

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2010-KA-0044**
VERSUS * **COURT OF APPEAL**
JOHN MORGAN * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 478-874, SECTION "G"
Honorable Julian A. Parker, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, and
Judge Max N. Tobias, Jr.)

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AFFIRMED

The Appellant, John Morgan, appeals his conviction for second degree murder and sentence of life imprisonment. We affirm the judgment of the district court finding no error on the part of the district court in holding that there was sufficient evidence to convict Morgan.

In June of 2008, Morgan was charged with one count of second-degree murder. He entered a plea of not guilty. The defense filed motions to suppress the evidence, the confession, the identification, and for a preliminary hearing. The defense also filed a motion for a psychiatric evaluation, which was granted. Following a lunacy hearing, Morgan was found competent to proceed. Later, the district court denied the motions to suppress the evidence and the confession. Following a three day jury trial from July 27th to 29th, 2009, Morgan was found guilty as charged. In August of 2009, Morgan was sentenced to serve life imprisonment at hard labor without benefit of parole, probation or suspension of sentence, and concurrent with any other sentence. Morgan's motion for reconsideration of sentence was denied, and his motion for appeal was granted.

The following facts were adduced at trial.

On direct examination, homicide Detective Greg Hamilton, of the New Orleans Police Department, testified that he was summoned by Fifth District Police officers to 939 Elysian Fields Avenue, to investigate a possible homicide. Upon arrival, on the neutral ground outside of 939 Elysian Fields Avenue, he observed a gray and tan trunk and a decomposed mummified body amongst Hurricane Katrina storm debris. Det. Hamilton spoke to Mr. Rodney M. Hoover, owner of the house at 939 Elysian Fields Avenue, and his wife/companion, Ms. Kathleen Greer. Mr. Hoover and Ms. Greer told Det. Hamilton that the trunk associated with the body had been stored in their storage room by Morgan when he moved into one of the upper floor apartments in January 2005, along with Ms. Greer's daughter, Tracey Greer.

Following Hurricane Katrina, Morgan told Mr. Hoover that he no longer wanted any of his property that was in the storage room. While clearing his property of storm debris, Mr. Hoover dragged the trunk onto the neutral ground, forced open the lock and dumped the contents onto the ground; the decomposed mummified body fell out of the trunk. In Morgan's apartment, inside a small lock box, Ms. Greer found Dana Pastori's drivers license, passport, birth certificate, Sears credit card, social security card, Ramada Inn check stub, Chattanooga library card, Seventh Avenue customer card, and an Adult Probation Department letter. Also found in the lock box were Morgan's Buyer's Club Sportsman card, BellSouth credit card, Louisiana fishing license, correspondence from Chase Manhattan Bank, social security survivor disability card, and a subpoena to appear in Criminal District Court for March 8, 2002. Ms. Greer gave all the documents to Det. Hamilton, who learned that Morgan and Ms. Pastori had previously lived at 735 Ursulines Avenue.

Subsequently, Det. Hamilton interviewed Ms. Maria Barranco, owner of 735 Ursulines Avenue. Ms. Barranco informed Det. Hamilton that Morgan and Ms. Pastori lived in one of the front apartments for approximately two years beginning in 2000, and that prior to Morgan moving out of the apartment, she smelled a foul odor which she believed was the scent of dead rats. The odor was so foul that nothing would neutralize it. Ms. Barranco showed Det. Hamilton a small crawl space in the kitchen wall of Morgan's prior apartment from where most of the foul odor was coming. Det. Hamilton observed caulk between the floorboards and stains inside the crawl space. He determined that the trunk associated with the mummified body could have fit inside the crawl space. Det. Hamilton also learned from Ms. Barranco that Morgan and Ms. Pastori worked at the Quartermaster Deli located next door to the apartment.

Inside the trunk that contained the body, Det. Hamilton found a pair of socks, a curling iron electrical cord which was tangled inside the body, a white sheet, a white towel, a pair of underwear, sweat pants, a beer can, moth balls, an ace bandage and a small American flag. The body was clothed in a brassiere and a shirt with a Lake City Police Department logo on it. The arms and legs had been cut from the torso. The body and the trunk were transported to the Orleans Parish Coroner's Office. Subsequently, Det. Hamilton retrieved a tibia bone from the body and sent it to the FBI crime lab for DNA analysis. Later, because the bone was too dry to test, Det. Hamilton sent a tooth to the FBI crime lab for DNA testing. An FBI agent contacted Ms. Pastori's mother, Frances Cella, obtained a DNA sample from her and forwarded it to the FBI crime lab for mitochondrial DNA comparison to the tooth taken from the body.

