

Judgment rendered August 9, 2023.  
Application for rehearing may be filed  
within the delay allowed by Art. 922,  
La. C. Cr. P.

No. 55,183-KA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

STATE OF LOUISIANA

Appellee

versus

DOUGLAS W. THOMAS

Appellant

\* \* \* \* \*

Appealed from the  
Forty-Second Judicial District Court for the  
Parish of DeSoto, Louisiana  
Trial Court No. 20-CR-31239

Honorable Nicholas E. Gasper, Judge

\* \* \* \* \*

LOUISIANA APPELLATE PROJECT  
By: Peggy J. Sullivan

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Assistant District Attorneys

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Before STONE, STEPHENS, and ROBINSON, JJ.

## **ROBINSON, J.**

Douglas Thomas appeals his second degree murder conviction, claiming that he was acting in self-defense when he shot and killed Demarcus Lewis. Thomas further argues that even if he was not acting in self-defense, the evidence at most supports a conviction of manslaughter, not second degree murder.

We affirm his conviction and his sentence to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

### **FACTS**

Late in the night on October 3, 2020, Douglas Thomas went to a trailer in Mansfield, Louisiana. Ben Bonner lived in the trailer with his girlfriend and her son, a juvenile named D.J., who was Thomas's cousin. D.J. and Demarcus Lewis were also present in the trailer that night. Lewis was a close friend of Bonner and had been staying at the trailer for four days. Lewis and Thomas had never met as far as Bonner knew at the time.

According to Bonner, Thomas was at the trailer that night to see Bonner's girlfriend. Thomas claimed that he was there to sell methamphetamine to Bonner. Although Bonner denied this, Bonner did state that he was a hustler who would buy methamphetamine in order to sell it.

That night Lewis was in the trailer's living room, recording himself on Facebook Live. While the video portion of the recording was saved, the audio portion of the recording was unavailable.

Thomas and D.J. went outside for Thomas to take a phone call and for Thomas to fire his handgun for D.J.'s benefit. Thomas and D.J. returned to the trailer and began giving Lewis a hard time about the nickname,

“4KTREY,” that he had chosen for himself and was trying to portray on Facebook Live. Thomas spoke briefly with Bonner in the master bedroom before returning to the living room.

Thomas came up behind Lewis and touched him. This took place at 4:47 from the start of the video recording. At 5:09, Lewis stood up and removed his jacket. He is off-camera until 5:29 when he is seen gesturing wildly until 6:32. Lewis and Thomas were yelling at one another. In D.J.’s words, Lewis was getting “hyped.” Bonner agreed that Lewis started becoming aggressive when he stood up and removed his jacket. Bonner asked why they were messing with Lewis, and told them to leave him alone. He believed that the atmosphere was growing tenser before he returned to the master bedroom.

Thomas followed Bonner and they had a brief discussion. As Thomas was about to leave the bedroom, Lewis headed that way. According to Bonner, Thomas and Lewis were face to face when Lewis opened the bedroom door. Lewis told Thomas to watch out, but when Thomas smooched at Lewis, he reacted by grabbing Thomas and rushing Thomas toward the bathroom door. Thomas fired two shots at Lewis as they went through the bathroom door and fell to the ground with Lewis on top. Lewis suffered a gunshot wound to the abdomen and a gunshot wound to his left thumb.

At 6:38, the video shows D.J. pausing at the edge of the trailer door before leaving the trailer four seconds later. He was closely followed by Bonner. Thomas left the trailer at 7:00. At 7:06, D.J. returned to the trailer to retrieve his cell phone. At 8:59, Thomas reentered the trailer. He is seen

at 9:27 gesturing for Lewis to follow him. At 9:41, he is shown leading Lewis out of the trailer by the arm.

Thomas placed Lewis in the front passenger seat of his SUV. He drove Lewis to a remote wellsite in DeSoto Parish where he shot Lewis one time in the head. Lewis's body was discovered at around 10:00 a.m. on October 4.

Following the murder of Lewis, Thomas fled to Medicine Lodge, Kansas. On October 5, Officer Richard Garza with the Medicine Lodge Police Department received a call from dispatch that someone, who turned out to be Thomas, was asking for money at a convenience store to buy fuel. There had been a call earlier that day in a nearby town that someone was trying to exchange a firearm for fuel. Upon arrival at the convenience store, Officer Garza ran the license plate numbers on Thomas's SUV. His interaction with Thomas was captured on his body cam. Shortly after Officer Garza approached Thomas, he got into his vehicle despite Officer Garza's attempt to prevent him from doing so, and drove away from the store. Officer Garza pursued Thomas in his patrol car but lost him. The SUV was eventually located, and Thomas was apprehended about seven hours later. A firearm was found on the curb in front of a home along the route that was believed to have been taken by Thomas while fleeing Officer Garza.

