

STATE OF LOUISIANA

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NO. 2000-KA-1821

VERSUS

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COURT OF APPEAL

LAWRENCE WILLIAMS

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 356-871, SECTION "E"
Honorable Calvin Johnson, Judge

Judge Steven R. Plotkin

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer,
Judge Patricia Rivet Murray)

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AFFIRMED

The issue in this appeal is was the evidence sufficient to sustain the conviction of second degree murder.

PROCEDURAL HISTORY

Lawrence Williams was charged by bill of indictment, with second degree murder, a violation of La. R.S.14:30.1. At his arraignment he pleaded not guilty. The motion to suppress the identification was denied after hearings. The trial court found sufficient probable cause to substantiate the charges and bind Williams over for trial after a hearing. A twelve-person jury found Williams guilty as charged after a two-day trial. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence; the sentence is to run concurrently with any other sentence he is serving.

STATEMENT OF FACTS

On March 28, 1992 at about 12:20 a.m. Officer Andrew Michaelson responded to a call at 423 Jackson Avenue concerning a shooting. On arrival, he saw a man, later identified as Milton Williams, on the sidewalk in front of a bar; the man was bleeding from gunshot wounds. The officer

called for an ambulance, secured the scene, and began to interview witnesses. Inside the bar, he met Natalie Bell who complained of a gunshot wound to her leg. She said that as she heard gunshots, she felt her leg sting and found she had been wounded.

Mr. Bennie Roberts, a friend of Milton Williams, testified that he had known Williams for more than twenty years. On weekends Mr. Roberts often helped out at the Melody Inn Lounge that Milton Williams owned. Mr. Roberts knew that a gun was kept in the bar's cash drawer, but he had never seen Milton Williams use it in the bar. On the night in question Mr. Roberts was stacking beer boxes in the yard behind the bar when he learned that a fight had occurred in the bar and Milton Williams had escorted two men and a woman to the door. Milton Williams did not seem upset by the altercation, but about twenty minutes later when Mr. Roberts was again in the backyard, he heard gunshots. Mr. Roberts went to the front of the bar, and on the sidewalk near the steps, Milton Williams was stretched out on his side. Mr. Roberts saw he was breathing, but as Mr. Roberts raised his head, Mr. Williams made three "gasping sounds" and died.

Dr. Richard Tracy, an expert in pathology, testified that he performed the autopsy of Milton Williams on March 28, 1992. Williams' clothing was densely soaked with blood so that the doctor could not see any evidence of

gun smoke or powder on the cloth. There were five bullet wounds; two bullets entered from the front left shoulder area, two from the rear lower left near the buttocks, and a fifth bullet entered behind the ear and exited in front of the ear. The bullets entering from the left front shoulder area were the cause of death, which would occur almost immediately after such wounds, the doctor concluded. Four of the bullets were retrieved from the body, and they appeared to be from a large caliber weapon.

Mr. Stanley Cain worked as a deejay at the Melody Inn Lounge on the evening of March 27, 1992. His position in the deejay booth was next to the entrance to the bar. On the night of the shooting, the bar, described as a “neighborhood joint for the whole St. Thomas area,” was very crowded. Occasionally fights erupted in the bar, but they ended when Milton Williams told the people involved to leave the bar; the fighters would leave and then return to apologize. Three months before the incident at issue here Williams’ son was killed in a manner very similar to Milton Williams’ death, and at that time Milton Williams began to keep a gun at the bar. On the evening of March 27th a couple Mr. Cain had seen in the neighborhood came into the bar, and suddenly a fight broke out between the male member of the couple and a single man that Mr. Cain had never seen before. Someone called to Milton Williams, who was in the back of the bar, to come

to the front to stop the fight. He came forward holding a gun and asked all three people to leave; the single man left first and then the couple. Mr. Cain felt no apprehension after the incident because it was not unusual. However, about twenty-five minutes later, the single man returned, saying, “now I have a gun.” Mr. Cain noticed that the gun was a large revolver. The man looked around for a moment and then walked back outside. Someone called for Williams, and he walked outside carrying his gun. Mr. Cain testified that “as soon as he [Milton Williams] hit the door he was shot. I know within seconds, as soon as he opened that door, it was over with.”