Det. Hamilton located Morgan in Mecklenburg, North Carolina, where he and Tracey Greer had evacuated to after Hurricane Katrina. He telephoned Morgan and arranged an interview. The FBI was contacted in North Carolina. Morgan was subsequently interviewed by Agent Ernie Mathis.

In July 2007, Det. Hamilton received the lab report from the FBI confirming that the body was positively identified as that of Ms. Pastori. An arrest warrant for Morgan was obtained; Morgan was arrested in North Carolina in February 2008.

On cross examination, Detective Hamilton testified that Morgan and Ms. Tracey Greer evacuated from the Elysian Fields apartment following Hurricane Katrina after receiving \$2000 from FEMA, and that stains in the crawl space taken from the Morgan's prior apartment at 735 Ursulines Avenue were tested with liquid crystal violet and were presumptive for human blood. However, samples of the stains processed by the crime lab came back negative for blood. Det. Hamilton testified that the crawl space had a musty smell but, based on his experience, the odor did not smell like a dead body.

Anna Dugar, a criminalist with the New Orleans crime lab, testified under direct examination that she processed the crawl space located at 735 Ursulines Avenue in November 2005. A visual inspection of the interior of the crawl space revealed what appeared to be six blood spatter stains on the floor, door and wall, and a possible blood swipe stain on the inside of the door. Chemical tests using hemosticks and leucocrystal violet showed a purple coloration which was presumptive for blood. Maggot egg cases and a white powder on the baseboard were also present. Officer Dugar took samples to the crime lab for follow up testing.

On cross-examination, Officer Dugar testified that the visual and chemical tests performed on the suspected blood and/or body fluid stains found inside the crawl space could not determine the presence of human blood, and that testing could not identify the donor of the suspected blood and/or body fluid stains, or when the stains were deposited inside the crawl space. She further testified that the subsequent crime lab follow up tests were negative for blood on the six suspected blood spatter and/or body fluid stains.

Ms. Frances Cella, the mother of the victim, Ms. Pastori, testified that she met Morgan sometime between 1990 and 1992 in New Orleans, and that Morgan and her daughter were dating each other at the time. She last spoke to Ms. Pastori in the late '90s. Following Hurricane Katrina, Ms. Cella was contacted by Det. Hamilton and asked if she had a daughter named Dana Pastori. Det. Hamilton electronically sent Ms. Cella a photograph of the body believed to be her daughter; Ms. Cella positively identified the body as that of her daughter. Subsequently, in December 2005, Ms. Cella provided a DNA sample to Det. Hamilton for comparison with the DNA from the body.

On cross-examination, Ms. Cella testified that the last time she spoke to Ms. Pastori was when she received a telephone call from Ms. Pastori from Puerto Rico in the late '90s. Ms. Cella did not know why Ms. Pastori was in Puerto Rico. Ms. Cella had no knowledge of what happened to Ms. Pastori or who killed her. Also, she had no knowledge of Ms. Pastori being hospitalized for injuries in an auto accident in 2002.

Dr. James Traylor, an expert in the field of forensic pathology, testified that he performed the autopsy on the body of Ms. Pastori in October 2005; he also examined the trunk that contained the body. Both the body and the trunk arrived

inside body bags. The trunk was constructed of particle board. The dimensions of the trunk were thirty by sixteen and one half by fifteen and one half inches. Inside the trunk was a beer can, moth balls, dead maggots and pupa cases. Dr. Traylor did not find any blood or body fluid evidence or stains inside the trunk. Thus, he concluded that the body was stored in the trunk but the decomposition process took place in another location.

The body was in an advanced state of decomposition. From the chest up, including the head, the body was skeletonized. There were only a few pieces of tissue remaining. The extremities were also skeletonized with a few pieces of muscle and dried skin remaining. The tissue that remained on the torso and hip region was mummified. There was no longer any insect activity on the body. The body was inside a white sheet. The torso was “disarticulated” (cut) in the lumbar region about the level of the navel. The legs were cut at the knee joints. The neck and skull were attached to the body. The body was clothed in a button-up blue sweat shirt, a green T-shirt with “Lake City P.D.” printed on the front, a pair of green drawstring shorts, a pair of white socks, a pair of bikini style underwear, and a brown wig with long hair and a green “scrunchy” inside. An electrical cord with a curling iron attached was wrapped and knotted around the neck of the body. Dr. Traylor determined that the cause of death was homicidal strangulation.

