

# The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2018-KO-1684

vs.

DYLAN MAGLUILO

-----  
IN RE: Dylan Magluilo; - Defendant; Applying For Writ of Certiorari  
and/or Review, Parish of Caddo, 1st Judicial District Court Div. F,  
No. 335,569; to the Court of Appeal, Second Circuit, No. 52,227-KA;  
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April 15, 2019

Denied.

GGG

BJJ

JLW


MRC

JDH

SJC

JTG

Supreme Court of Louisiana  
April 15, 2019

  
Deputy Clerk of Court  
For the Court

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Judgment rendered September 26, 2018.  
Application for rehearing may be filed  
within the delay allowed by Art. 992,  
La. C. Cr. P.

No. 52,227-KA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

STATE OF LOUISIANA

Appellee

versus

DYLAN MAGLUILO

Appellant

\* \* \* \* \*

Appealed from the  
First Judicial District Court for the  
Parish of Caddo, Louisiana  
Trial Court No. 335,569

Honorable Katherine Clark Dorroh, Judge

\* \* \* \* \*

LOUISIANA APPELLATE PROJECT  
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TRENEISHA J. HILL  
Assistant District Attorneys

\* \* \* \* \*

Before PITMAN, GARRETT, and McCALLUM, JJ.

**McCALLUM, J.**

The defendant, Dylan Magluilo ("Magluilo"), was convicted by a jury of second degree murder under La. R.S. 14:30.1 and was sentenced to life in prison. Magluilo now appeals, challenging only the sufficiency of the evidence. For the reasons stated herein, we affirm.

**FACTS**

*The prosecution's lay witnesses.* On September 8, 2015, a group including Magluilo, Danielle Davis, Todd Scruggs, Lacy Smith, Amanda Thompson, and Tiffany Chaffee booked a room at the Hilton Hotel in downtown Shreveport. All of these group members, except Davis and Magluilo, admitted using methamphetamine during the time frame surrounding this murder.

In his recorded interview with detectives, Magluilo admitted that he had a "gym" bag with him in the hotel room. Tiffany Chaffee saw that Magluilo had a black bandana wrapped around a gun and had a "duffle" bag in the hotel room.<sup>1</sup> Chaffee also testified that Magluilo was a "nervous wreck" and appeared to be high.

Seeking to obtain methamphetamine, Lacy Smith and Todd Scruggs contacted the victim, Mark Cornett, to arrange a purchase. Mark Cornett met them in the parking garage of the Hilton Hotel and took \$200 cash as payment for the purchase of methamphetamine. He went alone to retrieve the methamphetamine and returned shortly without it or the money. Cornett

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<sup>1</sup> As described in more detail *infra*, the state introduced a picture of the bloody "gym" or "duffle" bag found near the crime scene as State Exhibit 45. At trial, Tiffany Chaffee identified the bag depicted in State Exhibit 45 as the same bag that Magluilo had with him in the Hilton hotel room. For the sake of clarity only, we refer to it as the "bag" for the remainder of this opinion.

indicated they would have to go to a casino near the Shreveport Airport (which is on Monkhouse Drive) to get the methamphetamine.

Cornett got in the driver's seat of his vehicle, while Todd Scruggs got in the front passenger seat and Lacy Smith got in the rear passenger seat. At Scruggs' direction, Cornett stopped in the parking lot of the Hilton and picked up Magluilo, who got in the rear driver-side seat carrying the bag. The four then proceeded along Interstate 20 and exited at Monkhouse Drive.<sup>2</sup>

Lacy Smith testified that, when the car stopped at the red light at the bottom of the exit ramp, she felt movement to her left. She turned and saw that Magluilo was holding a handgun to the back of Mark Cornett's head and then heard a loud bang. Todd Scruggs testified that he was looking to the right when the shot was fired. He heard a loud boom and saw a flash of light. Scruggs stated that after Magluilo shot Cornett and exited the car, Magluilo knelt down and put the handgun in the bag.<sup>3</sup>

After the shooting, Lacy Smith and Todd Scruggs fled the scene together. Magluilo made his escape separately. All three were on foot and contacted Ted Wheat for a ride.<sup>4</sup> Wheat, accompanied by Brooklin Pickett, first went to Monkhouse Drive to pick up Magluilo, but could not find him because he was not where he said he would be. Before Wheat and Pickett left, Lacy Smith contacted them by phone. They picked up Smith and Todd

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<sup>2</sup> Lacy Smith testified that there was not much talking during the ride, while Todd Scruggs testified that he and Cornett were laughing and joking.

