

**STATE OF LOUISIANA**

\*

**NO. 2014-KA-0511**

**VERSUS**

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**COURT OF APPEAL**

**JOHN E. RIVERS**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**BONIN, J., CONCURS WITH ADDITIONAL REASONS.**

I concur, but write to make explicit that the precise and proper question for a reviewing court to answer (which the majority opinion correctly answers) when the defendant's claim, as here, is that he is entitled to a conviction of only the lesser, responsive verdict of manslaughter in a second degree murder prosecution is: "In reviewing defendant's claim, [the reviewing] court must determine whether a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found that the mitigatory factors were not established by a preponderance of the evidence." *State v. Lombard*, 486 So. 2d 106, 111 (La. 1986);