

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2002-KA-0431**  
**VERSUS** \* **COURT OF APPEAL**  
**JEREMY JONES** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 419-861, SECTION "I"**  
**Honorable Raymond C. Bigelow, Judge**  
\* \* \* \* \*  
**Judge David S. Gorbaty**  
\* \* \* \* \*

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones,  
Judge David S. Gorbaty)

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**AFFIRMED**

On February 15, 2001, the defendant was charged by grand jury indictment with second-degree murder in violation of La. R.S. 14:30.1. He was arraigned and pled not guilty February 21, 2001. After a four-day trial, he was found guilty by a twelve-member jury. He filed a motion for new trial, a motion to quash the indictment, and a motion in arrest of judgment. On October 24, 2001, the motions were denied. At that time, the defendant waived delays, and he was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Defendant subsequently filed this appeal.

**FACTS**

Detective Doug Eckert testified that on December 17, 2000, he went to 5521 West End Boulevard in response to a call that a white male, later identified as T. J. Emfinger, had suffered a gunshot wound to the head. He found the body between a brick wall and a fence. The victim was missing his cell phone and wallet. Eckert spoke to Eula Crews, 5523 West End Boulevard, and Cornell Goldman. From Goldman, he learned that a blue pickup truck had been used in the crime. He subsequently determined that

Jack Valian was the owner of the truck. He showed a photographic lineup to Crews, who identified the defendant. She also told him the truck looked similar to the one used in the crime.

Valian said the defendant borrowed his truck twice the night of the crime, first at 6:00 p.m., returning it early in the evening, and then again at 10:00 or 11:00 p.m., returning it at midnight.

Crews said she was in her driveway at 11:30 p.m. the night of the killing, unloading Christmas presents from her car. Crews lives alone and was being very vigilant of the surrounding area as she completed her task. She saw the blue pick-up truck that she recognized as one that commonly visited her upstairs neighbors. Jeremy Jones, the driver, and a man she did not recognize got out of the truck and walked past her. Jones had both of his hands in his pockets. The other man got one of his shoes stuck in the mud and “fussed a little,” but proceeded to catch up with Jones. There was no apparent aggression between the men, and they talked as friends. The two walked between two houses. Immediately, Crews heard three pops. Jones ran past her “looking scared,” jumped into the truck, and “squealed off.” The other man never came out from between the houses. Crews went into her house and called 911. She had taken particular notice of the two men, and knew she knew Jones. She was confident of her identification and said

the lighting was good in the area. She positively identified the defendant at trial and identified the photograph of him she had chosen in a lineup.

Charles Thomas Russell said he had an apartment on West End Boulevard that he shared with Carnel Goldman and Gary Ray Brewster, a.k.a. Kristen. He saw the defendant in Oz, a French Quarter bar, in the early morning hours of Sunday, December 17, hours after the crime. The defendant told him he was sorry about something that had happened next to Russell's house. Russell told him that he did not want to know anything about it.

Russell said Detective Eckert had come to his house after the murder, but that he knew nothing about it at the time. Later, Eckert brought over a picture of the victim, and Russell identified the victim. After that, Russell contacted Eckert about the statements that he remembered the defendant had made.

Cornell Goldman said that he saw the defendant, whom he knew, in Oz in the hours after the crime, and when they embraced, Goldman felt what he thought was a gun in the small of the defendant's back. The defendant told Goldman that he indeed did have a gun and that he was sorry for what had happened at Goldman's house because he did not want to bring him any "heat." Goldman thought at the time that the defendant might have assumed

he and Russell had had a fight, which is why the defendant had made the strange reference to their house. Goldman said he did not learn about the killing until the next day when the police arrived at his house on West End. He did not know the victim was Emfinger until he recognized him in a picture the police showed to him. The police interviewed him several times, and after days he finally came to the conclusion that the defendant had been talking about the murder the night he had seen him at Oz.

“Kristen” said that on the night of the crime or early the next morning, he saw the defendant at The Bourbon Pub. The defendant asked him if he had learned of what had happened at “the house.” The defendant then told him that somebody had been shot, and that he had been the shooter. Kristen then went to Oz to meet Goldman and Russell. They said they knew about the shooting because the defendant had told them about it. The next day he learned about the discovery of the body, and he went to West End Boulevard. At some point, detectives asked him if he would help get the defendant arrested. He said he was sure he would see the defendant because he saw him every night. When he saw the defendant at The Bourbon Pub, he asked him where he was going, and he called the detectives to tell them that the defendant was on his way to Good Friends, another French Quarter bar. Detective Eckert later arrested the defendant in the 700 block of

Dauphine Street as he was driving the blue pickup truck.

### **ERRORS PATENT**

A review of the record for errors patent reveals none.

### **ASSIGNMENT OF ERROR ONE**

The defendant argues the trial court erred in refusing to give the responsive verdict of manslaughter. Not only did the defense not object, waiving the argument on appeal, La. C.Cr.P. art. 801, but the defendant in fact moved for the trial court to exclude the manslaughter verdict, leaving nothing for this court to review. The defendant does not raise ineffective assistance of counsel in his appeal.

Moreover, La. C. Cr. P. art. 814(C) states that “Upon motion of the state or the defendant, or on its own motion, the court shall exclude a responsive verdict listed in Paragraph A if, after all the evidence had been submitted, the evidence, viewed in the light most favorable to the state, is not sufficient reasonably to permit a finding of guilty of the responsive offense.” Here the defense of the case was either misidentification or self-defense. No evidence was presented that would have supported a verdict under La. R.S. 14:31.

This assignment is without merit.

### **ASSIGNMENT OF ERROR TWO**

The defendant argues the grand jury was selected in a racially or sexually discriminatory manner, an argument that was the basis for his post-trial motions that were denied, as set out above.

It appears that the argument was not timely made below. La. C.Cr. P. arts. 521, 535. In State v. Hampton, 96-608 (La. App. 3 Cir. 12/11/96), 687 So.2d 505, the court held that the defendant waived his argument that African-Americans were improperly excluded from the grand jury where he had not raised the issue in a motion to quash prior to trial and he alleged no facts supporting his argument. In State ex rel. Roper v. Cain, 99-2173 (La. App. 1 Cir. 10/26/99), 763 So.2d 1, the court held that an equal protection claim based upon discriminatory selection of the grand jury foreman was barred where the defendant failed to file a pretrial motion to quash. This court has held that an objection to a general or petit jury should be urged by a motion to quash prior to trial, otherwise the objection is waived. State v. Rodriguez, 93-0461 (La. App. 4 Cir. 3/29/94), 635 So.2d 391. Here, the defendant did not make his motion to quash until after trial. Furthermore, the defendant makes no factual assertions upon which to base his argument.

This assignment is without merit.

## **CONCLUSION**

Accordingly, for the foregoing reasons, the defendant's conviction

and sentence are affirmed.

**AFFIRMED**