<sup>3</sup> Smith testified that Scruggs urged Magluilo not to shoot her. Scruggs contradicted Smith on that point.

<sup>4</sup> Smith and Scruggs' efforts to get a ride from Wheat were independent from Magluilo's efforts to do the same.

Scruggs at the Moonrider Inn (located on Monkhouse Drive) and took them back to the Hilton Hotel.<sup>5</sup>

Magluilo called Ted Wheat again asking for a ride. Wheat obliged, picking up Magluilo at the Greenwood Road exit on Interstate 20 and taking him to Wheat's shop/residence. Initially, Pickett testified that Magluilo burned his pants at Wheat's shop because they had blood on them. Later, she partially recanted, stating that she actually did not know whose pants were burned and did not see Magluilo without pants.

Amanda Thompson testified that she picked up Magluilo from Ted Wheat's shop/residence and took him to her house. Tiffany Chaffee was already at Thompson's house at this point. Thompson and Chaffee both testified that Magluilo confessed to killing Mark Cornett. However, they reported slightly different explanations of Magluilo's motive.

Thompson testified that Magluilo said he killed Mark Cornett because Todd Scruggs told him to do so. Chaffee testified that Magluilo said he thought the car ride to the casino was a setup for Mark Cornett to kill him. Magluilo explained that he believed this because Todd Scruggs, during the ride, kept turning around and telling Magluilo that Cornett had a gun and was going to kill Magluilo. Magluilo told Chaffee that he shot Mark Cornett when Cornett stopped the car and bent over as if reaching for something. Both Chaffee and Thompson stated that Magluilo's story evolved from initially denying that he was the shooter to admitting he shot Mark Cornett.

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<sup>5</sup> Smith testified that, in the days following the shooting, Scruggs supplied her with methamphetamine. Scruggs, however, testified that Smith supplied him with methamphetamine during that time frame.

The gun and bag were found at a construction site near the crime scene. Chaffee and Thompson stated that Magluilo had Thompson drive past the construction site where Magluilo had left the gun and the bag. Chaffee and Thompson testified that they drove by the site but did not stop.

*Magluilo's police interview.* Magluilo did not testify at trial. He did give a recorded statement to the police on September 27, 2015, which was introduced into evidence and played for the jury. On the recording, Magluilo admitted to being at the Hilton with Danielle Davis, Tiffany Chaffee, Amanda Thompson, Todd Scruggs, and a woman Magluilo did not know. He also admitted to having with him his gym bag containing "all" his clothing. He further stated that he took the bag when he left the Hilton. He sat directly behind Cornett, who was driving.<sup>6</sup> However, Magluilo denied being in the car at the Monkhouse exit on Interstate 20, and he denied shooting Cornett. Magluilo claimed that, because Cornett appeared high and was swerving all over the road, he got out of Cornett's car at the intersection of Fairfield Avenue and Common Street around 9:00 or 10:00 p.m. on September 8, 2015. From there he walked to his girlfriend's house at 1070 Boulevard Street while carrying the bag containing all his clothing.<sup>7</sup> Once there, Magluilo did not see anyone, and after unsuccessfully trying to contact his girlfriend by throwing rocks at her window, he called his sister, Danielle Coats. Between midnight and 2:00 a.m. on September 9, 2015, she gave him a ride back to the Hilton to get his truck.

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<sup>6</sup> Magluilo stated that he really did not like Cornett for various reasons, and he was concerned about encountering Cornett because Cornett would try to fight him "or something like that" and had threatened to kill him "or something like that."

<sup>7</sup> One of the interviewing officers noted that it would have been a shorter walk to go back to the Hilton and retrieve his truck than to walk to 1070 Boulevard Street.