Dr. Traylor further testified that he could not determine when the electrical cord was wrapped around the neck of the body, that he could only estimate when the person was killed, and that he found no evidence that identified the killer of Ms. Pastori.

Detective Aaron Crunk testified that in 2005, he was assigned to the Eighth District Police Station located in the French Quarter. He knew Ms. Pastori and

Morgan when they worked the night shift at the Quartermaster Deli in the 1100 block of Bourbon Street at the corner of Ursulines Avenue. He frequented the deli to eat supper and write his police reports. Det. Crunk was aware that Ms. Pastori and Morgan were living together around the corner on Ursulines Avenue. One evening, Ms. Pastori told Det. Crunk and other officers that she was leaving the city and moving back to her hometown. He never saw her again. Approximately one week later he asked Morgan about Ms. Pastori. Morgan told Det. Crunk that Ms. Pastori had been involved in an automobile accident and was hospitalized. Det. Crunk asked him to find out the name of the hospital so that a card could be sent to her. Morgan never responded and quit working at the deli. Det. Crunk saw Morgan briefly after he quit working at the deli; he described Morgan as very skinny, "sickly looking" and aloof, and that Morgan avoided any and all police contact.

Det. Crunk also testified that he only saw Ms. Pastori and Morgan at the deli; they appeared to have a good relationship and acted very professional. Det. Crunk further testified that he did not observe any arguments or discord between them.

Lynn Lyons, an employee of the Quartermaster Deli, testified that she knew Ms. Pastori as "Polly". Ms. Lyons provided the district attorney's office with Ms. Pastori's employment records. The records reflect that Ms. Pastori, a cashier, last worked in March 2002. Ms. Lyons testified that Morgan also worked at the deli delivering orders on a bicycle. Ms. Lyons was aware that Morgan and Ms. Pastori lived together on Ursulines Avenue, and that their relationship appeared to be fine. She further testified that after Ms. Pastori resigned from the deli, Ms. Lyons asked Morgan about Ms. Pastori, and Morgan told her that Ms. Pastori was involved in

an automobile accident while visiting a friend. He described Ms. Pastori as not being in good shape. Morgan told Ms. Lyons that while he was visiting Ms. Pastori in the hospital, her parents took her to their home out of state to recuperate, after which Ms. Pastori traveled to Prague, where she decided to live. Ms. Lyons never inquired about Ms. Pastori again.

Ms. Lyons further testified that she found out that Ms. Pastori was dead when reports were published that her body was found inside of a trunk after Hurricane Katrina, and that the last time that she saw Morgan was about one month after the hurricane. Ms. Lyons did not talk to Morgan about Ms. Pastori's death, nor did she have knowledge of who killed her, and Ms. Lyons did not know a person with the nickname "Pepper".

Maria Barranco, owner of 735 Ursulines Avenue, testified that she rented a second floor apartment to Morgan and Ms. Pastori in November 2000, and that they resided their together for about two years. Ms. Barranco lived in the rear of the house. She testified that both Morgan and Ms. Pastori worked the graveyard shift at the deli around the corner from the apartment, and that—after not seeing Ms. Pastori anymore— she inquired of Morgan about her whereabouts. Morgan told Ms. Barranco that Ms. Pastori had been involved in an accident when a tool chest fell on the back of her neck causing a concussion, and that she was staying with her father to recover. On several later occasions, Morgan told Ms. Barranco that Ms. Pastori was getting better, got a job as a dispatcher with the local police, and decided to remain with her father. Ms. Barranco also inquired as to why Ms. Pastori did not take her dog, a small Yorkie named Ginger, because Ms. Pastori loved the dog. Morgan told Ms. Barranco that Ms. Pastori let him keep the dog so that he would have company. Ms. Barranco did not inquire about Ms. Pastori

again. Morgan remained in the apartment alone until he brought another woman named Karen to live with him sometime in October 2003. Karen resided there for about eight months. After Karen left, a third woman named Tracey moved into the apartment with Morgan. Around October 2004, Ms. Barranco noticed that Morgan was moving some belongings out of the apartment. He told her that Tracey was moving to her mother and stepfather's house on Elysian Fields.

