedings are a prerequisite to trigger the two-year prescription period of Article 3493.10, the district court erred in interpreting the statute in favor of prescribing Mr. Brown's claim. The plain text, legislative history, and a common sense reading of the statute make clear that Article 3493.10 contains no requirement of criminal proceedings. If that were not enough, Louisiana's rules of statutory interpretation instruct that, in the face any perceived uncertainty as to the scope of a prescription

provision, courts should interpret the provision in a way that preserves claims, rather than prescribing them.

In Louisiana, "prescription statutes are strictly construed against prescription and in favor of the claim sought to be extinguished by it." *Byrd,* 357 So.3d at 586. Where "there are two possible constructions, the one which favors maintaining an action, as opposed to barring it, should be adopted." *Id*. As the Louisiana Supreme Court has clarified, "[a]bsent clear, contrary legislative intent, prescriptive statutes which can be given more than one reasonable interpretation should be construed against the party claiming prescription." *Correro v. Ferrer*, 2016-0861, p. 4 (La. 10/28/16), 216 So.3d 794, 796 (reversing the grant of the exception of prescription and remanding for further proceedings) (internal quotations and citation omitted).

With no statutory language to rest on, Defendant-Appellee can only argue that one reading of the statutory language of Article 3493.10 might be to require a criminal charge or conviction to establish a crime of violence. Setting aside how strained such a reading would be, it would still not support prescription because a court would still be required to strictly construe Article 3493.10 in a manner to avoid prescription. In other words, even accepting Defendant-Appellee's argument, at most it offers only an alternative reading of Article 3493.10, not the only plausible one, and thus cannot support prescription here. The district court therefore erred in granting Defendant-Appellee's exception of prescription.

III. The District Court Erred in Making an Unsupported Factual Finding that the Officers' Attack Did Not Constitute a Crime of Violence

Against the facts alleged in Mr. Brown's Petition, the district court erred in making a factual finding that the unprovoked attack that resulted in Mr. Brown's immediate hospitalization did not qualify as conduct falling under the definition of a "crime of violence." While it is true that Louisiana law permits law enforcement to exercise reasonable force pursuant to Article 220, nothing under that section sanctions the use of *excessive* force against a defenseless, compliant individual. Here, the facts alleged by Mr. Brown—which must be accepted as true at this stage—indicate that Defendant-Appellee and his fellow officers intentionally used excessive force during the assault. Notably, the Defendant-Appellee never made the argument that Article 220 should apply to excuse his abhorrent conduct. The district court alone came to this conclusion, without any factual basis and in direct contravention of the express allegations in the Petition.

A. As a Matter of Law, Excessive Force Can Amount to a Crime of Violence Under Article 3493.10.

Under Louisiana law, excessive force by a police officer against a civilian can qualify as a crime of violence for purposes of applying Article 3493.10's two-year prescriptive period. This legal reality is not only supported by the text of Article 220 itself, but also by the very cases invoked by Defendant-Appellee—all of which

relied on specific factual determination that the defendant officers in those cases exercised reasonable force.

Article 220 of the Louisiana Code of Criminal Procedure requires that a person "submit peaceably to a lawful arrest," and that an officer making the arrest, "may use *reasonable force* to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained." Article 220 (emphasis added). As evidenced by the text of this section, force used attendant to arrest and detention must in fact be "reasonable." Whether force is reasonable, in turn, "depends upon the totality of the facts and circumstances in each case," and courts evaluate an officer's actions against those of ordinary, prudent, and reasonable persons placed in the same position. *See Hall v. City of Shreveport*, 45,205, p. 5–6 (La.App. 2 Cir. 4/28/10), 36 So.3d 419, 423. Officers who use unreasonable or excessive force are liable for any injuries that result. *Kyle v. City of New Orleans*, 353 So. 2d 969, 973–74 (La. 1977).