*The defense's witness.* Danielle Coats, Magluilo's sister, was the sole witness called by the defense. Her testimony contradicted Magluilo's recorded statement. She also contradicted Chaffee and Thompson regarding whom Magluilo was with and his whereabouts after leaving Ted Wheat's shop/residence in the early morning hours of September 9, 2015.

Coats testified that her first personal contact with Magluilo on September 9, 2015, was when she went to pick up her vehicle from Ted Wheat's shop/residence around 3:40 a.m.<sup>8</sup> According to Coats, Magluilo left Wheat's shop/residence with her, rather than with Chaffee and Thompson, around 4:30 or 5:00 a.m. and they went to a Motel 6 in Bossier City. She testified that Magluilo was with her intermittently throughout the day. She contradicted his statement that she had dropped him off at his truck at the Hilton. She also stated that she was on the phone with Magluilo at the time of the shooting. She said she heard a gunshot followed by shouting and screaming. Subsequently, she heard a car door open and close after which the call ended.

*The investigation.* At 3:15 or 3:30 a.m. on September 9, 2015, Mark Cornett's vehicle was discovered stopped at a traffic light on the Monkhouse Drive exit ramp on Interstate 20. The engine was still running. Sergeant Tracy Mendels of the Shreveport Police Department reported to the scene to document and collect forensic evidence. She found Cornett dead in the driver's seat with the seatbelt on, a burned-down cigarette between his

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<sup>8</sup> Coates testified that, on the night in question, she was returning from New Orleans, Louisiana, by bus, and arrived in Shreveport at approximately 3:00 a.m. on September 9, 2015.

fingers, and his right foot on the brake pedal.<sup>9</sup> A cell phone was beneath his left leg on the floor. Cornett's wallet was found, but no gun or other weapon. Blood poured down the back of the driver's seat and sprayed across the backseat. A smear of blood on the backseat suggested that someone may have moved across the backseat and exited the rear passenger side door, which was found open. Sergeant Mendels photographed the exterior and interior of the vehicle.

Sergeant Mendels collected fingerprints from inside and outside the vehicle, but none of the prints were viable enough to aid in identification. She collected swabs of the surfaces and blood inside the vehicle. These were sent to the North Louisiana Crime Lab for testing, along with a spent Hornaday 9 mm cartridge casing that was found on the ground outside the rear passenger door. Sergeant Mendels testified that a parking voucher from the Shreveport Convention Center parking garage was found in the vehicle and the receipt was dated and time stamped for September 9, 2015 at 2:30 a.m., just an hour before the body was discovered and 911 was called.

Sergeant Mendels testified that a bag was found at a construction site immediately North of the intersection of Monkhouse and Interstate 20. The bag contained "a lot" of men's clothing.<sup>10</sup> It contained live 9 mm cartridges, some of which were manufactured by Hornaday. The bag also had blood on it which was still wet. A 9 mm High Point semiautomatic handgun was found nearby at the same construction site. The gun had blood spatter on it,

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<sup>9</sup> A civilian witness testified that, before law enforcement arrived at the scene, another civilian put the car's transmission in park because Cornett's foot on the brake was the only thing keeping the car from moving.

<sup>10</sup> We note that Sergeant Mendels' statement that the bag had "a lot" of men's clothing in it is consistent with the defendant's statement that his bag had "all" his clothes in it.



and some of the cartridges in its magazine were manufactured by Hornaday Ammunition.

Dr. James Traylor, the forensic pathologist who performed the autopsy, testified that the cause of death was a single, close contact gunshot wound to the back of the head. He recovered the bullet from Mark Cornett's head in two fragments. The bullet was a jacketed hollow point, and its jacketing had separated from its core.

Carla White, a forensic firearm analyst, test fired a cartridge from the handgun found at the construction site and determined that this gun fired the 9 mm cartridge found by Mark Cornett's car. White compared markings on the test-fired projectile with the fragments recovered from Mark Cornett's head. She determined that the handgun found at the construction site had fired the bullet recovered from Cornett's head.