Later, in November 2004, Ms. Barranco, after parking on Bourbon Street and walking toward her home, encountered a horrible odor outside the front of her house. She testified:

And I got near—I got near the corner and I said: Oh, my God. What is that? And I kept getting closer and closer and closer. And I said: Oh, my God. It's in front of my house. What is that? And I was getting ready to throw up. I went in the house, and then all of a sudden...the garbage patrol came. And they said: Do you know whose garbage this is? And I said no. I said, I wish I did. I said, I don't know what that is. And I was like getting sick. And then I opened my gate, and I saw like trails of this in my yard, in my little patio and going up like from the steps. I said, Oh, my God, it came—it's coming from my house. And then—and I went—so I went inside. The garbage patrol came out again. So I went out and said: Look, I don't know what this is. I said, I have no clue who put this out. I said, I'm trying to wash my yard with pine oil and hose it down.

Ms. Barranco explained that she observed a Tupperware container containing what appeared to be “globs of like liposuction, fat...it was globs of yellow stuff like fat, like chicken fat or whatever in it. And it was the most awful smell in your life.” Shortly thereafter, Morgan appeared and told Ms. Barranco, “That's my trash. He tells the garbage patrol, he said, That[sic] belongs to me because I'm moving.” When Ms. Barranco inquired as to the identity of the awful smelling substance, Morgan told her that it was a dead rat. Ms. Barranco

responded, “I said a rat? I said, I’ve smelled dead rats before, but this is not a rat. I kept gagging. And I said,...You’ve got to go bring this to the dump, let me tell you now. He says: I can’t bring it to the dump now. I said, Well[sic] you can’t leave that in my patio...I can’t even go out...I’m throwing up. I mean it was like so bad.” Ms. Barranco gave Morgan a garbage bag in which he placed the foul smelling substance and left it on the front steps until the next day when he disposed of it. Ms. Barranco noticed a foul odor prior to this incident, but Morgan told her it was from dead rats in the walls. Ms. Barranco gave Morgan moth balls and cat litter in an attempt to mask the odor, but the odor remained. Ms. Barranco never entered the apartment while Morgan resided there.

Ms. Barranco also testified that she observed Morgan moving clothes, furniture and a trunk out of the apartment and down the steps. “He was talking to me about it. I mean, I didn’t—I was just looking in the ...like clothes and stuff. And he mentioned to me, he says: Oh, I hadn’t taken a bath in about three days. Everything kind of smells. I said: Yeah. Everything does smell. It had kind of like that—an odor. And then he says: Oh, man that trunk is really heavy.” Morgan placed the trunk on a dolly and proceeded down the street. Ms. Barranco, not knowing if Morgan was moving or not, decided to follow him in her car. Morgan walked up Bourbon Street to Esplanade Avenue to Royal Street to Elysian Fields Avenue and entered a two story yellow house with white columns which was next door to the Phoenix Bar. Several weeks later Ms. Barranco put a note on the apartment door requesting that Morgan remove the rest of his belongings. She never heard from him again. When she opened the apartment to remove Morgan’s belongings, she smelled the same terrible odor she had smelled outside of her house. The odor seemed to be coming primarily from the crawl space in the

kitchen. She inspected the interior of the crawl space and explained, “I couldn’t—I had to put something over my mouth, and I was like gagging. And I’d run out and go back in and run out and go back in.” Inside the crawl space, Ms. Barranco found rugs and runners which had a “kind of gooey stuff on it, like—looked like thick, thick saliva.” Ms. Barranco also observed caulk between the floor boards inside the crawl space of which she was unaware. The apartment remained vacant until after August 2005 when she rented it following Hurricane Katrina to two girls who were desperate to find housing. Ms. Barranco explained that it took two years to get rid of the odor, and sometimes it is still detectable. It was not until after Hurricane Katrina that she was contacted by Detectives Hamilton and Rome and informed of the body found inside the trunk which they believed was Ms. Pastori.

Ms. Barranco also testified that during the time Morgan resided in the apartment, neither Ms. Barranco nor her maintenance man entered the apartment. She testified that prior to November 2004, she saw flies and occasionally smelled a foul odor, but Morgan kept insisting that it was caused by dead rats, and that none of the other tenants complained about the odor. She did smell the same odor emanating from the trunk, but it was not as intense as the odor from the substance inside the Tupperware container. She further testified that she had no knowledge of what happened to Ms. Pastori or who killed her.