Upon his return to Louisiana, Thomas was interviewed by DeSoto Parish Sheriff's Office ("DPSO") detectives. Thomas told them that Bonner had called him to deliver drugs. Bonner also had some tire rims that Thomas was interested in buying. Regarding the shooting in the trailer, Thomas

explained that Bonner tried to rob him and had placed a shotgun to his right side. When he tried to escape, he shot Lewis as Lewis rushed him.

Thomas stated that as he attempted to drive Lewis to the hospital following the shooting, he told Lewis not to move. Thomas had his gun in his hand as he drove. When he looked in his rearview mirror, Lewis jumped him and grabbed his hand, which caused the gun to discharge in the SUV. Thomas insisted that Lewis had something in his hand while in the vehicle, but he did not know what it was. He pushed Lewis's dead body out at the wellsite. Thomas denied getting out of his SUV at the wellsite. He also stated that he traveled to Terrell, Texas, where he cleaned out his SUV, including the spent casing. Thomas claimed during the interview that he sometimes kept a .22 pistol in the passenger-side door, but did not know if it was there the night of the shooting.

When the detectives told Thomas that the evidence, namely a shell casing found at the wellsite and a concussion impression in the gravel, showed the shooting took place at the wellsite, Thomas changed his story. He stated that when he opened the SUV door at the wellsite for Lewis to get out, Lewis lunged at him, and they began tussling on the ground. Thomas shot Lewis as Thomas got up from the ground. Toward the end of the interview, Thomas claimed that he threw his weapon out of the car on the highway between Marshall and Longview, Texas.

On December 1, 2020, Thomas was indicted by a DeSoto Parish Grand Jury for the second degree murder of Lewis.

A jury trial commenced on May 25, 2022. Dr. James Traylor, who performed the autopsy on Lewis, testified as an expert in forensic pathology regarding his autopsy findings. Lewis was 5'6" and weighed 159 pounds. A

toxicology report on Lewis was positive for methamphetamine and marijuana. Although Lewis was under the influence of methamphetamine, Dr. Traylor did not find either of the illegal substances to be abnormally high.

Dr. Traylor testified that Lewis was shot three times, and that each bullet exited his body. All three shots were fired at a distant range, or more than 18 inches away. One bullet entered the medial right abdomen and exited above the left buttock. The bullet's track was front to back, top to bottom, and right to left. It caused injury to the small bowel, the left psoas muscle, and the left ilium. Approximately 900 ccs of residual blood were found in his peritoneal cavity, which amounted to around 20% of his blood volume. Dr. Traylor explained that although a person with that much blood in his belly would be in pain, he would be able to move around. Lewis may have lost additional blood from the abdominal gunshot because blood could have leaked from the entry and exit wounds.

Dr. Traylor explained that the gunshot to Lewis's head was the fatal wound and it would have rendered Lewis immediately incapacitated. The track of the bullet to the head was left to right, slightly back to front, and slightly bottom to top. The exit wound was near where the right ear attaches to the head. The track of the bullet which struck Lewis's left thumb was right to left, and top to bottom.

D.J. testified regarding the verbal altercation between Lewis and Thomas which began in the living room. D.J. did not witness the actual shooting, but saw Lewis rush Thomas after Thomas went to the master bedroom. D.J. claimed that after he fled the trailer, Thomas drove up to him and asked for his help in dumping the body. D.J. testified that he refused to

help Thomas and continued walking away. D.J. also testified that Bonner was carrying a stick when Bonner left the trailer. He added that Bonner always carried sticks around. D.J. testified that the only gun in the trailer that night was Thomas's gun.

Bonner testified that Thomas and Lewis were both standing erect when the shots were fired. Bonner agreed that there was no way that Thomas could have gotten out of the situation when Lewis rushed him in a very aggressive manner. According to Bonner, he told Thomas to leave because he was messing with Lewis, and that Thomas was about to leave and walk out of the bedroom when Lewis rushed him.

