

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2000-KA-0389**  
**VERSUS** \* **COURT OF APPEAL**  
**BYRON JONES** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 401-394, SECTION "B"**  
**Honorable Patrick G. Quinlan, Judge**  
\* \* \* \* \*  
**Judge David S. Gorbaty**  
\* \* \* \* \*

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

Harry F. Connick  
District Attorney  
Juliet Lee Clark  
Assistant District Attorney  
619 South White Street  
New Orleans, LA 70119  
COUNSEL FOR PLAINTIFF/APPELLEE

Sherry Watters  
LOUISIANA APPELLATE PROJECT

P. O. BOX 58769  
New Orleans, LA 70158-8769  
COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTION AFFIRMED; SENTENCE  
AMENDED, AND AFFIRMED AS AMENDED**

Defendant Byron Jones appeals his conviction for manslaughter claiming that the State failed to prove that the killing was not in self-defense. He also appeals his sentence of twenty years at hard labor without benefit of parole, probation or suspension of sentence claiming that it is excessive. For the following reasons we affirm the conviction, amend the sentence, and affirm as amended.

**STATEMENT OF THE CASE:**

Mr. Jones was charged by grand jury indictment with second degree murder of Luke Freeman. Just prior to the beginning of trial, Jones waived trial by jury and elected to be tried by the judge. The trial court found him guilty of manslaughter, and after a pre-sentence investigation, sentenced Jones to twenty years at hard labor without benefit of parole, probation, or suspension of sentence.

**STATEMENT OF THE FACTS:**

Crystal Freeman, the victim's sister, was defendant's live-in girlfriend

and mother of his five children. She identified a photograph taken on July 19 showing her with a black eye. She stated that Jones had punched her in the eye on July 13. On the following Friday, July 17, she moved to her mother's house. On Sunday, July 19, her brother Luke saw the black eye. Ms. Freeman denied telling Luke how she received the injury, but stated that he knew who had inflicted the blow. On cross-examination, Ms. Freeman testified that she had had Jones arrested for hitting her on a previous occasion, but had dropped the charges against him.

Michelle Freeman, another sister of Luke Freeman, testified that on the afternoon of July 19, she got off work and went home to her apartment at 316 Jeff Davis Parkway. She and her ex-boyfriend walked to a nearby store to buy detergent; and on the way home, she turned around and saw her brother behind her. She stated that Luke told her he was going to her house to get their father, who was nicknamed "Tuti," and Luke's girlfriend, Maria. She said that her brother walked past her, and that when she was about two blocks from the house, she saw her brother and Jones fighting. She saw Luke hit Jones and then kick him. Ms. Freeman testified that Jones then walked into his house and her brother walked to the backyard. She went into her apartment to get her laundry; and as she came out of her door to go to the laundromat, she saw Jones hiding in the stairwell that was next to her door.

She said that Jones peeked out and when he saw her, jumped back. She turned around to go back inside, and her brother stepped out and went toward the alleyway. Ms. Freeman said that she was walking behind Luke when she heard Jones say, "Come here, Luke, I have something to tell you. I want to talk to you about something." Luke replied, "What do you have to tell me? You don't have a f\_\_\_\_\_g thing to tell me." Ms. Freeman started walking down the alleyway. When she got halfway down the alley, she turned around and saw Jones running down the alleyway with a knife in his hand. She testified that because she saw blood on the knife, she ran back toward her apartment to see what had happened. In the grassy area near her apartment, she saw her brother on his knees and elbows. He told her that Jones had stabbed him. She ran to a pay phone to call for an ambulance, then called her mother. When she returned to the backyard she saw her father and Maria bending over Luke who was already dead. Under cross-examination, Ms. Freeman testified that her father was holding the handle of a shovel, and told her that he had chased Jones, but could not catch him.

Maria Castro testified that she and Luke Freeman had lived together for six and one-half years. They had two children together, and she was pregnant for a third when Luke was killed. On July 19, 1998, at about 5 p.m., she was at Michelle Freeman's apartment when Luke arrived after first

going to his mother's house. She stated that when he got to the apartment, Luke told her to get the children ready to go home and then exited the apartment. When Ms. Castro came out of the apartment with her children, she saw Jones with a knife on top of Luke. She screamed for Jones to get off of Luke. Jones looked at her, stabbed Luke and ran away. Ms. Castro said that Tuti, Luke's father, was behind a shed, and when he heard her scream at Jones, he grabbed something to hit Jones, but Jones had already run from the scene. She ran to call an ambulance but found out that Michelle had already called, so she went back to Luke and tried to stop the bleeding.

