Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of September, 2020** are as follows:

PER CURIAM:

2019-K-00647
c/w
2019-KO-00730

STATE OF LOUISIANA VS. SIMON QUINN (Parish of Terrebonne)

We find that the State need not prove a murder beyond a reasonable doubt in order for a defendant to be found guilty of obstructing a murder investigation. We affirm the ruling of the court of appeal, which reversed defendant's conviction for second degree murder, and affirmed defendant's conviction for obstruction of justice, his habitual offender adjudication, and his sentence for obstruction.
AFFIRMED.

Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.
Retired Judge Benjamin Jones appointed as Justice ad hoc sitting for Weimer, J., recused in case number 2019-KH-00647 and 2019-KO-00730.
Retired Judge Michael E. Kirby appointed as Justice ad hoc sitting for Crain, J., recused in case number 2019-KH-00647 and 2019-KO-00730.

Johnson, C.J., concurs in part and dissents in part and assigns reasons.
Crichton, J., concurs in part and dissents in part and assigns reasons.
Kirby, J., concurs in part and dissents in part and assigns reasons.

09/09/20

SUPREME COURT OF LOUISIANA

Nos. 2019-K-00647, 2019-KO-00730

STATE OF LOUISIANA

versus

SIMON QUINN

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF TERREBONNE

PER CURIAM:[*]

On May 13, 2015, fishermen in Cocodrie noticed a large Rubbermaid tote floating near a dock. The next day, they called the police after they spotted clothing and a human arm sticking out of it. Inside the tote, police found a decomposing body, which was later identified as Robbie Coulon, the victim and a lifelong friend of the defendant.

The victim lived in defendant's Houma apartment, in apparent violation of the rental agreement. Friction between the two developed as the victim repeatedly ignored defendant's instructions to refrain from doing anything that could draw the attention of the property manager to the victim's unauthorized presence. In addition, the victim pawned some of defendant's belongings, including an Xbox belonging to defendant's son.

On May 7, 2015, defendant returned from a stretch of offshore work. Defendant's girlfriend, Jeanie Gamble, picked him up in New Iberia and drove him to his apartment, where they began using crystal meth. According to Gamble, the victim was present in the apartment when she left at around 7:00 a.m. to pick up

[*] Retired Judge Benjamin Jones appointed as Justice ad hoc sitting for Weimer, J., recused. Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4. Retired Judge Michael Kirby appointed as Justice ad hoc sitting for Crain, J., recused.

defendant, but the victim was gone by the time they returned. Defendant noticed that his son's Xbox was missing again, and there were no clean towels.

Defendant decided to purchase more methamphetamine. He left Gamble at McDonald's to get lunch, obtained the drugs, and then they returned to her apartment, where they both used more crystal meth. They returned to defendant's apartment. Defendant briefly left Gamble in his bedroom, and then returned within five minutes in an upset state. Gamble described him as pale, shaking, and trembling.

According to Gamble, defendant told her, "I can't believe it, I can't believe it, he did it." When Gamble asked what defendant meant, he replied that Coulon killed himself. Gamble suggested they call the police, but defendant ranted about losing his freedom, an outstanding warrant, being able to see his children again, and having just begun a new job. Defendant suggested Gamble help him move the victim's body, but she refused. They left the apartment—without Gamble ever seeing the victim's body—to give defendant some time to think.

Defendant and Gamble went shopping at a dollar store and then returned to Gamble's apartment, where they stayed until approximately 11 p.m. Gamble then drove defendant around Dularge first, and to a park near Terrebonne General Hospital second, so that he could continue to think.

Eventually, defendant suggested to Gamble that the victim might not really be dead but just very drunk. Defendant dropped Gamble off at her apartment at around 4 a.m. on May 8. Defendant returned to Gamble's apartment at around 7 a.m. and told her that he and a friend had gone back to his apartment and spoken with the victim, who was alive. He said the victim was upset with him, and the friend convinced the victim to leave.

At around 9 a.m., defendant left Gamble's apartment again, driving her brother's red Ford truck. He returned the truck about seven or eight hours later, and explained he was gone so long because he had helped another friend tow a vehicle. Gamble did not believe him.

On May 9, Gamble returned defendant's debit card to him, which she found in her brother's truck. On May 12, defendant, who appeared angry, attempted to redeem his son's Xbox from the Cash America Pawn in Houma. When the pawn shop owner told defendant that he would either need to produce the original pawn receipt or bring the victim to the store with identification, defendant responded that the victim was "out of town and he's not coming back." The victim's body was found floating in the Rubbermaid tote in Cocodrie on the next day.

During the investigation that followed the discovery of the victim's body, the police obtained a security camera recording from a Houma Home Depot, which was recorded on the morning of May 8. The recording showed a person who resembled the defendant arrive in a red Ford truck, enter the store, and leave with a 54-gallon Rubbermaid container and some rope. Defendant's face could not be seen in the recording, but from the suspect's height, build, and clothing, he appeared to be the defendant. Cell site data showed defendant's phone moved later along the route from Houma to Cocodrie. Additional video surveillance also showed the red truck driven along this route.