Bonner testified that as he left the bedroom following the shooting, he grabbed an axe handle which he used to keep dogs at bay while riding his bike in his neighborhood. He and D.J. ran up the road. According to Bonner, Thomas picked up D.J. and they returned to the trailer. He observed Thomas and D.J. exit the SUV, enter the trailer, and then pull Lewis out of the trailer. Bonner testified that he saw Thomas force Lewis into the SUV. Lewis appeared to be resisting. D.J. got into the vehicle before exiting a short while later. A few minutes later, he saw D.J. running toward a residence.

Bonner denied having any firearms in the house, and specifically denied poking Thomas in the ribs with a shotgun or that he was trying to rob Thomas. Bonner admitted using methamphetamine that night both before and after the shooting, but did not see Lewis using any that night. However, he had used methamphetamine with Lewis three days earlier.

Lieutenant Reggie Rowe works for the Criminal Investigation Division of the DPSO. He searched the trailer after obtaining a warrant. He

found a few drops of blood on the stairs leading into the trailer, blood droplets on the floor in the kitchen/living room area, and a few drops of blood on the floor in a short hallway leading to the main bedroom. In the main bedroom, he found a large pool of blood right on the other side of the door, several drops of blood on the foot of the mattress and on the floor at the foot of the bed, several drops of blood on a vacuum cleaner, and a bloody shoe impression on the floor. Lt. Rowe thought Lewis must have been leaning over the bed as blood dripped from him. There were several drops of blood on the floor entering the bathroom.

Lt. Rowe found a shell casing on the bed in the master bedroom. Another shell casing was found on the side of the bed. Both shell casings were from .40 Smith & Wesson Winchester bullets.

Lt. Rowe described the scene at the wellsite. A .40 Smith & Wesson Winchester shell casing was found seven feet from Lewis's body. Its location was consistent with where it would have been ejected. Tire tracks were probably 10-15 feet from the body. The rocks to the right of Lewis's head and left of his right arm appeared to be disturbed or hollowed out. That divot was consistent with something impacting the ground there. Lt. Rowe noted that a projectile could cause some splash back as it hit the ground. There was also a divot at Lewis's left foot.

Lewis was holding his driver's license in his right hand. Dried blood on his face looked like it had pooled, gone across his face, and off the side of his face as if he was lying there. It did not flow down his face like one would expect if Lewis had been standing.



Lt. Rowe found no signs of a struggle at the wellsite as none of the ground surface was messed up. He considered the rocks at the wellsite to be packed and not loose.

Lt. Rowe calculated the driving distance from the trailer to DeSoto Parish Regional Hospital as being 1.2 miles. In contrast, the driving distance from the trailer to the wellsite where Lewis was found was 5.2 miles. Lt. Rowe described the wellsite as being heavily wooded on both sides of a driveway leading from Highway 522. The driveway was at an incline, and the wellsite was not easily visible from the road.

Probable blood stains were found on the interior of the SUV's rear hatch as well its front passenger seat. The three fired cartridges were determined to have been fired by the Smith & Wesson M&P .40 pistol which had been recovered.

Sgt. Mike Armstrong is a case detective with the DPSO. He interviewed Thomas when he was back in Louisiana. Sgt. Armstrong agreed that Thomas's story changed more than once during his interview, which was played for the jury.

Sgt. Armstrong acknowledged that there was a sizable height and weight difference between Lewis and Thomas. During the interview, Thomas told Armstrong that his ribs had been fractured. However, Thomas never received medical attention for any injury to his side.

Sgt. Armstrong described the divot in the rocks near Lewis's head as being a concussion. He explained that he thought it was possibly from a projectile. Sgt. Armstrong agreed that the ground surface at the wellsite was compact and not loose. He also agreed there were no drag marks in the rocks indicating someone had been dragged or pulled.

Thomas testified at trial. He was born on May 11, 1979. He was invited to the trailer by Bonner in order to deliver methamphetamine. He had never seen Lewis before and did not know him. He claimed he had been to the trailer on three or four prior occasions to deliver drugs or to buy stolen property. Bonner had some rims that he wanted to buy.

According to Thomas, Bonner did not have enough money to pay for the drugs. Thomas claimed that Bonner wanted to rob him and pointed a shotgun in his side, and he still had the mark to his side from it at the time of trial. When describing the shooting in the trailer, Thomas stated that Bonner was to his right as Lewis rushed him, and he had his gun in his left hand. Lewis fell on him after he shot Lewis, and that caused Thomas to fall backwards. It was during this sequence of events that Bonner's shotgun punctured his side.