Agent Leslie McCurdy, an expert in the field of mitochondrial forensic DNA examination with the FBI crime lab in Quantico, Virginia, testified that she compared the DNA sample taken from the tooth of the victim with the DNA sample taken from Ms. Pastori’s mother, Frances Cella. As the confirming examiner, Agent McCurdy, in June 2006, reviewed the raw DNA data generated by the authorized examiner of the victim’s tooth, Dr. Douglas Hares. Agent

McCurdy and Dr. Hares determined that the DNA sample from the tooth of the victim could not exclude Ms. Pastori as the source of that DNA. He concluded that the mitochondrial DNA profile generated by the sample taken from Frances Cella was consistent with the mitochondrial DNA profile generated by the sample taken from the victim's tooth.

Agent McCurdy also testified that he had no knowledge as to how Ms. Pastori was killed or who killed her.

Rodney Manuel Hoover, owner of 939 Elysian Fields Avenue, testified that he rented a second floor apartment to his stepdaughter, Tracey Greer, and Morgan about seven months before Hurricane Katrina. Mr. Hoover and Kathleen Greer lived in the rear townhouse part of the property, and that he used the second apartment on the ground floor as a storage room. Mr. Hoover alone had access to the storage room and had the only key. He testified that Morgan asked him if he could store some items in the ground floor storage room, and Mr. Hoover agreed. Thus, Mr. Hoover helped Morgan store two trunks in the storage room. One trunk was locked, and Morgan placed it in the corner of the bathroom. Mr. Hoover never saw the contents of the trunk. The second trunk was unlocked and contained clothes and blankets, which Morgan placed in the center of the room. The trunks had "an odor to them...that smelled like dead rats or...a dead...cat or something...." Morgan told Mr. Hoover that his prior landlord did not take care of her property, and rats caused the odor. Mr. Hoover sprayed the storage room to neutralize the odor to no avail. Morgan did not have access to the storage room after he placed the trunks inside.

Following Hurricane Katrina, Morgan and Tracey Greer evacuated and moved to the Carolinas. They only took their computer hard drives and some

items of clothing. Morgan told Mr. Hoover that he did not want any of his belongings that he left in the storage room. Thus, on October 21, 2005, while cleaning the storage room, Mr. Hoover dragged the trunks out to the neutral ground and opened them, using a hammer and screwdriver to open the locked trunk. When he flipped it over a body fell out. Because it was in the early morning hours and Mr. Hoover had no telephone service, he waited until the next morning to contact law enforcement. He waived down the military police that were securing the street and also used a telephone at the local flea market to contact the NOPD. Det. Hamilton arrived to investigate.

Mr. Hoover also testified that he never entered Morgan's apartment on Ursulines Avenue, and had no knowledge of what happened with the trunks prior to Morgan moving into his property. Mr. Hoover testified that the lights on the neutral ground were out, but he used a Coleman lantern for illumination. He indicated that he never met Ms. Pastori, and had no knowledge as to what happened to her or who killed her. He further testified that when Morgan evacuated after the hurricane, Morgan told Mr. Hoover, "Just throw everything out because I don't want anything that's in there."

Kathleen Greer testified that in 2005, she resided with her husband/companion, Mr. Hoover, at 939 Elysian Fields Avenue. Her daughter, Tracey Greer, and Morgan resided in a second floor apartment in the front of the property. After Tracey and Morgan evacuated from the apartment, Kathleen Greer found a lockbox inside the apartment which was lying open on the floor. It contained a driver's license for "Dana Surette" (Ms. Pastori's father's name is Surette), birth certificates for Dana and her children, the driver's licenses of three men and some legal papers. She gave the documents to Det. Hamilton.

Ms. Greer further testified that she did not see Morgan bring the trunks and other belongings into the storage room, but she did observe them inside the storage room. She testified that she never saw the contents of the trunks. Ms. Greer also never visited Morgan's apartment on Ursulines Avenue, had never met Ms. Pastori, and had no knowledge as to what happened to her. Finally, Ms. Greer testified that Morgan said ugly things about Ms. Pastori, and told Ms. Greer that she had moved to Czechoslovakia.