The defendant, Byron Jones testified that in July 1998, he and Crystal Freeman had stayed together for about two weeks, but had gotten into a fight when Crystal saw the name of another woman, Ozelia Lumor, on the apartment lease. He told Crystal that things were not working out between them because of her family always butting into their business. Jones admitted that he hit Crystal, but stated that it was because she had been throwing his things around. Jones testified that on the Thursday and Friday before July 19, he and Crystal argued and he told her that he had someone else. On July 19, he was cleaning the house and smelled a foul odor in the living room. A rat had crawled into the sofa and died, and he used a knife to

cut open the sofa to remove the rat. At that point, he saw Luke Freeman, Sr., and Maria Castro approach his house in a van. Maria asked for Michelle, but he told them he did not know where she was. He said that they then drove down the block to a playground. Luke Freeman, Sr., walked back to the house and asked Jones for help carrying an ice chest. He refused, and Luke Freeman, Sr., returned carrying the ice chest alone.

Jones testified that he, Ozelia, and Luke Freeman, Sr., then sat on the porch talking. About 45 minutes later, he saw the younger Luke Freeman coming down the street. The younger Luke took off his shirt and said, "What the f\_\_k I told you." Jones said Luke was referring to an earlier incident when Luke threatened him for hitting Crystal. Luke jumped on Jones and "stomped" him, threatening to kill him. Jones was able at some point to grab the knife that he had used to cut open the sofa from where he had placed it on the windowsill. Jones testified that when Luke saw the knife, he told Jones to "Hold up." Jones testified that he wanted to call the police at that point, but did not because he did not have a telephone and the closest pay phone was across the street. The elder Luke then told Jones he did not need to call the police because he would talk to his son. Jones then saw the younger Luke coming up the alley with a big stick in his hand.

Jones testified that the younger Luke swung the stick at him and

struck him in the face. In an attempt to protect himself, Jones started swinging the knife, and remembered hitting Luke in the side. Luke continued to attack him with the stick, so he continued to swing the knife. At some point, he ran toward Palmyra Street, and discarded the knife on the street. On cross-examination, Jones could not explain why, if the altercation took place in the front yard, all the blood and the victim were found in the back yard. Jones stated that Luke was still alive when they “got into it.” He also claimed that he did not stab Luke, but only “swung” the knife at him to keep from being hit.

Detective Don LeDuff testified that on July 19, 1998, he investigated a homicide near the rear apartment at 316 S. Jefferson Davis Parkway. LeDuff described the scene as an open backyard where he found blood-stained clothing in a grassy area where an altercation between the victim, Luke Freeman, and Jones had taken place. He learned from witnesses on the scene that the altercation stemmed from Luke confronting Jones about an earlier incident in which Jones had given Luke’s sister, Crystal, a black eye. LeDuff testified that he also learned that after the initial confrontation, Jones went into his apartment, armed himself with a knife, and hid in the stairwell near the rear apartment. Luke went into his sister’s apartment. As Luke attempted to leave the apartment a few moments later, Jones confronted him

with the knife and began to stab him. Luke Freeman, Sr., the father of the victim, told Detective LeDuff that he was seated in the yard under a tree and witnessed the entire incident. As the younger Freeman lost strength because of the stabbing, he fell to the ground. Jones got on top of him continuing to stab him about the arms and face, then ran up the alley to front, passing Michelle Freeman on the way. A blood-covered knife was recovered on Palmyra Street, around the corner from the scene. LeDuff identified a handle-less shovel, found near Freeman's body, which he said had been used in an attempt to break up the altercation. LeDuff stated that he did not notice any blood on the steps or on the porch and that the blood trail was in the rear yard and through the alley.

Dr. Richard Tracey testified about the autopsy performed on Freeman by Dr. Newman. He stated that the autopsy protocol showed that Freeman had been stabbed four times, with the most significant wound in the right groin. That wound severed large blood vessels, namely the iliac and femoral arteries, that led into the leg. A contributing wound was in the left forearm where it opened into large arteries. Dr. Tracey stated that there were two superficial wounds, one on the left upper arm and one on the left cheek. The cause of death was massive bleeding. It was Dr. Tracey's opinion, based on the autopsy notes and pictures, that the two fatal wounds were inflicted by



stabbing, rather than slicing or swinging movements.

## **DISCUSSION:**

### **ASSIGNMENT OF ERROR NO. 1:**

In his first assignment of error, Jones complains that the State failed to prove beyond a reasonable doubt that he did not kill Luke Freeman in self-defense. In support of this claim, he argues that the victim had previously threatened him and on the day of the incident the victim beat, kicked and stomped him. He also asserts that the victim was intoxicated.

The standard of reviewing a claim of insufficient evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *State v. Rosiere*, 488 So.2d 965 (La. 1986). The reviewing court is to consider the record as a whole and not just the evidence most favorable to the prosecution; and, if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. *State v. Mussall*, 523 So.2d 1305 (La. 1988). Additionally, the reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. *Id.* The trier of fact's determination of credibility is not to be

disturbed on appeal absent an abuse of discretion. *State v. Cashen*, 544 So.2d 1268 (La.App. 4 Cir. 1989).