Mr. Cain heard four or five shots that sounded like canon fire. All the shots came from a large caliber weapon, he said, and none came from a smaller caliber weapon such as Milton Williams’ gun. Mr. Cain walked outside and said that Milton Williams had been shot and was face down on the sidewalk. His gun was in his hand and his finger was on the trigger. Mr. Cain took the gun from Milton Williams’ hand because he was afraid it might be fired inadvertently, and he also took Williams’ broken glasses from his nose. Mr. Cain gave the gun to someone behind the bar. Mr. Cain said that he could not identify the gunman.

Ms. Corina Kennedy had worked at the Melody Inn Lounge for two years, and she was working behind the bar on March 28th. She customarily

saw Milton Williams bring a gun into the bar and put it in a drawer near the cash register. He would take the gun out at closing time and take it home. He also took out the gun when he ordered people to leave the bar. She never knew Milton to fire the gun. On the night in question, she spoke with a regular customer, a woman named "Billy G," who came up to the bar to introduce her brother, who was called "Rat"; Ms. Kennedy served them each a drink. At trial Ms. Kennedy identified the defendant as "Rat." Moments later Ms. Kennedy realized a fight had broken out, first between Rat and two women, and then another man joined the women against Rat. Ms. Kennedy called to Milton Williams who was in the stockroom. While pointing his gun at them, he ordered all the people involved in the fight out of the bar. Rat dropped his radio headphones, and Ms. Kennedy told Milton Williams to let the man pick them up. As he was leaving, Rat said, "I don't appreciate you shoving on me like this here. I'm going to get out this so-and-so club. . . . But I'll be back." Milton Williams told him "to get his . . . a-s-s out of there." After the defendant left, Ms. Kennedy called the police because she thought he would come back, but the police did not come. Milton Williams put his gun back in the drawer and went back to the stockroom. Sometime later, the defendant reentered the bar wearing a sweatshirt with a hood pulled up over his head. He took out a gun and said, "tell him I'm back. I got a gun

like him now.” Ms. Kennedy called to her boss, suggesting they call the police. Milton Williams took his gun and as he put his foot toward the door Ms. Kennedy saw Milton go down to the ground.

Ms. Kennedy described the defendant’s gun as possibly a .38 handgun with a “big nose.” She heard a series of loud gunshots and no other type of gunfire; she did not hear any speech from Milton Williams or his assailant. When she realized that Milton Williams was shot, she called the police. She found a blanket to put on him, but Bennie Roberts told her he was dead. She did not see the defendant after he walked out of the bar. In December of 1994, she selected Lawrence Williams' photo from a photographic lineup and named him as the man who came back to the bar to challenge Milton Williams.

Detective Michael Fejka was involved in the investigation of the homicide occurring March 28, 1992, at 423 Jackson Avenue. When he arrived on the scene at 12:40 a.m., he saw the victim in front of the bar. He noticed a woman, Natalie Bell, being treated by the EMS unit. The detective interviewed Corina Kennedy and Stanley Cain. No gun or bullet casings were found outside; however, one spent pellet was recovered from within the bar near the door and it appeared to be .38 caliber. The detective surmised that Milton Williams’ wounds were “near contact” but not contact

wounds because of the condition of the skin around the wounds. The detective was shown the victim's gun, a .32 caliber weapon; there was no evidence that it had been fired. The detective showed a photographic lineup to Natalie Bell, and she also selected the defendant's picture and named him as the man she had seen in the bar with a gun.