Homicide Detective David Phillips of the Mecklenburg police department in Charlotte, North Carolina, testified that he assisted Det. Hamilton in the murder investigation of Ms. Pastori. In November 2005, Det. Phillips was asked to locate Morgan at an address in Charlotte to obtain an interview and a DNA sample. Det. Phillips found Morgan and Tracey Greer living together in an apartment complex. Det. Phillips and FBI special agent Ernie Mathis, drove to Morgan's apartment, and informed Morgan that he was investigating the homicide of a person who was found inside of a trunk in New Orleans that belonged to Morgan. Morgan responded that he would be happy to talk to Det. Phillips and that he was familiar with the case because he had a previous telephone conversation with a New Orleans detective.¹ Morgan was shown a photograph of the trunk, and said that he had a similar trunk but denied that the trunk in the photograph belonged to him. Morgan admitted that he and Ms. Pastori did not get along and that, following an argument on his birthday in July 2001 or 2002, she left him saying that she was tired of him, of New Orleans, and of the Quartermaster. Approximately two weeks

¹ Morgan gave a recorded voluntary statement to Det. Phillips.

later he received a card from Ms. Pastori telling him that she was “fine”. Morgan submitted to two DNA samples.

On December 16, 2005, the NOPD requested that the trunk be processed by the Mecklenburg police department because the New Orleans crime lab was destroyed by the hurricane. The trunk was sent to the Mecklenburg FBI office for processing. The exterior and interior of the trunk were swabbed for DNA evidence. Inside the trunk was found a beer can and a paper bag containing an assortment of items. Other items were found inside the trunk that appeared to be covered with body fluids. The final DNA tests generated partial genetic markers, but not enough markers were found to do a full DNA profile. No further analysis or identification was made.

In 2008, Det. Phillips was informed by the NOPD that the body was identified as that of Ms. Pastori, and an arrest warrant was issued for Morgan’s arrest. Det. Phillips was asked to serve the warrant, and he arrested Morgan on February 8, 2008, and transported him to the police station. Once at the station, Morgan was informed of his *Miranda* rights and signed a waiver of rights form. During the subsequent videotaped interview, Morgan informed Det. Phillips that his real name was John Allen Roberson, which was his father’s name. He showed Det. Phillips a copy of his Tennessee birth certificate. Morgan acknowledged that he and Ms. Pastori dated on and off for seven or more years while living in New Orleans. He described their relationship as intense and rocky. He described Ms. Pastori as having a temper which resulted in yelling and screaming arguments that were not physical in nature. They often argued, and it was not unusual for Ms. Pastori to leave him, but she always returned. Around Mardi Gras of 2002, he and Ms. Pastori had an argument. She left him, and that was the last time that he saw

her. Two weeks later Morgan received a card from Ms. Pastori saying that she had moved back to her mother's house in Ohio and was trying to get custody of her children. Morgan stated that he confirmed through mutual friends that Ms. Pastori was "fine". Morgan continued to deny that the trunk which contained the body belonged to him. He admitted the following: he had a bad drug habit while living in New Orleans; he used cocaine, marijuana, acid, and mushrooms; and most of his money went to support his drug habit, which caused Ms. Pastori to move out. Later, he changed his statement and said that he moved out. Morgan initially denied seeing Ms. Pastori's body after she was killed, but later his story changed. He told Det. Phillips that he had been approached by his drug supplier and others involved in the drug business. Morgan indicated that Ms. Pastori was going to be killed.

Det. Phillips also testified that he interviewed Tracey Greer, who was cooperative. Ms. Greer recognized a photograph of Ms. Pastori from conversations she had with Morgan, but she had never met her. Ms. Greer was very upset when she was informed that Ms. Pastori's body was found inside Morgan's trunk, and that he was arrested for her murder. She had no knowledge or information about Ms. Pastori's murder.

A review of the record for errors patent reveals none.

In his first assignment of error, Morgan argues that the State failed to prove that Ms. Pastori was murdered and that Morgan murdered her. Specifically, Morgan argues that no evidence was presented to refute the possibility that Ms. Pastori committed suicide or died from a drug overdose or other accident. Thus, the State failed to prove that Morgan, if he killed Ms. Pastori, had the specific intent to kill her.

In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *State v. Green*, 588 So. 2d 757 (La. App. 4th Cir. 1991). However, the reviewing court may not disregard this duty simply because the record contains evidence that tends to support each fact necessary to constitute the crime. *State v. Mussall*, 523 So. 2d 1305 (La. 1988). The reviewing court is not permitted to consider just the evidence most favorable to the prosecution but must consider the record as a whole since that is what a rational trier of fact would do. If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *Mussall*, 523 So. 2d at 1309-1310. "[A] 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." *State v. Smith*, 600 So. 2d 1319, 1324 (La. 1992).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So. 2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R. S. 15:438. This is not a separate test from *Jackson v. Virginia*, but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. *State v. Wright*,

445 So. 2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs*, 504 So. 2d 817 (La. 1987). If a rational trier of fact reasonably rejects the defendant's hypothesis of innocence, that hypothesis falls; and, unless another one creates reasonable doubt, the defendant is guilty. *State v. Captville*, 448 So. 2d 676 (La. 1984).