Manslaughter is a homicide that would be either first or second degree murder, but the killing is committed in "sudden passion or heat of blood caused by provocation sufficient to deprive an average person of his self-control and cool reflection." La. R.S. 14:31(A)(1). "Sudden passion" and "heat of blood" are not separate elements of the offense but are mitigating factors that exhibit a degree of culpability less than that present when the homicide is committed without them. *State v. Lombard*, 486 So.2d 106 (La. 1986).

A homicide is justifiable if committed by one in defense of himself when he reasonably believes that he is in imminent danger of being killed or receiving great bodily harm, and that the homicide is necessary to save himself from that danger. La. R.S. 14:20(1). When a defendant claims self-defense, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *State v. Lynch*, 436 So.2d 567 (La. 1983); *State v. Brumfield*, 93-2404 (La.App. 4 Cir. 6/15/94), 639 So.2d 312. Regarding self-defense, it is necessary to consider whether the defendant had a reasonable belief that he was in imminent danger of losing his life or receiving great bodily harm and whether the killing was necessary, under the

circumstances, to save the defendant from that danger. *State v. McClain*, 95-2546 (La.App. 4 Cir. 12/11/96), 685 So.2d 590. Although there is no unqualified duty to retreat, the possibility of escape is a factor in determining whether or not the defendant had a reasonable belief that deadly force was necessary to avoid the danger. *Id.* However, a defendant who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that the defendant desires to withdraw and discontinue the conflict. La. R.S. 14:21.

It does not appear that the trial judge erred in finding Jones guilty of manslaughter. Clearly, Jones's testimony was not found credible by the trial judge; moreover, the physical evidence contradicted his testimony. Jones testified that he and the younger Luke fought in the front of his residence, but all of the blood was found in the rear yard. As to the claim of self-defense, the initial altercation between Jones and Luke had ended when Jones armed himself with the knife and lay in wait for Luke in the stairwell. Further, there is no evidence in the record, contrary to Jones's assertion in his brief, that the younger Luke Freeman was intoxicated at the time of the altercation. There was no testimony from Dr. Tracey about whether or not the victim was intoxicated; and, none of the witnesses, including Jones

himself, testified that the victim appeared to be intoxicated. Detective LeDuff testified that “Mr. Freeman” was intoxicated, but he was referring to the victim’s father whom he attempted to interview some two hours after the homicide. The State proved its case beyond a reasonable doubt.

**ASSIGNMENT OF ERROR NO. 2:**

In his second assignment of error, Jones complains that the trial court imposed an excessive sentence. He concedes that no written motion for reconsideration of sentence was filed, but asserts that his trial counsel objected to the sentence. However, a review of the sentencing transcript shows that no objection was made to the sentence. La. Code Crim. Proc. art. 881.1(D) provides that the failure to make or file a motion for reconsideration of sentence precludes the defendant from raising an objection to the sentence on appeal. *See also State v. Martin*, 97-0319 (La.App. 4 Cir. 10/1/97), 700 So.2d 1322; *State v. Green*, 93-1432 (La.App. 4 Cir. 4/17/96), 673 So.2d 262, *writs denied* 96-1131, 96-1248 (La. 10/4/96), 679 So.2d 1379, 1380. Therefore, appellate review of this issue is precluded.

**ERRORS PATENT:**

A review of the record reveals an error patent with regard to the

sentence in that it was imposed without benefit of parole, probation, or suspension of sentence. La. R.S. 14:31(B) provides:

Whoever commits manslaughter shall be imprisoned at hard labor for not more than forty years. However, if the victim was killed as a result of receiving a battery and was under the age of ten years, the offender shall be imprisoned at hard labor, without benefit of probation or suspension of sentence, for not less than ten years nor more than forty years.

At the sentencing hearing, the trial judge imposed the sentence without benefits after the prosecutor pointed out that the offense was a crime of violence. La. Code Crim. Proc. art. 890.1 provides that when the court imposes sentence, it shall specify if the offense was a crime of violence; and, if the offense is a crime of violence, the court may deny or place conditions on eligibility for diminution of sentence for good behavior. La. Code Crim. Proc. art. 893 provides that the court shall not suspend the sentence of a conviction for a crime of violence, and La. R.S. 14:2(13)(d) lists manslaughter as a crime of violence. Neither Articles 890.1 nor 893 prohibit probation or parole eligibility. Because the trial judge imposed a sentence of twenty years imprisonment, the fact that it was imposed without benefit of probation or suspension of sentence is irrelevant. However, the trial court erred in imposing the sentence without benefit of parole because parole eligibility is not prohibited by La. R.S. 14:31 or Articles 890.1 and 893.

Therefore, the sentence imposed is amended to delete the denial of parole eligibility. There are no other errors patent.

Accordingly, Byron Jones's conviction is affirmed. The sentence imposed by the trial court is amended to delete the denial of parole eligibility, and affirmed as amended.

**CONVICTION AFFIRMED; SENTENCE  
AMENDED, AND AFFIRMED AS AMENDED**