Audra Williams, a forensic DNA analyst, testified that DNA recovered from the gun matched a Chase Anderson and another person who was not identifiable. Detective Sherita Holden, the lead detective in this case, testified that she investigated Chase Anderson's possible involvement in the murder and determined that he had an alibi witness who would place him elsewhere the night of the murder.

## **DISCUSSION**

Magluido's sole assignment of error is that the evidence was insufficient to support his conviction for second degree murder. La. R.S. 14:30.1(A)(1) defines second degree murder as "the killing of a human being... [w]hen the offender has a specific intent to kill or inflict great bodily harm." The issue in this case is not whether it was sufficiently

proved that second degree murder was committed, but whether it was sufficiently proved that Magluilo is the person who committed the murder.

The standard of appellate review for a sufficiency of the evidence claim is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Tate*, 01-1658 (La. 5/20/03), 851 So. 2d 921, *cert. denied*, 541 U.S. 905, 124 S. Ct. 1604, 158 L. Ed. 2d 248 (2004); *State v. Carter*, 42,894 (La. App. 2 Cir. 1/09/08), 974 So. 2d 181, *writ denied*, 08-0499 (La. 11/14/08), 996 So. 2d 1086. The *Jackson* standard has been codified in La. C. Cr. P. art. 821 and is applicable in cases involving both direct and circumstantial evidence.<sup>11</sup>

*Jackson* does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the fact finder. *State v. Pigford*, 05-0477 (La. 2/22/06), 922 So. 2d 517; *State v. Dotie*, 43,819 (La. App. 2 Cir. 1/14/09), 1 So. 3d 833, *writ denied*, 09-0310 (La. 11/06/09), 21 So. 3d 297. “[I]t is the function of the jury, and not that of the appellate court, to assess the credibility of witnesses.” *State v. McKinney*, 31,611 (La. App. 2 Cir. 2/24/99), 728 So. 2d 1009. “In the absence of internal contradiction or irreconcilable conflict with physical evidence, one

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<sup>11</sup> An appellate court reviewing the sufficiency of evidence in such cases must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is so viewed, the facts established by the direct evidence and inferred from the circumstances established by that evidence must be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of every essential element of the crime. *State v. Sutton*, 436 So. 2d 471 (La. 1983); *State v. Speed*, 43,786 (La. App. 2 Cir. 01/14/09), 2 So. 3d 582, *writ denied*, 09-0372 (La. 11/06/09), 21 So. 3d 299.

witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion." *State v. Wiltcher*, 41, 981 (La. App. 2 Cir. 5/9/07), 956 So. 2d 769, citing *State v. Burd*, 40, 480 (La. App. 2 Cir. 1/27/06), 921 So. 2d 219, writ denied 2006-1083 (La. 11/9/06), 941 So. 2d 35.

The arguments that Magluilo asserts in support of his assignment of error are as follows: (1) State witnesses Lacy Smith and Todd Scruggs have been in "much prior trouble." At the time of the trial, both were drug users and had narcotics offenses in their criminal histories. Additionally, Todd Scruggs' criminal history includes an armed robbery. (2) Todd Scruggs and Lacy Smith had the same opportunity to commit the murder as did Magluilo, since Scruggs and Smith were both in the vehicle at the time of the shooting. Thus, assuming they committed the crime, they have the incentive to falsely accuse Magluilo. (3) While DNA was found on the murder weapon, none of it proved to belong to Magluilo.<sup>12</sup> Additionally, the defense points out that there were no fingerprints linking Magluilo to the murder. Magluilo also asserts that (4) "many of the state's witnesses' testimony made no sense or was conflicting with evidence," and that "in this case, there is internal contradiction and irreconcilable conflict."

Magluilo's two arguments regarding state witnesses Todd Scruggs and Lacy Smith amount to nothing more than attacks on their credibility. The first argument seeks to impeach their credibility on the basis of their prior felony convictions. The second argument is also a credibility attack,

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<sup>12</sup> The defense brief states that Magluilo's DNA was not found on the gun. This is not precisely or necessarily true. The testimony of Audra Williams, the only DNA expert who testified, indicates that the DNA found on the gun included: (1) that of Chase Anderson, who was excluded as a suspect via alibi; and (2) a contributor of DNA who was unidentifiable – and thus *could* have been Magluilo.

and is premised on the assumption that Scruggs and/or Smith committed the murder. From that assumption, Magluilo reasons that these witnesses therefore had the incentive to falsely accuse him as a means of escaping prosecution themselves. *McKinney, supra*, makes clear that it is the function of the jury – not that of the appellate court – to determine witness credibility. Thus these arguments are meritless.