A fact finder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. *State v. Huckabay*, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093; *State v. Harris*, 99-3147 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432. The testimony of a single witness, if believed by the trier of fact, is sufficient to support a conviction. *State v. White*, 28,095, p. 14 (La. App. 2 Cir. 5/8/96), 674 So. 2d 1018, 1027.

Morgan was convicted of second degree murder, which is defined in pertinent part as: "the killing of a human being: 1) when the offender has a specific intent to kill or to inflict great bodily harm." La. R.S. 14:30.1.

Specific intent is that state of mind that exists when the circumstances indicate the offender actively desired the proscribed criminal consequences to follow his act. La. R.S. 14:10(1); *State v. Lindsey*, 543 So.2d 886 (La. 1989).

The determination of whether the requisite intent is present in a criminal case is for the trier of fact. *State v. Huizar*, 414 So. 2d 741 (La. 1982); *State v. Butler*, 322 So.2d 189 (La.1975). In reviewing the correctness of such a determination, the court should review the evidence in a light most favorable to the prosecution and must determine if the evidence is sufficient to convince a reasonable trier of fact of the guilt of the defendant beyond a reasonable doubt as to every element of the offense. *Jackson v. Virginia*; *State v. Huizar*.

In the instant case, Dr. Traylor testified that the cause of death was homicide by strangulation as evidenced by the curling iron electrical cord found knotted around Ms. Pastori's neck. An electrical cord tied in a knot around the victim's neck is indicative of a specific intent to kill or inflict great bodily harm.

Ms. Pastori lived with Morgan until the day before she was no longer seen or heard from again, as evidenced by the testimony of her co-worker, Lynn Lyons, her friend, Detective Aaron Crunk, and her landlady, Ms. Barranco.

Morgan's story as to the whereabouts of Ms. Pastori was inconsistent. Det. Crunk and Ms. Barranco testified that after no longer seeing Ms. Pastori, Morgan told them that Ms. Pastori was involved in an accident and was living with her father. Morgan told Ms. Lyons and Kathleen Greer that after Ms. Pastori recuperated from her "accident", she moved to Prague, Czechoslovakia. After his arrest, Morgan told Det. Phillips that Ms. Pastori moved to Ohio to live with her mother and try to get custody of her children.

Ms. Barranco observed Morgan moving a trunk from the Ursulines Avenue apartment to the Elysian Fields Avenue apartment. Mr. Hoover testified that Morgan stored two trunks inside his storage room, one of which contained Ms. Pastori's body, which he discovered after Hurricane Katrina. Ms. Barranco and Mr. Hoover both testified to the awful smell that emanated from the trunk that Morgan had sole custody of, and that Mr. Hoover observed contained Ms. Pastori's decomposed body. Ms. Barranco testified that Ms. Pastori did not take her beloved dog, Ginger. Kathleen Greer testified that she found Ms. Pastori's driver's license, birth certificate and other documents in the Elysian Fields apartment, documents, which it would be expected, Ms. Pastori would have taken with her if she had left voluntarily.

Thus, the circumstantial evidence presented by the State, which forms the basis of Morgan's conviction, consist of proof of collateral facts and circumstances from which a rational trier of fact could infer, according to reason and common experience, that Morgan, with the specific intent to kill, strangled Ms. Pastori in their Ursulines Avenue apartment sometime in 2002, dismembered her body and placed it inside of the trunk that he stored in Mr. Hoover's storage room after he moved to the Elysian Fields apartment. It was not unreasonable for the jury to reject the hypothesis of innocence. This assignment of error is without merit.