Louisiana courts, including those cited by Defendant-Appellee, have likewise made clear that an officer's excessive force can qualify as tortious conduct. In *Vallery*, the court stated that it is "well-settled that under Louisiana law, excessive force may transform ordinarily protected use of force into an actionable battery, rendering the officer and his employer liable for damages." *Vallery*, 2011-1611, p. 2. There, the court ultimately found that the defendant's conduct was reasonable

because the plaintiff resisted arrest, meaning that the protections of Article 220 applied. The courts in *Edwards* and *Byrd* reached similar conclusions, determining that the respective plaintiffs acted in a way that necessitated the use of reasonable force, but that the force used did not rise to a tortious level. *Edwards*, 348 So.3d at 274 (noting that, where the plaintiff tried to strangle himself necessitating officer intervention, "it does not necessarily follow that claims of excessive force equate to the commission of a 'crime of violence'"); *Byrd*, 357 So.3d at 588 ("The injuries allegedly sustained by Byrd do not automatically transform the defendants' permitted actions into crimes of violence.").

While these cases found the plaintiffs insufficiently alleged crimes of violence, they make clear that excessive force beyond what is permitted by Article 220 can qualify as conduct defined as a crime of violence under Article 3493.10. Louisiana state courts and federal courts interpreting Louisiana law have consistently acknowledged that Article 3493.10's two-year prescriptive period applies to civil causes of actions based on damages arising from an act defined as crimes of violence. *See, e.g.*, *Bowman,* 20-2498, p. 6; *Johnson v. Littleton*, No. 08-1738 CV2, 2008 WL 8635056 (La. Dist. Ct. Aug. 28, 2008); *Raymond*, 856 So. 2d 27. Nothing in the text of Article 3493.10 exempts acts of criminal violence where the perpetrator is a police officer. Where an officer's excessive force rises to the

level of a second degree battery, there is little question that it can likewise qualify as a crime of violence.

B. The Facts Alleged by Mr. Brown Demonstrate That the Unprovoked Attack Against Him Constitutes a Crime of Violence.

In his Petition, Mr. Brown alleged facts indicating that he was brutally attacked by Defendant-Appellee and his fellow officer despite complying with their instructions and posing no threat to the officers. Because these facts must be accepted as true for purposes of determining prescription, and because the cases that Defendant-Appellee relies on are easily distinguishable from Mr. Brown's case, the district court erred in making the unsupported factual finding that the conduct as alleged by Mr. Brown did not qualify as meeting the definition of a crime of violence.

In evaluating an exception of prescription brought by a defendant, Louisiana courts are required to accept all of the plaintiff's allegations as true. *See Hill on behalf of George v. State Farm Mut. Auto. Ins. Co.*, 55,091, p. 10 (La.App. 2 Cir. 5/10/23), 362 So.3d 1279, 1285 (noting that where, as here, "no evidence has been introduced at a hearing on an exception of prescription, all allegations of the petition(s) are to be accepted as true."); *Bowman,* 20-2498, p. 4 ("In reviewing the allegations of Respondent's petition, the Court must consider them as true, since no counter evidence was presented by Exceptors at the hearing to rebut Respondents claims or the credibility of the allegations in Respondents petition."). Here, Mr.

Brown alleged that he was beaten without warning or provocation. *See* R. at 6–7. He was hit numerous times in his face and torso until he collapsed. *See id.* He was left bloody and with fractures to his face and eye socket, and he experienced significant pain in his chest. *Id.* at 7. And once the severity of his injuries was noticed, he was taken to Ochsner LSU Health Shreveport-LA where he was evaluated and treated for, among other things, (1) an orbital fracture on the left side of his face; (2) a fracture of his nasal bones; and (3) abrasions on his left eyelid. *Id.* at 7. Notably, each of these facts are also set forth in detail in Mr. Pouncy's indictment and Mr. Grant's plea. *See* Grant Factual Basis for Plea at 2–4; *see also* Pouncy Indictment at 1–2.