Defendant was indicted for the second degree murder of Robbie Coulon, La.R.S. 14:30.1, and for obstruction of justice by tampering with evidence of Coulon's murder, La.R.S. 14:130.1(A)(1).[1] A Terrebonne Parish jury found

[1] With regard to obstruction, the indictment provided:

defendant guilty as charged. The district court sentenced him to life imprisonment at hard labor without parole eligibility for second degree murder and to a consecutive term of 50 years imprisonment as a second-felony offender for obstruction of justice. Defendant appealed.

The court of appeal reversed the conviction for second degree murder and affirmed the conviction for obstruction, in an opinion issued by a divided panel. *State v. Quinn*, 18-0664 (La. App. 1 Cir. 3/27/19), 275 So.3d 360. The court of appeal applied the due process standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), to the conviction for obstruction of justice first. After reviewing the evidence, the court found that jurors could reasonably conclude that defendant, with a guilty mind, disposed of the victim's body, and thereby committed obstruction by tampering with evidence with the specific intent of distorting the results of a criminal investigation. In addition to the evidence summarized above, the court of appeal noted materials similar to those used to wrap the victim's body were found in defendant's apartment, and that defendant's ex-wife visited him in jail after his arrest where he told her, "I did that. I put him there."

The majority then used the same standard to examine the evidence of second degree murder. The majority found that the jury was presented with a reasonable hypothesis of innocence that the State's largely circumstantial case was unable to exclude: that the victim committed suicide and defendant, while he tried to conceal the victim's body, did not murder him. The majority noted that Dr. Cameron

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In violation of La.R.S. 14:130.1(A)(1) and La.R.S. 14:130.1(B)(1), Simon John Quinn on or about May 7, 2015, did obstruct justice by tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding in which a sentence of death or life imprisonment may be imposed.

Snider, who performed the autopsy, provided the only testimony regarding the cause, mechanism, and manner of death. Dr. Snider could determine that the cause of death was asphyxia but little else. In particular, he was unable to determine the mechanism by which the victim was deprived of oxygen, and he could not classify the death as a homicide. Although the body was found with a plastic bag over the victim's head and a bed sheet around the victim's neck,[2] either of which might have been the mechanism of asphyxiation,[3] there was no evidence Dr. Snider could use to distinguish a murder from a suicide. Given that the jury was also presented with information suggesting the victim may have been suicidal, the majority found rational jurors could not conclude beyond a reasonable doubt that defendant murdered the victim, although defendant clearly tried to dispose of the victim's body.[4]

The dissent disagreed with the majority only with regard to the sufficiency of evidence proving defendant murdered the victim. The dissent found there were several circumstances from which rational jurors could conclude defendant murdered the victim, "including the defendant's revelation that Coulon was dead, the defendant's physical reaction in making that revelation, the defendant's failure to seek help or report Coulon's death to the police, and the defendant's actions in disposing of Coulon's body." *Quinn*, 18-0664, p. 1, 275 So.3d at 374–375 (Crain,

[2] Dr. Snider was not able to examine these items because they had been removed by the time the body was transported to him.

[3] Dr. Snider also allowed that asphyxiation could have resulted from alcohol intoxication, but he was unable to determine the quantity of alcohol consumed because of the degree of decomposition, and he considered it least likely of the three possibilities.

[4] The majority then found two of defendant's remaining claims were rendered moot when it determined that the State presented insufficient evidence of a murder. Once the conviction and sentence for second degree murder were set aside, the court of appeal found it unnecessary to determine whether the district court abused its discretion in ordering that the sentences run consecutively or whether the district court erred in excluding some evidence of the victim's suicidality.

J., dissenting). Accordingly, the dissent believed the majority was substituting its judgment for that of the jurors, and the dissent would affirm the convictions, habitual offender adjudication, and the sentences.

The State sought review in this court, arguing that the dissent's view with regard to the evidence establishing a murder is correct. Defendant, represented by the Louisiana Appellate Project, prefers the view of the majority in the court below. Defendant also sought review in this court, arguing with the assistance of the Tulane Law School Criminal Justice Clinic that the obstruction conviction is inextricably bound to the murder conviction: if the State failed to prove a murder, there cannot be sufficient proof there was obstruction of justice with regard to a murder. The student practitioners of the clinic also argue that the 50-year sentence for obstruction is excessive because it constitutes a de facto life sentence, is grossly disproportionate to the severity of defendant's actions, and is higher than sentences imposed on similar offenders.

After reviewing the record, the briefs, and the argument of the parties, we find the court of appeal correctly found the State presented insufficient evidence that defendant murdered the victim. "In reviewing the sufficiency of the evidence to support a conviction, an appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) .... [T]he appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *State v. Captville*, 448 So.2d 676, 678 (La. 1984). Where a conviction is based on circumstantial evidence, as is the case here, the evidence "must exclude every reasonable hypothesis of

innocence." La.R.S. 15:438.