Thomas testified that he returned to the trailer with the intention to take Lewis to the hospital. When he reentered the trailer, he found Lewis on the bedroom floor. Thomas asserted that calling 9-1-1 was not an option for him because he prior bad experiences with the police. He denied that he dragged Lewis from out of the trailer, but instead helped him out and into the front passenger seat of his SUV. Thomas denied that he asked D.J. to help him dispose of a body.

Thomas stated that what was going through his mind at that moment was he wanted to see his kids in Kansas before turning himself in. As he drove with his gun in his left hand on his leg, he told Lewis not to move because he did not trust Lewis.

Thomas acknowledged that he knew the area of Mansfield well as he was born and raised there, and he knew where the hospital was. Thomas

claimed that Lewis told him the direction to drive, so he followed Lewis's instructions and took him where he wanted to go, even though it was the opposite direction from the hospital. He drove 120 mph down the road to where Lewis wanted to go. He believed that Lewis possibly wanted to be comforted by someone or to be brought to a family member. Thomas testified that he reached Highway 522 and was trying to get to Highway 84 which would get him to the hospital.

Thomas testified that although he was trying to get help for Lewis, he was scared and still wanted to protect himself. Thomas claimed that as they drove, Lewis threatened him and said he would kill Thomas if he survived. He stopped his SUV at the wellsite, went around to the passenger side, opened Lewis's door, and told Lewis to get out. This is how he described what happened next: "At the well site, when I opened the door and told him to get out my car, from the threats, he lunged out at me. We ended up in a tussle on the ground and, when I was freeing myself from the tussle, and in the motion of getting up, I shot. Was the fatal shot to wherever it landed."

Thomas agreed that he lied to Armstrong in the beginning of the interview, but in the end, he explained what had happened at the wellsite. Thomas asserted that adrenaline was going through him when Lewis lunged at him. Thomas claimed that he saw something in Lewis's hand when he lunged. He stated that he reached behind with his left hand to his pocket for his gun and shot at Lewis to free himself. He was not fully standing, but in the process of standing up, when he shot Lewis, who was on the ground. He had turned his body and was not looking at Lewis's head when he fired from behind. After firing, he looked back, saw Lewis was not moving, got into his SUV, and left.

Thomas asserted that he shot Lewis in the trailer to protect himself during the robbery. He then tried to assist Lewis, even though he still had doubts about Lewis's intentions. He further asserted that he shot Lewis again at the wellsite to protect himself. Thomas claimed that if he had wanted to kill Lewis instead of taking him to the hospital, then he would have killed him when he went back in the trailer. Thomas stated he is 5'11" and that he weighed 200 pounds at the time of the shooting. He described Lewis as being little.

Thomas was convicted as charged by a unanimous jury on May 27, 2022. Thomas filed a motion for a new trial on June 20, 2022. Following the denial of his motion for a new trial, Thomas was sentenced to life at hard labor and without benefits. A motion to reconsider sentence was denied.

### **DISCUSSION**

Thomas's appellate counsel maintains that Thomas was acting in self-defense when he shot Lewis. Thomas shot Lewis in the trailer following an altercation when Lewis rushed Thomas and pushed him to the ground. Thomas was the only person who returned to the trailer to render assistance to Lewis. While in Thomas's vehicle, Lewis began threatening Thomas, so Thomas decided to tell Lewis to exit the vehicle. When Thomas went to the front passenger side to remove Lewis from the vehicle, Lewis lunged at Thomas and both fell to the ground. As Thomas was freeing himself from Lewis, Thomas fired one shot, which struck Lewis in the head.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1).

Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent to kill or inflict great bodily harm may be inferred from the circumstances of the offense, the extent and severity of the victim's injuries, or the defendant's actions in deliberately pointing a gun and firing it at a person. *State v. McLaughlin*, 54,874 (La. App. 2 Cir. 3/1/23), 357 So. 3d 551.

Thomas's appellate counsel argues in the alternative that even if Thomas had not been acting in self-defense, the evidence at most supports a manslaughter conviction. Thomas was under strong provocation, his blood had not cooled, and there had been no opportunity for calm reflection between the second assault by Lewis and the shooting. He shot Lewis the first time after being provoked by Lewis's attack, then after he tried to help Lewis, Lewis threatened him and attacked him a second time.

Manslaughter is defined in part as a "homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed." La. R.S. 14:31(A)(1).