Ms. Natalie Bell testified that she met the defendant on the Tuesday evening, March 24, 1992, prior to the Saturday of the murder. Ms. Bell and her girlfriends were sitting on her porch when he walked by and began talking with them. He introduced himself as "Rat," and bought them cigarettes. On the following Friday night, Ms. Bell and her friends were on their way to the Melody Inn Lounge when they saw the defendant talking to his girlfriend outside the bar. He walked into the bar at the same time as Ms. Bell and her friends. The defendant bought drinks for all the women, but, as he was carrying the drinks, another woman named Kim accidentally knocked all the drinks out of his hands. She began cursing at him and a fight ensued. Kim's boyfriend entered the melee, and they fought several minutes before the bar owner stopped them. Milton Williams, with a gun in his hand, approached Rat first; Williams put his gun to Rat's head and escorted Rat to the door. Rat objected, saying, "Take that gun out my face." Milton Williams also forced Kim and her boyfriend out of the bar. About thirty

minutes after Rat had been expelled from the bar, he returned. As he walked in, everyone began to run because he had a gun in his hand. Ms. Bell saw Milton Williams coming from behind the bar with his gun. He put it to the defendant's head and backed him out of the bar. Ms. Bell started to go outside to see if she could talk to the defendant, but suddenly she heard five shots. The last one hit her leg. When she looked outside she saw Milton Williams lying across the doorsill, dead. Ms. Bell said the gunshots all sounded the same. Two days after the shooting, Ms. Bell was sitting on her porch when the defendant came by. He explained the shooting by saying that he feared for his life, and he wanted Ms. Bell to testify to that effect if he ever got caught. She saw him a second time when he was going out with her friends; at that time he had shaved his head and had a gunshot wound. Sometime later Detective Fejka showed her a photographic lineup from which she selected the defendant's picture.

ASSIGNMENT OF ERROR

In a single assignment of error, the defendant complains that the State failed to prove his guilt beyond a reasonable doubt in that the State failed to show that the killing of Milton Williams was not in self-defense.

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).

Second degree murder is the killing of a human being when the offender has specific intent to kill or inflict great bodily harm. La. R.S. 14:30.1. 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. In arguing 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.

Looking at the evidence in the light most favorable to the prosecution, we find that the state carried its burden of proving that Lawrence Williams did not kill Milton Williams in self-defense. Although Milton Williams had used a gun to put the defendant out of his bar prior to his death, Milton did not harm the defendant. Milton simply expelled the defendant from the bar just as Milton expelled the people who had been

fighting with the defendant. At that point the defendant could have withdrawn from the situation. However, instead of staying out of the bar and avoiding a confrontation, the defendant found a gun and returned to challenge Milton Williams. The defendant, who admitted to Natalie Bell that he shot Milton Williams, claimed to her that he did it because “he feared for his life.” However, Ms. Bell testified that as Milton Williams stepped out of the bar five shots rang out. Mr. Cain, the deejay, also reported that as soon as Milton Williams “hit the door” he was shot. Both Mr. Cain and Ms. Kennedy said that after the defendant returned to the bar, he said, “now I have a gun,” and, according to Stanley Cain, the defendant walked outside apparently waiting for Milton Williams to come outside. Mr. Cain, Ms. Kennedy and Ms. Bell all testified that as soon as Milton Williams appeared in the doorway, five loud shots from the same type gun were heard. Detective Fejka found no evidence that Milton Williams’ gun had been fired. Furthermore, all the bullet casings were the same type and belonged to a large gun. According to the autopsy report, the victim was shot five times on his left side: once behind the ear, twice in the chest and twice in the back. The defendant did not have to return to the bar, but he chose to do so while armed with a deadly weapon. He is the aggressor in this incident; he was not threatened, rather he provoked Milton Williams to get a gun and

open the door with the result that Milton Williams was instantly killed.

Thus, the record contains sufficient evidence to support the conclusion that the defendant was not acting in self-defense when he shot Milton Williams. Considering these factors and the evidence, we find that the State proved beyond a reasonable doubt that the defendant did not shoot the victim in self-defense. Furthermore, viewing the evidence in the light most favorable to the prosecution, we find that the State proved the elements of the offense of second degree murder beyond a reasonable doubt.

CONCLUSION

Accordingly, for reasons stated above, the defendant's conviction and sentence are affirmed.

AFFIRMED