In addition, the *Jackson* standard of review does not allow a jury to speculate on the probabilities of guilt where rational jurors would necessarily entertain a reasonable doubt. *State v. Mussall*, 523 So.2d 1305, 1311 (La. 1988) (citing 2 C. Wright, Federal Practice & Procedure, Criminal 2d, § 467). The requirement that jurors reasonably reject the hypothesis of innocence advanced by the defendant in a case of circumstantial evidence presupposes that a rational rejection of that hypothesis is based on the evidence presented, not mere speculation. *See State v. Schwander*, 345 So.2d 1173, 1175 (La. 1977).

The evidence establishing that defendant moved and tried to dispose of the victim's body is the most incriminating evidence against him. It is also the evidence proving the crime of obstruction. Despite the overwhelming evidence of obstruction, there was simply no evidence presented from which the jury could reasonably determine whether defendant killed the victim or found him already deceased. Despite defendant's deceit, shifting stories, and strange behavior, a jury could only speculate as to which of two scenarios occurred:[5] (1) the tension between defendant and the victim erupted in a sudden murder, which defendant then tried to conceal; or (2) the victim committed suicide and defendant, fueled by methamphetamine and fear of law enforcement, decided to conceal the death rather than report it. While evidence of concealment indicates consciousness of guilt, *State v. Davies*, 350 So.2d 586, 588 (La. 1977), here it is nearly the only evidence from which the jury could infer defendant killed the victim, and standing nearly alone it does not render the reasonable hypothesis of innocence unreasonable.

[5] Notably, the present case differs from *State v. Mayeux*, 19-00369 (La. 1/29/20), — So.3d —, available at 2020 WL 508655, in that defendant here did not testify while defendant in *Mayeux* did and thereby ran the risk the jury would not believe him. *See id.*, 19-00369, pp. 4–5.

Accordingly, the court of appeal did not err in setting aside defendant's conviction for second degree murder.

The State presented overwhelming evidence that defendant tried to conceal the victim's death and dispose of his body, and no reasonable person could find defendant did not commit obstruction. Defendant, however, argues that the murder and the obstruction are so intertwined that he can only be guilty of both or neither. If the jury had found defendant not guilty of murder but guilty of obstruction, inconsistency in the verdicts would have been permissible. Judicial tolerance of inconsistent verdicts rendered by a single jury has been a longstanding feature of the jury system. *See United States v. Powell*, 469 U.S. 57, 66, 105 S.Ct. 471, 477, 83 L.Ed.2d 461 (1984) ("The fact that the inconsistency may be the result of lenity, coupled with the Government's inability to invoke review, suggests that inconsistent verdicts should not be reviewable."); *Dunn v. United States*, 284 U.S. 390, 393, 52 S.Ct. 189, 190, 76 L.Ed. 356 (1932) ("Consistency in the verdict is not necessary."); *see also State ex rel. Elaire v. Blackburn*, 424 So.2d 246 (La. 1982) (discussing the legitimacy of compromise verdicts which do not necessarily fit the evidence).

Here, however, the jury found defendant guilty of both crimes, and the inconsistency, if any, was created by the appellate court. While that might present a problem under *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 2362–63, 147 L.Ed.2d 435 (2000) in another case,[6] we need not make that determination today because the appellate court did not introduce a true

[6] The United States Supreme Court held in *Apprendi*, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.*, 530 U.S. at 490, 120 S.Ct. at 2362–63.

inconsistency. One can be found guilty of obstructing a murder investigation although the investigation does not ultimately result in a conviction for murder that survives appellate review. *See State v. McKnight*, 98-1799, pp. 13–14 (La. App. 1 Cir. 6/25/99), 739 So.2d 343, 352–353, *writ denied*, 99-2226 (La. 2/25/00), 755 So.2d 247. To find otherwise would be to reward those who more successfully obstruct justice while punishing those who obstruct with less success.

Here, the jury rendered a verdict finding defendant guilty of obstruction of justice in a "second degree murder proceeding or investigation." Because of the sentencing implications, the jury had to make that determination. The sentencing ranges for the crime of obstruction of justice are graded according to the nature of the underlying offense:

> (1) When the obstruction of justice involves a criminal proceeding in which a sentence of death or life imprisonment may be imposed, the offender shall be fined not more than one hundred thousand dollars, imprisoned for not more than forty years at hard labor, or both.
>
> (2) When the obstruction of justice involves a criminal proceeding in which a sentence of imprisonment necessarily at hard labor for any period less than a life sentence may be imposed, the offender may be fined not more than fifty thousand dollars, or imprisoned for not more than twenty years at hard labor, or both.
>
> (3) When the obstruction of justice involves any other criminal proceeding, the offender shall be fined not more than ten thousand dollars, imprisoned for not more than five years, with or without hard labor, or both.

La.R.S. 14:130.1(B).

But nothing in the definition of the crime requires the underlying criminal proceeding to end in a conviction that survives appellate review, and we decline to read such a requirement into the statute. Defendant here was indicted with obstruction of justice as defined in La.R.S. 14:130.1(A)(1). This provision defines obstruction of justice as follows:

> A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as described in this Section:
>
> (1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:
>
> (a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or
>
> (b) At the location of storage, transfer, or place of review of any such evidence.