In his second assignment of error, Morgan argues that his trial counsel was ineffective for failing to challenge the sufficiency of the State's circumstantial evidence, or to provide even a semblance of an adequate defense. Specifically, Morgan argues fourteen instances of ineffective assistance of counsel: 1) trial counsel failed to file a motion in limine to require the State to prove the chain of custody of the trunk prior to trial; 2) counsel failed to cross-examine Det. Hamilton and Dr. Traylor as to the chain of custody of the trunk; 3) counsel failed to object to Dr. Traylor testifying as to the cause of death not based on science or forensic evidence; 4) counsel failed to cross-examine Dr. Traylor as to the cause of death and lack of scientific evidence; 5) counsel failed to cross-examine Dr. Traylor as to the time and conditions necessary for a body to decompose or mummify; 6) counsel failed to make an opening or closing statement to argue a lack of reasonable doubt; 7) counsel failed to take any action to prevent the field trip to the Ursulines Avenue apartment, which was prejudicial and inflammatory; 8) counsel failed to object to the "blood spatter" evidence on the basis of lack of expertise, chain of evidence or failure to preserve the scene, which was prejudicial and inflammatory; 9) counsel failed to object to the eliciting of hearsay evidence

during the testimony of Det. Hamilton; 10) counsel did not request a special jury instruction on circumstantial evidence, chain of custody or cause of death; 11) counsel failed to invoke the requirement of La. R.S. 15:450 that a defendant's statement be used in full; 12) counsel failed to cross-examine Ms. Pastori's mother about Ms. Pastori's long standing erratic lifestyle including a history of disappearing; 13) counsel failed to object to the relevance of Morgan's birth certificate in his real name, introduced to impugn his character; and 14) counsel failed to object to the testimony of Detective Crunk that Morgan was very skinny and avoided police contact, which was prejudicial and inflammatory.

In *State v. Mims*, 97-1500 pp. 44-45 (La. App. 4 Cir. 6/21/00), 769 So. 2d 44, 72, this court discussed the standard to be used to evaluate an effective assistance of counsel claim:

Generally, the issue of ineffective assistance of counsel is more properly addressed in an application for post-conviction relief filed in the trial court, where a full evidentiary hearing can be conducted. *State v. Smith*, 97-2221, p. 14 (La. App. 4 Cir. 4/7/99), 734 So.2d 826, 834, writ denied, 99-1128 (La. 10/1/99), 747 So.2d 1138. Only if the record discloses sufficient evidence to rule on the merits of the claim does the interest of judicial economy justify consideration of the issues on appeal. *Id.* Here, however, we believe the record is sufficient to address defendant's claims, which are essentially evidentiary.

The defendant's claim of ineffective assistance of counsel is to be assessed by the two-part test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). See *State v. Fuller*, 454 So.2d 119 (La.1984). The defendant must show that his counsel's performance was deficient and that this deficiency prejudiced him. The defendant must make both showings to prove counsel was so ineffective as to require reversal. *State v. Sparrow*, 612 So.2d 191, 199 (La.App. 4 Cir.1992). Counsel's performance is not ineffective unless it can be shown that he or she made errors so serious that he or she was not functioning as the

"counsel" guaranteed to the defendant by the 6th Amendment of the federal constitution. *Strickland, supra*, at 686, 104 S. Ct. at 2064. That is, counsel's deficient performance will only be considered to have prejudiced the defendant if the defendant shows that the errors were so serious that he was deprived of a fair trial. To carry his burden, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 693, 104 S. Ct. at 2068.

See also *State v. Crawford*, 2002-2048 (La. App. 4 Cir. 2/12/03), 848 So. 2d 615.

Furthermore, as noted in *State v. Griffin*, 2002-1703, pp. 9-10 (La. App. 4 Cir. 1/15/03), 838 So. 2d 34, 40:

This Court has recognized that if an alleged error falls "within the ambit of trial strategy" it does not "establish ineffective assistance of counsel." *State v. Bienemy*, 483 So.2d 1105 (La.App. 4 Cir. 1986). Moreover, as "opinions may differ on the advisability of a tactic, hindsight is not the proper perspective for judging the competence of counsel's trial decisions. Neither may an attorney's level of representation be determined by whether a particular strategy is successful." *State v. Brooks*, 505 So.2d 714, 724 (La. 1987).

See also *State v. Myers*, 2004-1219 (La. App. 4 Cir. 11/3/04), 888 So. 2d 1002.

The record in the instant case is not sufficient to address Morgan's numerous claims, which would be better raised in an application for post-conviction relief wherein Morgan could explore counsel's reasons and decisions as to each claim. Thus, this assignment of error is not considered at this time.

DECREE

For the foregoing reasons, the conviction and sentence of John Morgan is affirmed.

AFFIRMED