Magluilo's argument that the evidence was insufficient because his DNA was not proved to be on the murder weapon and there was no fingerprint evidence linking him to the murder is also meritless. There is no requirement that the state prove second degree murder with fingerprint or DNA evidence. La. R.S. 14:30.1.

Finally, the defense argument that the testimony of "many of the state's witnesses...made no sense or was conflicting with evidence," and "in this case, there is internal contradiction and irreconcilable conflict" also lacks merit. The defendant cites no specific facts whatsoever to support these conclusory allegations. Nor do we find any evidence in the record which would potentially render the evidence insufficient. We do note that Lacy Smith and Todd Scruggs contradicted each other regarding (1) whether there was conversation in the car prior to the shooting; (2) whether, in the days following the shooting, Scruggs was supplying Smith with methamphetamine or *vice versa*; and (3) whether Scruggs told Magluilo not to shoot Smith right after Cornett was shot. Bearing in mind the totality of the evidence, these contradictions are immaterial and do not render the evidence insufficient. This is especially so when the evidence is viewed in the light most favorable to the prosecution.

Tiffany Chaffee saw Magluilo with a gun wrapped in a black bandana and carrying the gym/duffle bag at the Hilton shortly before the murder. In the parking lot of the Hilton, Todd Scruggs and Lacy Smith saw Magluilo get into Mark Cornett's vehicle carrying the bag. Lacy Smith testified that during the ride, the bag sat on the backseat between her and Magluilo.

Lacy Smith testified that she saw Magluilo shoot Cornett in the back of the head. Todd Scruggs testified that he heard a loud boom and saw a flash of light; he looked left and saw that Mark Cornett was shot in the head, and saw Magluilo put the gun in the bag after he exited the car.

The bag Magluilo was carrying was found at a construction site near the crime scene still wet with blood. It contained men's clothes and Hornaday 9 mm bullets, *i.e.*, the same type of ammunition that was used to kill Cornett. The bag and clothing found inside the bag contained DNA (blood) belonging to the victim. The gun used to shoot Cornett was also found hidden within 50 feet of the bag. Magluilo admitted to Tiffany Chaffee and Amanda Thompson that he shot Mark Cornett and that he left his bag and the gun at a construction site near the crime scene.

The evidence presented at trial established that Magluilo shot Mark Cornett with specific intent to kill or inflict great bodily harm. Expert testimony by Dr. Traylor established that Mark Cornett was killed by a single, close-contact gunshot to the back of the head. Magluilo shot Mark Cornett in a manner that left no doubt that he would die.

Expert testimony by Sergeant Mendels – as well as observations by the eyewitnesses to the shooting and the citizens who discovered the crime – established that Mark Cornett was killed inside the vehicle. There was no damage to the outside of the vehicle. There were no windows shot out, and

nothing appeared to be missing from the victim, not even his wallet. There was no evidence of a drive-by shooting, robbery, or even a struggle. There was no evidence that suggested Cornett was an aggressor. There was no gun or other weapon recovered from the car or Cornett's person to support an argument that Magluilo was acting in self-defense.

Finally, Magluilo's own sister testified to hearing a gunshot accompanied by screaming while on the phone conversing with him. She then heard a car door open and close before the phone call ended.

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 to be proved beyond a reasonable doubt. The evidence at trial was constitutionally sufficient to convict Magluilo of second degree murder.

#### **CONCLUSION**

For the reasons stated above, Dylan Magluilo's conviction and sentence for second degree murder are AFFIRMED.

SECOND CIRCUIT COURT OF APPEAL  
NO. 52,227-KA

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STATE OF LOUISIANA

APPELLEE,

DYLAN MAGLUILO

APPELLANT.