The State presented ample evidence at trial from which the jury could reasonably infer defendant tampered with the victim's body with the intent to distort a potential murder investigation. When viewed in the light most favorable to the State through the due process lens of *Jackson v. Virginia*, defendant's own fear of alerting law enforcement and his concern for his potential loss of freedom, access to his children, and his employment, which he expressed to Gamble, is evidence of the requisite intent. While the court of appeal found that the verdict of guilty of second degree murder could not stand when reviewed under the standard of *Jackson v. Virginia*, that finding does not negate the fact that a criminal investigation of, and prosecution for, second degree murder indeed occurred.

Defendant's remaining claims regarding his sentence are not properly before the court. The sole sentencing claim presented for review in the court of appeal was whether the sentences were excessive due to their consecutive nature, and the court of appeal found that assignment of error rendered moot by the reversal of one of the convictions. While defendant now argues that his sentence is excessive because he is a non-violent offender and because it exceeds sentences imposed on

comparable offenders in this jurisdiction, these arguments were not presented to the court of appeal, and therefore will not be considered now. *See generally Segura v. Frank*, 93-1271, p. 15 (La. 1/14/94), 630 So.2d 714, 725 ("[A]ppellate courts will not consider issues raised for the first time" in appellate court); *cf. United States v. Williams*, 504 U.S. 36, 40, 112 S.Ct. 1735, 1738, 118 L.Ed.2d 352 (1992) (Supreme Court's "traditional rule . . . precludes a grant of certiorari" when issue neither "pressed [n]or passed on below.").

After oral argument, defendant, through the Tulane Law School Criminal Justice Clinic, filed a supplemental brief in which he contends he is entitled to be resentenced under the version of the habitual offender statute, La.R.S. 15:529.1, as it was amended by 2017 La. Acts 282, citing *State v. Lyles*, 19-00203 (La. 10/22/19), 286 So.3d 407. In *Lyles*, this court found that "[f]or persons . . . whose convictions became final on or after November 1, 2017, and whose habitual offender bills were filed before that date, the full provisions of Act 282 apply." *Id.*, 19-00203, p. 6, 286 So.3d at 411. Defendant here was sentenced under the habitual offender statute in effect at the time of the crime, which provided a sentencing range of 20 to 80 years. *See* La.R.S. 15:529.1(A)(1) (as amended by 2010 La. Acts 973, effective July 6, 2010). If sentenced under the habitual offender statute as amended by 2017 La. Acts 282, the sentencing range would be 13 1/3 to 80 years.

The district court sentenced defendant to consecutive terms of life and 50 years. Considering the sentences imposed, there is no reason to believe the district court would impose a lesser sentence if defendant were resentenced under a provision in which the minimum sentence has been reduced from one-half the maximum unenhanced sentence to one-third the maximum unenhanced sentence. Defendant cites *State v. Williams*, 17-1753 (La. 6/15/18) (per curiam), 245 So.3d

1042, for the proposition a defendant is entitled to be resentenced under Act 282 even when defendant's sentence is well within the ranges provided under either version of the habitual offender statute. In *Williams*, however, the State conceded defendant should be resentenced. Under the circumstances here, and where there is no reason to believe a different outcome will result, we decline to remand for resentencing.

Accordingly, we find that the State need not prove a murder beyond a reasonable doubt in order for a defendant to be found guilty of obstructing a murder investigation. We affirm the ruling of the court of appeal, which reversed defendant's conviction for second degree murder, and affirmed defendant's conviction for obstruction of justice, his habitual offender adjudication, and his sentence for obstruction.

AFFIRMED

SUPREME COURT OF LOUISIANA

Nos. 2019-K-00647, 2019-KO-00730

STATE OF LOUISIANA

VS.

SIMON QUINN

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Terrebonne

JOHNSON, C.J., concurs in part and dissents in part and assigns reasons:

A unanimous jury convicted the defendant of second degree murder and obstruction of justice. I would affirm both convictions. The appellate court misapplied the *Jackson* standard and substituted its own opinion of the evidence for the judgment of the jury. This court's majority opinion endorses that misapplication of the law.

A court charged with reviewing whether the evidence was sufficient to convict under *Jackson v. Virginia*, 443 U.S. 307 (1979) must largely defer to rational conclusions of the fact-finder. The *Jackson* standard "leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors 'draw reasonable inferences from basic facts to ultimate facts.'" *Coleman v. Johnson*, 566 U.S. 650, 655 (2012) (internal citations omitted). "Sufficiency review essentially addresses whether "the government's case was so lacking that it should not have even been submitted to the jury." *Musacchio v. United States*, 136 S. Ct. 709, 715 (2016). Clearly the State's case here, though circumstantial, was not so lacking that it should never have been submitted to the jury. Our review should end there.