Under any reasonable reading, these facts indicate that the attack against Mr. Brown constituted an assault that, by definition, qualifies as a crime of violence. *See* La.R.S. 14:2.B(6) (listing second degree battery as an enumerated "crime of violence"); La.R.S. 34.1 (defining second degree battery as "a battery when the offender intentionally inflicts serious bodily injury."). That the assailants were law enforcement officers who were processing Mr. Brown at the time of the attack does not immunize their actions if the reasonable force provision of Article 220 is inapplicable. As explained above, Article 220 only applies where an officer uses "reasonable" force in proportion to a civilian's resistance. Mr. Brown's Petition alleges that he offered no resistance to arrest or booking. The Defendant-Appellee

can point to no such evidence of resistance, and telling of this absence, he never even made an argument below that Article 220 ratified his actions. Defendant-Appellee only cites Article 220 to support the fact that officers are entitled to use reasonable force, but he never argued that his own use of force was reasonable under Louisiana law. *See* R. at 19–21; R. at 63–64; R. at 111–112. Of course, we now know from the Justice Department's prosecutions of Mr. Brown's attackers that no such justification of reasonable force could have been made consistent with the truth. That Mr. Brown was so brutally bludgeoned despite the lack of resistance only confirms that Defendant-Appellee's use of force was plainly unreasonable and in no stretch defensible under Article 220.

Respectfully, the district court failed to grapple with the facts as alleged in the Petition. In its order, the court, citing Article 220, emphasized that an individual "shall submit peaceably to a lawful arrest." R. at 118. Of course, but Mr. Brown did exactly that, and there was no evidence in the record for the court to conclude otherwise. Similarly, the district court did not analyze whether the attack on Mr. Brown was itself excessive, instead focusing almost solely on whether charges were brought against the officers for their attack. As noted above, a ruling on that basis has no statutory support. At bottom, the court hinged its order on this conclusory declaration: "the mere fact that plaintiff contends the actions of defendant were crimes of violence do not make it so." R. at 118. That statement is a truism, but

does nothing to answer the applicable question: do *the facts* as alleged in the Petition, accepted as true, reflect conduct that would qualify as a crime of violence. To that question, the district court simply ignored the facts as alleged and presumed appropriate conduct by the officers without any evidentiary basis. Based on the criminal indictments and the plea secured against Mr. Brown's attackers by the United States Department of Justice, we now know for a fact that presumed faith in these officers' conduct was gravely misplaced.

Further, the facts as alleged in Mr. Brown's Petition are easily distinguishable from the facts of the cases relied upon by both the district court and Defendant-Appellee: *Vallery*, *Edwards* and *Byrd*. The key distinction between Mr. Brown's Petition and those cases is that Mr. Brown was entirely compliant and did not resist or otherwise pose a threat to the officers. In *Vallery*, *Edwards*, and *Byrd*, the officers used force in response to allegations that the plaintiff was either actively resisting arrest or appeared to be an imminent threat to their person or surroundings. *See Vallery*, 2011-1611, p. 2 (noting that plaintiff resisted arrest before being struck by police with a baton); *Edwards*, 348 So.3d at 270–71 (noting that plaintiff's efforts to strangle himself prompted police tasing); *Byrd*, 357 So.3d at 584 (noting that plaintiff was charged with "resisting an officer with force or violence"). These courts all relied on Article 220 in holding that the conduct of the officers was

reasonable under the circumstances and therefore could not be fairly characterized as a crime of violence.

By contrast, Mr. Brown was beaten without provocation while already in custody, having peacefully submitted to his arrest and complied with the officers' instructions, and without ever posing a danger to himself or his booking officers. R. at 6–7. There is no evidence that Mr. Brown was resisting detention, and no allegations that the officers used reasonable force. In fact, not even Defendant-Appellee advanced the argument that his conduct was protected by Article 220 because it was reasonable, non-excessive force. Instead, the district court invoked Article 220 on its own without considering that the alleged facts clearly demonstrated excessive and unreasonable force.