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ON APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF CADDO, STATE OF LOUISIANA  
NUMBER 335,569 CRIMINAL DOCKET  
HONORABLE KATHERINE DORROH JUDGE PRESIDING

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ORIGINAL BRIEF ON THE MERITS  
ON BEHALF OF  
THE STATE OF LOUISIANA, APPELLEE

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COURT OF APPEAL

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MAY IT PLEASE THE COURT:

Appellant, Dylan Magluilo, was indicted by a Caddo Parish Grand Jury on December 10, 2015, with the second degree murder of Mark Anthony Cornett on September 9, 2015. R. 6. Various pre-trial motions were filed and resolved. A jury trial commenced on November 17, 2017, and ended with a unanimous jury verdict of guilty as charged on November 10, 2017. He was sentenced to the mandatory sentence of life imprisonment without benefit of probation, parole, or suspension of sentence on November 20, 2017. From this conviction and sentence, Appellant lodges this appeal with a lone assignment of error urging insufficient evidence. The State will address the facts in the assignment of error in consideration for judicial economy.

**ASSIGNMENT OF ERROR NO. 1**

This assignment of error is directed to a claim of insufficient evidence suggesting internal contradiction and irreconcilable conflict with the testimony of witnesses. Appellant's argument in brief requests this court to re-evaluate the evidence/testimony by urging consideration be given to credibility and weight of evidence issues that are outside the scope of review by this court.

La. R.S. 14:30.1 defines the crime of Second Degree Murder. On September 9, 2015, Mark Cornett was driving an automobile with Todd Scruggs sitting in the front passenger seat. In the rear passenger seat were Lacey Smith, directly to the rear of Scruggs, and Dylan Magluilo, directly behind the victim, Mark Cornett. The group was seeking illegal narcotics. Around 3:00 or 3:30 a.m., Cornett with the aforementioned passengers in the same positions, were westbound on Interstate 20 in Caddo Parish and exited at Monkhouse Drive. Cornett stopped the vehicle at the I-20 exit ramp and Monkhouse Drive. At this point, Magluilo pointed a 9

millimeter handgun at the back of Mark Cornett's head and fired. The shot killed Cornett instantly. Scruggs and Smith fled the vehicle as they thought they would be shot also. Scruggs and Smith reported what happened to the police within a few hours of their departure from the scene.

Lacey Smith met up with Todd Scruggs earlier in the evening and eventually went to the Hilton Hotel with him and three other women. R. 888. Todd went inside the hotel with the three women while Lacey remained in the vehicle. He alone came out minutes later to leave in pursuit of the drug, methamphetamine. R. 890. Lacey contacted Mark Cornett about getting some drugs. Cornett came to the Hilton and Scruggs gave him \$200 to buy some meth. R. 893. Mark left for a few minutes and came back to report they had to go to Monkhouse Drive to get it. At this point, Mark picked up Appellant at the Hilton before they departed the area. Magluilo got into the rear passenger seat behind Cornett. R. 896. Smith had met Appellant one other time.

The vehicle traveled I-20 to Monkhouse exit where the vehicle stopped for a red light at the exit ramp intersection with Monkhouse. She felt a movement next to her. She looked to Appellant seated to her left. He had a gun out and shot Cornett in the back of his head. R. 897. She started screaming and asking Magluilo why he did he shoot him. Magluilo then pointed the gun at her. She grabbed her purse and ran. As she looked back, she saw Todd and Appellant in the street as Todd shoved Magluilo, telling him not to shoot her. Under cross-examination, Smith admitted she was in shock after the shooting. R. 912, 913. Smith ended up crossing I-20 headed toward the airport.

Todd caught up with Smith as she was running toward the airport. Smith reached the Moonrider Motel with Todd where the security guard let her use the

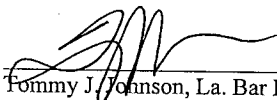
telephone. R. 899. Todd made contact with a person by the name of Ted Wheat to come and get them. Wheat was accompanied by a woman with blonde hair.

Later that morning, Smith met with detectives of the Shreveport Police Department to give a statement along with Todd Scruggs and their attorney, Peter Flowers. At trial, Smith admitted to taking drugs before and after the homicide. In fact, Smith stated she was around Todd Scruggs for about three days after the homicide. During that time, Scruggs supplied Smith with drugs and she used them to help her deal with what she had witnessed. R. 920.