The majority concedes that "the State presented overwhelming evidence that defendant tried to conceal the victim's death and dispose of his body." But it concludes that—despite defendant's irrational response to allegedly finding his

friend dead, his shifting stories, and lies—there was "simply no evidence presented from which the jury could reasonably determine whether defendant killed the victim or found him already deceased." Therefore, according to the majority, the jurors could only speculate as to which, of the two ways that the victim could have been asphyxiated—by his own hand or that of another—was the true reason for his death. But the dismissive label of "speculation" ignores the facts the jury heard: (1) the defendant was the only person to enter the victim's room: (2) the defendant's instinct—on leaving the room containing the dead body of his friend—was not to call for help or call police, but rather to plan his evasion of authorities; and (3) that the product of his planning was a sordid and covert effort to dispose of his friend's body by lying to his girlfriend, borrowing her brother's truck, driving to Home Depot to buy a large plastic container, retrieving the body of his friend, tying his friend's dead hands and feet together, attaching a cinderblock to his friend's dead body, stuffing his friend's dead body in the plastic container and then throwing him over the dock in Cocodrie. Defendant lied to his girlfriend about where he had been, concocted five different stories about the possible fate of his friend, and has continued to deny those efforts in the face of overwhelming evidence. The jurors could make an entirely reasonable inference from these basic facts that the defendant killed his friend, panicked and tried to conceal the murder. When a case is based on circumstantial evidence, the jury may infer guilt and the verdict will withstand sufficiency review unless the facts presented leave a reasonable alternative hypothesis of innocence. *State v. Captville*, 448 So. 2d 676 (La. 1984). But a reasonable hypothesis is not merely one "which could explain the events in an exculpatory fashion," but one that "is sufficiently reasonable that a rational juror could not 'have found proof of guilt beyond a reasonable doubt.' " *Id.* at 680. Defendant's actions in covering up his friend's death and the story he asked the jury to believe are, quite simply, not sufficiently reasonable that a rational juror was

required to credit them. We have long recognized that "[e]vidence of flight, concealment, and attempt to avoid apprehension is relevant. It indicates consciousness of guilt and therefore, is one of the circumstances from which the jury may infer guilt. *This rule applies notwithstanding that the evidence may disclose another crime.*" *State v. Davies*, 350 So.2d 586, 588 (La.1977) (emphasis added). The fact that this concealment made it harder for the coroner to determine the cause of death, only heightens the right of jurors to infer guilt where other aspects of the State's case may have been more opaque. A defendant should not be entitled to exculpatory inferences from the lack of a clear conclusion as to manner of death when it is his behavior that has rendered the medical examiner incapable of reaching a conclusion.

Judge Crain, dissenting from the majority opinion in the court below, explained:

> The jury considered the evidence presented at trial . . . When that evidence is viewed in the light most favorable to the state, it was rational for the jury to find beyond a reasonable doubt the essential elements of second degree murder were proven and all reasonable hypotheses of the defendant's innocence, including the defendant's theory that Coulon committed suicide, had been excluded. The majority exceeds its role as a reviewing court and usurps the role of the factfinder by re-weighing the evidence then substituting its own appreciation of what the evidence did or did not prove for that of the factfinder.

State v. Quinn, 2018-0664 (La. App. 1 Cir. 3/27/19); 275 So.3d 360, 374–75 (Crain, J., dissenting in part) (citing *State v. Mitchell,* 99-3342 (La. 10/17/00), 772 So.2d 78, 83).

To be sure, the murder case against this defendant was not airtight, but the law does not require it to be so. "On sufficiency review, a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a "meaningful opportunity to defend" against the charge against

him and a jury finding of guilt "beyond a reasonable doubt." *Musacchio*, 136 S. Ct. at 715. Mr. Quinn deserves no greater level of due process protection than this.

09/09/20

SUPREME COURT OF LOUISIANA

Nos. 2019-K-00647, 2019-KO-00730

STATE OF LOUISIANA

VS.

SIMON QUINN

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF TERREBONNE

Crichton, J., concurs in part and dissents in part and assigns reasons.

While I concur with the majority's affirmance of defendant's conviction of obstruction of justice and the sentence imposed with respect thereto, I dissent from the per curiam insofar as it affirms the court of appeal's reversal of defendant's second degree murder conviction. In my view, in finding that the evidence is insufficient to support a conviction of second degree murder, the majority and court of appeal erroneously reweighed the evidence presented at trial and intruded on the jury's role as factfinder, substituting its own appreciation of the evidence for that of the jury.

As the majority correctly recognizes, when an appellate court reviews whether evidence is sufficient to support a conviction, the *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), due process standard requires that "the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *State v. Captville*, 448 So.2d 676, 678 (La. 1984) ("[A]n appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*.").

Notably absent from the per curiam's analysis, however, is the abundance of United States Supreme Court jurisprudence emphasizing the restricted role of

appellate courts in reviewing sufficiency. For example, in *Musacchio v. United States*, the United States Supreme Court described the skeleton nature of the *Jackson* standard as follows:

> *Sufficiency review essentially addresses whether "the government's case was so lacking that it should not have even been submitted to the jury."* On sufficiency review, a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a "meaningful opportunity to defend" against the charge against him and a jury finding of guilt "beyond a reasonable doubt." The reviewing court considers only the "legal" question "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 beyond a reasonable doubt." *That limited review does not intrude on the jury's role "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."*

Musacchio v. United States, 477 U.S. —, —, 136 S.Ct. 709, 715, 193 L.Ed.2d 639 (2016) (internal citations omitted) (emphasis added). Importantly, the *Jackson* standard "leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors 'draw reasonable inferences from basic facts to ultimate facts.'" *Coleman v. Johnson*, 566 U.S. 650, 655, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012). In *State v. Mack*, 2013-1311 (La. 5/7/14), 144 So. 3d 983, 988, this Court emphasized the requisite deference to the jury in *Jackson* review, per the guidance of the United States Supreme Court:

> In *Jackson,* we emphasized repeatedly the deference owed to the trier of fact and, correspondingly, the sharply limited nature of constitutional sufficiency review. We said that '*all of the evidence* is to be considered in the light most favorable to the prosecution,' 443 U.S. at 319, 99 S.Ct. at 2789 (emphasis in the original); that the prosecution need not affirmatively 'rule out every hypothesis except that of guilt,' *id.,* at 326, 99 S.Ct. at 2792; and that *a reviewing court 'faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution,' ibid.*

Id. (quoting *Wright v. West,* 505 U.S. 277, 296, 112 S.Ct. 2482, 2492, 120 L.Ed.2d 225 (1992)) (emphasis added).

This deference to the jury in a sufficiency review is critical. 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. Toups*, 2001-1875 (La. 10/15/02), 833 So. 2d 910, 912 (citing *State v. Smith,* 600 So.2d 1319 (La.1992)). The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *State v. Mussall,* 523 So.2d 1305 (La.1988); *see also* Scott Crichton & Stuart Kottle, *Appealing Standards: Louisiana's Constitutional Provision Governing Appellate Review of Criminal Facts*, 79 La. L. Rev. 369, 388 (2018) ("On sufficiency review, a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a 'meaningful opportunity to defend' against the charge against him and a jury finding of guilt 'beyond a reasonable doubt.'"). Accordingly, the trial court judge's closing jury instruction correctly provided:[1]

> As jurors, you alone shall determine the weight and credibility of evidence. As the sole judges of the credibility of witnesses and of the weight their testimony deserves, you should scrutinize carefully the testimony given and the circumstances under which the witness has testified. In evaluating the testimony of a witness you may consider his or her ability and opportunity to observe and remember the matter about which he or she testified, his or her manner while testifying, any reason he or she may have for testifying in favor of or against the state or the defendant and the extent to which the testimony is supported or contradicted by other evidence.
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> . . .
>
> The testimony of a witness may be discredited by showing that the witness made a prior statement which contradicts or is inconsistent with his present testimony.

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[1] Indeed, the judge provided similar instructions at the opening of trial:

> As jurors you are the sole judges of the credibility of witnesses and of the weight their testimony deserves. In determining the credibility or truthfulness of testimony you should carefully consider the testimony given and the circumstances under which the witness has testified. You can also consider the ability and opportunity to observe and remember the matter about which a witness has testified, his or her manner while testifying and any reason he or she may have for testifying in favor of or against the State or the defendant and the extent to which the testimony is supported or contradicted.

To prove second degree murder, the State must show a killing of a human being when the defendant had the specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1. Specific 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" and may be inferred from the circumstances surrounding the offense and the conduct of the defendant. La. R.S. 14:10(1); *State v. Boyer*, 406 So.2d 143, 150 (La. 1981). Evidence of flight, concealment, and attempt to avoid apprehension is relevant and admissible to prove consciousness of guilt from which the jury may infer guilt. *State v. Wilkerson*, 403 So.2d 652 (La. 1981). Relevant to the case at hand, in *State v. Davies*, 350 So.2d 586, 588 (La.1977), this Court stated:

> Evidence of flight, concealment, and attempt to avoid apprehension is relevant. It indicates consciousness of guilt and therefore, is one of the circumstances from which the jury may infer guilt. *This rule applies notwithstanding that the evidence may disclose another crime. State v. Brown*, La., 322 So.2d 211 (1975); *State v. Graves*, La., 301 So.2d 864 (1974); *State v. Nelson*, 261 La. 153, 259 So.2d 46 (1972). *See also State v. Lane*, La., 292 So.2d 711 (1974); *State v. Johnson*, 249 La. 950, 192 So.2d 135 (1966); *State v. Goins*, 232 La. 238, 94 So.2d 244 (1957); 29 Am.Jur.2d, Evidence, ss 280 et seq., pp. 329 et seq.

(Emphasis added).

The evidence presented at trial of this case was clearly not "so lacking that it should not have even been submitted to the jury." *Musacchio*, *supra*. Instead, the majority endorses the death-by-suicide defense, relying in part on testimony to which the jury may have justifiably given little weight, and blindly ignores the evidence supporting the conviction. Critically, all the evidence was weighed by the jury, and the jury apparently rejected the defense's theory that the victim committed suicide. Nothing here suggests that the jury's rejection of that theory was irrational.

With respect to intent, the majority recognizes that the "State presented overwhelming evidence that defendant tried to conceal the victim's death and dispose of his body," *State v. Quinn*, 19-0647, 19-0749 (La. 9/9/20), -- So. 3d --, but

then minimizes that conclusion immediately by trying to confine the evidence to the crime of obstruction. While the commission of obstruction of justice is not, itself, sufficient evidence to prove second degree murder, it is certainly evidence from which guilt may be inferred. *Davis*, *supra*. Accordingly, the jury may have reasonably – and within their broad discretion to do so – inferred guilt from defendant's removal and disposal of the victim's body, which evidence alone was undeniably harmful to defendant's claim of innocence. *See Musacchio*, *supra*; *Coleman*, *supra*.