The subsequent criminal prosecution of the two officers makes the district court's invocation of Article 220 all the more troubling. As we now know and as fully admitted by one of the two perpetrators, Mr. Brown suffered an unjustified beating that resulted in his immediate hospitalization. This conduct cannot be read as "reasonable" under Article 220, and easily fits within the statutory definition of a crime of violence—entitling Mr. Brown to invoke the two-year prescriptive period provided by Article 3493.10. The district court therefore erred in determining that the attack on Mr. Brown did not constitute a crime of violence, and in granting Defendant-Appellee's exception of prescription.

IV. Alternatively, This Court Should Grant Mr. Brown's Motion to Remand

Currently pending before the Court is Mr. Brown's Motion to Remand in light of the criminal prosecutions of the two officers. Mr. Brown sought summary remand of the case in the interests of judicial economy because the indictment and guilty plea so profoundly called for the district court's prescription decision to be set aside. Mr. Brown would have expected Defendant-Appellee to not seriously contest this relief, but alas, Defendant-Appellee objected to the immediate remand. With these developments, which reflect that all of the facts as alleged in Mr. Brown's Petition were entirely accurate, there is no viable basis to support the district court's ruling. Setting aside that the court disregarded the facts of the Petition to reach its outcome, the premise of that ruling—that neither of the officers were criminally prosecuted—has been fatally undercut. So, even accepting the district court's misguided view that a criminal prosecution is somehow required to trigger Article 3493.10, at least for police officers, that prerequisite has now been met.

As Mr. Brown explained in his remand motion, this court has the inherent authority to remand a case for the consideration of additional evidence "where it is necessary to reach a just decision and to prevent a miscarriage of justice." *Alex v. Rayne Concrete Serv.*, 2005-1457, p. 23 (La. 1/26/07), 951 So.2d 138, 155. A case should be remanded where "evidence was unobtainable with due diligence" at the district court, "and the record reflects that the new evidence is likely to affect the

outcome of the case." *Campbell v. Melton*, 2001-2578, p. 14 (La. 5/14/02), 817 So.2d 69, 79. These intervening criminal proceedings constitute precisely such evidence.

To preserve judicial resources, this Court also could rule itself that Mr. Brown's claim is timely under Article 3493.10, based on these new undisputed and publicly known facts regarding Defendant-Appellee's criminal indictment stemming from his violent attack against Mr. Brown. There is now no question that Mr. Brown is entitled to the two-year prescription period under Article 3493.10 under any plausible interpretation of the statute. This Court could therefore remand and instruct the district court to reverse its grant of Defendant-Appellee's exception of prescription and proceed to the merits of Mr. Brown's civil claim.

RELIEF SOUGHT

WHEREFORE, for the foregoing reasons, Appellant prays this Court reverse the ruling below granting Defendant-Appellee's exception of prescription.

Respectfully submitted,
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CERTIFICATE OF SERVICE

It is certified that on December 13, 2023, a copy of the foregoing Appellate Brief was sent via electronic mail to James Sterritt, David Hemken, and Ashby Davis.

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CERTIFICATION FOR ATTACHMENTS

I hereby verify that all attachments to this brief have previously been duly filed and/or accepted or proffered into evidence in the lower court, to the best of my knowledge, information and belief, with the exception of the courtesy copy of *Bowman v. Ouachita Parish Sheriff Office, et al.*, 20-2498 (La. 4 Jud. Dist. Ct. 10/6/2023), which only was issued on October 6, 2023. I understand that failure to comply with this local rule may result in the refusal to consider said attachments. WILLFUL FAILURE TO COMPLY WITH THIS LOCAL RULE MAY SUBJECT ME TO PUNISHMENT FOR CONTEMPT OF COURT.

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