Todd Scruggs testified during the State's case in chief. R. 949. Scruggs had not known Appellant very long before September, 2015, about nine months. R. 951. He knew Mark Cornett about the same length of time. Scruggs admitted to using drugs on that evening along with Lacey Smith and others. R. 953. Lacey Smith made contact with Cornett to try and score some drugs. As they were leaving the Hilton parking garage, Scruggs called Magluilo to see if he wanted to ride along and he did. Magluilo got into the vehicle behind Cornett at the Hilton. R. 956. Cornett drove from the Hilton towards I-20 and from there to Monkhouse Drive.

Scruggs described the drive to Monkhouse Drive was without any tension between anyone in the vehicle. After the vehicle stopped at the red light to the Monkhouse exit ramp, he heard a loud boom and saw a flash. He looked to Cornett and saw his head looking to the ceiling. He observed he had been shot in the head. R. 958. Scruggs identified Magluilo as the person that shot Cornett. Under cross-examination, he admitted he did not actually see Appellant pull the trigger to kill Cornett, but he did see him with a gun immediately afterwards. R.

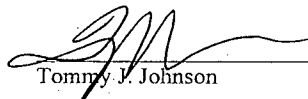
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CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing Original Brief of Appellee has been sent by first-class U.S. Mail to Carey J. Ellis, III, P. O. Box 719, Rayville, LA 71269 and to Dylan Magluilo #725838, Louisiana State Penitentiary, Angola, LA 70712 and to the Honorable Katherine Dorroh by hand delivery this 11th day of May, 2018.

I HEREBY VERIFY that all attachments to this brief have previously been duly filed and/or accepted into evidence in the lower court, to the best of my knowledge and belief. I understand that failure to comply with this local rule may result in the refusal to consider said attachments. WILLFUL FAILURE TO COMPLY WITH THIS LOCAL RULE MAY SUBJECT ME TO PUNISHMENT FOR CONTEMPT OF COURT.

  
Tommy J. Johnson

SECOND CIRCUIT COURT OF APPEAL

OF THE

STATE OF LOUISIANA

\* \* \* \* \*

DOCKET NUMBER 52,227-KA

\* \* \* \* \*

STATE OF LOUISIANA

PLAINTIFF-APPELLEE

VERSUS

**DYLAN MAGLUILO**

DEFENDANT-APPELLANT

\* \* \* \* \*

ON APPEAL FROM THE FIRST JUDICIAL  
DISTRICT CRIMINAL IN AND FOR THE PARISH  
OF CADDO, STATE OF LOUISIANA, HONORABLE  
KATHERINE DORROH, PRESIDING IN NUMBER 335569

\* \* \* \* \*

**CRIMINAL APPEAL**

ORIGINAL BRIEF ON BEHALF OF

DEFENDANT - APPELLANT

**DYLAN MAGLUILO**

\* \* \* \* \*

**LOUISIANA APPELLATE PROJECT**

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### **JURISDICTION**

A grand jury convened in Caddo Parish on December 10, 2015, and a true bill was rendered charging Mr. Dylan Magluilo with the second degree murder of Mark Cornett in violation of R.S. 14:30.1. (Rec. p. 6.) On May 26, 2017, the State filed notice of its request for sentencing enhancement due to the use of a firearm. C.Cr.P. art. 893.1 and art. 893.3. (Rec. pp. 2, 451-53.) He was convicted by the jury's unanimous vote on November 10, 2017. (Rec. pp. 4, 1404-05.) Mr. Magluilo was sentenced to the mandatory term of the rest of life at hard labor without benefits on November 20, 2017. (Rec. pp. 4, 1408-10.)

On the basis of the finality of this conviction and the life sentence imposed, jurisdiction vests in this Honorable Court pursuant to the provisions of the Louisiana Code of Criminal Procedure, Articles 911 and 912 and the provisions of the Louisiana Constitution, Article V, Section 10.