The prosecution's case did not rest solely on the fact that defendant took steps to conceal the investigation into the vicitm's death, however. It is also indicative of guilt that defendant concocted no fewer than five stories concerning what happened to the victim. *See Captville*, 448 So.2d at 680 n.4 ("[A] finding of purposeful misrepresentation reasonably raises the inference of a 'guilty mind' just as in the case of ... a material misrepresentation of facts by a defendant following an offense. 'Lying' has been recognized as indicative of an awareness of wrongdoing.") (internal citations omitted). According to defendant, the victim went from dead, to drunk, to alive and leaving town, with at least two of those lies occurring after defendant disposed of the victim's body.

Also relevant to the intent to commit second degree murder is defendant's reported anger with the victim over potentially being evicted from his apartment, after the victim repeatedly ignored defendant's pleas to follow the rules and stay out of sight, and the victim's pawning of defendant's son's Xbox for at least the second time. Admittedly, defendant's then-girlfriend, Jeanie Gamble, testified defendant was "upset" but "not irate" when they arrived at the apartment just prior to defendant announcing the victim's death, and defendant's other girlfriend,[2] Leslie Rogers,

[2] Ms. Rogers testified that she had known defendant since junior high and had recently been in a romantic relationship with him ending either shortly before or after the victim's death. Although

testified that defendant and victim fought but "[t]here was no aggression or anything like that." Contrary to these recounts of defendant's apparent emotions and relationship with the victim, the pawn shop clerk testified that defendant was "visibly angry" and "pissed" when he attempted to retrieve his son's Xbox. The pawn shop clerk interaction with defendant occurred days after the victim's death, meaning the victim's pawning of defendant's son's Xbox apparently continued to anger defendant days after he unceremoniously stuffed the victim's body in a plastic box. Following the above-referenced instructions of the court, the jury apparently rejected the interpretation of the facts by defendant's two girlfriends and accepted the testimony of the pawn shop clerk, who was notably not impeached during her testimony,[3] as to defendant's anger toward the victim. Although not an element of the offense, defendant's anger as a motive was thus proven.

Dr. Snider, a forensic pathologist, classified the victim's death as being due to asphyxia. Dr. Snider offered three possibilities for how the death occurred in the order of how he perceived their respective probabilities: 1) from a bed sheet around the victim's neck; 2) from a plastic bag over the victim's head; and 3) from alcohol intoxication. Dr. Snider testified that he could not determine whether any of these causes, no matter their probability, would be self-inflicted or homicide, noting that the decay of the body affected his ability to make such a determination. Thus, there was at least equal possibility of homicide or suicide according to Dr. Snider.

Finally, defendant was the last known person to have interacted with the victim or discovered the body of the victim. The State thus proved that he had the

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Ms. Rogers could not specify the exact date that her romance with defendant ended, she testified to spending time with defendant at his apartment after the victim's death and transporting defendant to his work the day prior to his arrest.

[3] Ms. Rogers admitted to lying to law enforcement, at least initially, about her contact with defendant. Ms. Gamble's testimony is at times inconsistent; for example, at first she stated that she was not sure if defendant did the crystal meth she had provided, but then when explaining why she and defendant left to purchase more drugs, she stated it is because defendant did not like the quality of hers.

opportunity to commit a homicide in this case and that homicide was a possible cause of death. Viewing the evidence in the light most favorable to the prosecution, the foregoing evidence was sufficient to prove a killing of a human being when the defendant had the specific intent to kill or to inflict great bodily harm.

The evidence presented at trial was overwhelmingly, if not entirely, circumstantial, potentially due in part to the fact that the victim's body was in a deteriorated condition when it was examined. Where a conviction is based on circumstantial evidence, as is the case here, the evidence "must exclude every reasonable hypothesis of innocence." La. R.S. 15:438. However, La. R.S. 15:438 does not establish a stricter standard of review than the more general rational juror's reasonable doubt formula enunciated by *Jackson*. *Mack*, *supra*. Rather, the circumstantial evidence rule serves as a helpful evidentiary guide for jurors. *State v. Major*, 2003-3522 (La. 12/1/04), 888 So. 2d 798, 801–02 (citing *State v. Toups,* 01-1875, p. 3 (La.10/15/02), 833 So.2d 910, 912; *State v. Chism,* 436 So.2d 464, 470 (La.1983)).