The standard of appellate review for a sufficiency of the evidence claim is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Tate*, 01-1658 (La. 5/20/03), 851 So. 2d 921, *cert. denied*, 541 U.S. 905, 124 S. Ct. 1604, 158 L. Ed. 2d 248 (2004). This standard, now legislatively embodied in La. C. Cr. P. art. 821, does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the fact finder. *State v. Pigford*, 05-0477 (La. 2/22/06), 922 So. 2d 517; *State v. Dotie*, 43,819 (La. App. 2 Cir. 1/14/09), 1 So. 3d 833, *writ denied*, 09-0310 (La. 11/6/09), 21 So. 3d 297.

The trier of fact makes credibility determinations and may accept or reject the testimony of any witness. *State v. Casey*, 99-0023 (La. 1/26/00), 775 So. 2d 1022, *cert. denied*, 531 U.S. 840, 121 S. Ct. 104, 148 L. Ed. 2d 62 (2000). The appellate court does not assess credibility or reweigh the evidence. *State v. Smith*, 94-3116 (La. 10/16/95), 661 So. 2d 442; *State v. Green*, 49,741 (La. App. 2 Cir. 4/15/15), 164 So. 3d 331. A reviewing court accords great deference to the trier of fact's decision to accept or reject the testimony of a witness in whole or in part. *State v. Jackson*, 53,497 (La. App. 2 Cir. 5/20/20), 296 So. 3d 1156.

Direct evidence provides proof of the existence of a fact, for example, a witness's testimony that he saw or heard something. *State v. Lilly*, 468 So. 2d 1154 (La. 1985). Circumstantial evidence provides proof of collateral facts and circumstances, from which the existence of the main fact may be inferred according to reason and common experience. *Id.* When the State relies on circumstantial evidence to establish the existence of an essential element of a crime, the court must assume every fact that the evidence tends to prove and the circumstantial evidence must exclude every reasonable

hypothesis of innocence. La. R.S. 15:438; *State v. Lilly, supra*; *State v. Green, supra*.

A homicide is justifiable when it is committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger. La. R.S. 14:20(A)(1). When self-defense is raised as an issue by the defendant, the State has the burden of proving, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. *State ex rel. D.P.B.*, 02-1742 (La. 5/20/03), 846 So. 2d 753; *State v. Allen*, 50,703 (La. App. 2 Cir. 8/10/16), 200 So. 3d 376, *writ denied*, 16-1734 (La. 9/6/17), 224 So. 3d 981. When the defendant challenges the sufficiency of the evidence in a self-defense case, the question becomes whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that the homicide was not committed in self-defense. *State v. Matthews*, 464 So. 2d 298 (La. 1985); *State v. Allen, supra*.

The evidence presented at trial clearly supports Thomas's second degree murder conviction. Instead of driving Lewis to a hospital, Thomas drove Lewis to a remote wellsite where he shot Lewis in the head. Lewis, who had lost 20% of his blood volume, would not have been in much of a position to resist Thomas, who was larger in stature than Lewis. Moreover, Thomas was armed with a gun, while Lewis was unarmed. Thomas claimed they tussled on the ground, yet Lewis was found clutching his driver's license in one hand. Additionally, the rocks at the wellsite were not disturbed in a way that would indicate a struggle had taken place there.

A rational trier of fact could have found beyond a reasonable doubt that the killing of Lewis was not committed in self-defense. The evidence did not show that Thomas reasonably believed that he was in imminent danger of losing his life or receiving great bodily harm and that shooting an injured Lewis was necessary to save himself from that danger. Moreover, the evidence established the essential elements of second degree murder beyond a reasonable doubt. The arguments made by Thomas's appellate counsel are without merit.

***Error Patent***

Our review of this record reveals that the trial court did not comply with the obligatory delay before sentencing Thomas. La. C. Cr. P. art. 873 requires that “[i]f a defendant is convicted of a felony, at least three days shall elapse between conviction and sentence. If a motion for a new trial, or in arrest of judgment, is filed, sentence shall not be imposed until at least twenty-four hours after the motion is overruled.” Thomas was sentenced on the same date that his motion for a new trial was denied. Nevertheless, we conclude that any error was harmless in this instance because Thomas did not object to the trial court's failure to observe the sentencing delay and because he suffered no prejudice as he faced a mandatory sentence of life imprisonment.

**CONCLUSION**

For the foregoing reasons, Thomas's conviction and sentence are  
**AFFIRMED.**