Significantly, the majority reasons that the State failed to exclude the defense's hypothesis of innocence that the victim committed suicide and defendant, fearing arrest from an outstanding warrant, hid his friend and roommate's body. The majority implicitly holds that such a hypothesis of innocence is "reasonable," as required by La. R.S. 15:438, and thus justifies the Court's supplanting of its own interpretation of the facts for that of the factfinder. I disagree. It is *absolutely unreasonable*, in my view, that despite the fact that defendant had no role in the victim's death he nonetheless immediately engineered a detailed plan that was laborious, time-consuming, and ultimately involved the repugnant act of tying his roommate's dead body in bed sheets, stuffing it in a Rubbermaid tote, and then attempting to submerge the tote in a remote body of water, for fear of arrest on an unrelated warrant. Notably, in accepting this hypothesis of innocence the majority

must ultimately find the evidence supported the victim's suicidal tendency, which requires relying on the testimony of defendant's ex-wife that the victim was suicidal.[4] Since defendant's ex-wife admitted at trial that she lied to police in order to protect defendant, the jury may have reasonably rejected her testimony and assigned it little weight. The only remaining evidence of defendant's suicidal nature was an ambiguous text message that the victim would "take care of [himself] the only way [he knows] how." Reviewing this statement in the light most favorable to the prosecution, as *Jackson* review requires, it simply implies the victim would take care of himself in some fashion, not that he would kill himself.

Ultimately, in order to reverse the jury's finding of conviction in this matter, the majority and court of appeal have necessarily reweighed the evidence – most significantly the testimony and credibility of the witnesses – and determined that defendant was not sufficiently angry or violent to have hurt the victim (although this did not preclude him from stuffing the victim's body in a plastic box and submerging it in water), that the victim was troubled and suicidal, and that the evidence of the victim's suicidal nature was sufficient to outweigh the implicit evidence of guilt by defendant's obstruction. In my view, the evidence has been reviewed in the light most favorable to *defendant*, not the State, in contravention of *Jackson*, *Musacchio*, and their progeny. The relevant question is not whether reviewing jurists would have found defendant guilty, because reviewing jurists do not have the benefit of viewing the witnesses and their testimony first-hand. The relevant question is whether the State's case was "so lacking that it should not have been submitted to the jury." *Musacchio*, *supra*. It was not.

[4] After the defendant's ex-wife provided her unsolicited opinion that the victim was depressed, she was precluded from further testifying as to defendant's alleged suicidal statements, as the testimony was ruled inadmissible hearsay.

For the foregoing reasons, I would reverse the court of appeal in part, reinstate the second degree murder conviction, and affirm the obstruction of justice conviction.

SUPREME COURT OF LOUISIANA

No. 2019-K-00647, 2019-KO-00730

STATE OF LOUISIANA

VS.

SIMON QUINN

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF TERREBONNE

Kirby, J., ad hoc, concurs in part and dissents in part and assigns reasons.

I wholeheartedly concur in the majority's per curiam to the effect that Mr. Quinn's conviction for second-degree murder cannot stand because the state's circumstantial evidence did not exclude the very reasonable hypothesis that Mr. Coulon committed suicide. The per curiam acknowledges the state's forensic pathologist's findings:

> "Dr. Snyder could determine the cause of death was asphyxia but little else. In particular he was unable to determine the mechanism by which the victim was deprived of oxygen and he could not classify the death as a homicide."

However, his actual trial testimony was more informative. When asked to rank the most likely mechanism of death he cited the bed sheet that was found wrapped around the victim's neck, adding,

> "a bedsheet can be wrapped around the neck and it can cause compression of the jugular veins and carotid artery [,] but it is so broad and flat it might not leave any significant mark. *And I see this mechanism*, for example *in persons* who are in jail or prison *and they tried to hang themselves*." [Emphasis added.]

The indictment against Mr. Quinn specifically charges him with

> "obstructing justice by tamper[ing] with evidence with the specific intent of distorting the results of any criminal investigation or proceeding in which a sentence of death or life imprisonment may be imposed."

The jury convicted him as charged. However, once the jury's verdict on the predicate offense is reversed, on the facts of this case, I cannot accept the conclusion that the obstruction of justice conviction in a second-degree murder proceeding or investigation survives.

Simply stated, Mr. Quinn may have tampered with evidence and he may have done so with the intent to distort a criminal investigation. However, the evidence in this case as found by both the appellate court and this court does not support a finding that the "criminal proceeding" was one in which a sentence of death or life imprisonment might be imposed. In my view his sentence of fifty years at hard labor under these facts is clearly excessive, implicating La. Const. Art. I, §20[1]. I would find that Mr. Quinn, at most, obstructed justice in a case involving the unlawful disposal of human remains in violation of La. R. S. 8:652[2] thereby subjecting him to the punishment prescribed by La. R. S. 14:130.1(B)(3)[3] and remand for resentencing.

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[1]§20. Right to Humane Treatment
Section 20. No law shall subject any person to. . . cruel, excessive, or unusual punishment.

[2] §652. Unlawful disposal of remains
A. Except in the case of cremated remains or as otherwise provided by law, it shall be unlawful for any person to dispose of any human remains, except fetal remains, without first obtaining certification of the cause of death by the treating physician, parish coroner, or the authorized representative of the parish coroner. …
B. Whoever violates this Section shall be punished by imprisonment for not more than three years, with or without hard labor, or by a fine of not more than one thousand dollars, or both.

[3] B. Whoever commits the crime of obstruction of justice shall be subject to the following penalties:

. . .

(3) When the obstruction of justice involves any other criminal proceeding, the offender shall be fined not more than ten thousand dollars, imprisoned for not more than five years, with or without hard labor, or both.