### **STATEMENT OF THE CASE AND ACTION OF TRIAL COURT**

A true bill of a grand jury was returned accusing Mr. Dylan Magluilo with the second degree murder of Mark Anthony Cornett. (Rec. p. 6.) The incident giving rise to this allegation occurred on September 9, 2015, in Shreveport, Louisiana. On December 15, 2015, Mr. Dylan Magluilo waived formalities and pled not guilty to the indictment. (Rec. p. 1.) Discovery was requested by the Defense and provided by the State prior to trial. The Trial in this cause began on November 7, 2017, with jury selection. (Rec. p. 3.) On November 20, 2017, he was found to be guilty as charged of the second degree murder of Mark Cornett. (Rec. pp. 4, 1404-05.) Mr. Magluilo was sentenced on November 20, 2017, to life in prison, without the benefit of parole, probation or suspension of sentence. (Rec. pp. 4, 1408-10.) Motion for an appeal was

made, the Louisiana Appellate Project was appointed, and on behalf of Mr. Magluilo  
this brief timely follows.

**ASSIGNMENT OF ERROR**

The State failed to present sufficient evidence to support the verdict of second degree murder.

### **ISSUE PRESENTED**

Was the evidence sufficient to support this verdict of second degree murder?

### **STATEMENT OF THE FACTS**

On September 9, 2015, Mark Cornett was shot one time in the back of his head which resulted in his immediate death. Dr. James Traylor testified that the weapon that killed Mark Cornett was fired from a close distance. (Rec. p. 1017.) This incident occurred at Monkhouse Drive and the I-20 at the stoplight at the end of the west bound exit at Monkhouse Drive. (Rec. p. 1022.) Mark Cornett was the driver of a black Lincoln and the passengers were Lacey Smith, Todd Scruggs and the accused, Dylan Magluilo. All four were drug users and were participants of the drug culture.

Lacey Smith testified that she had only met Todd Scruggs once before this incident which occurred in the early morning hours of September 9, 2015. (Rec. p. 885.) According to her testimony at trial, Todd Scruggs picked her up and the two ended up at the Hilton Hotel in downtown Shreveport. (Rec. p. 889.) The two left from the Hilton after dropping off other girls that Todd Scruggs had in the car. Lacey Smith and Todd Scruggs were trying to find someone to buy drugs from. (Rec. p. 890.) She said that she contacted her friend of about one year, Mark Cornett, who she used methamphetamine with to try to get drugs. (Rec. p. 891.) Mark Cornett met Todd Scruggs and Lacey Smith back at the Hilton parking lot and after an attempt by Mark Cornett to buy drugs from another, he said they had to drive to Monkhouse Drive to get drugs. (Rec. p. 894.) Lacey Smith said that she was in the rear passenger's seat, that Todd Scruggs was in the front passenger's seat. At this point, still in the parking lot, she testified that Dylan Magluilo was in the lot with a duffle bag and that he also got in the car behind Mark Cornett. (Rec. p. 896.) The four then

drove on the interstate to Monkhouse drive and after exiting, came to a stop at the red light at the end of the exit ramp. Lacey Smith alleged that while stopped at the red light, she saw movement to her left and when she looked, she said that Dylan Magluilo had a gun and that he shot Mark Cornett in the back of the head. (Rec. p. 897.) Lacey Smith said that she started screaming and she ran. She said that she ran to the Day's Inn across the I-20 and since she had drugs in her purse, she threw the whole purse away. During her run, she looked back and said that she saw Todd Scruggs push Dylan Magluilo and tell him "not to shoot her." (Rec. p. 898.) Todd Scruggs caught up with her and she said they ended up at the Moonrider Motel where she was able to use a security guard's phone to try to get her mother to come pick them up but when her mother could not, Todd Scruggs was able to get Ted Wheat to pick them up. (Rec. p. 900.) After going back to the Hilton, she said that she and Todd Scruggs ended up back up at Ted Wheat's house and from there, the two went to a local attorney and then to the police station. (Rec. p. 903.) She was interviewed by detectives and then released after giving her statement. (Rec. p. 904.)

Todd Scruggs also claimed that Mr. Magluilo shot Mark Cornett. After testifying similarly as Lacey Smith, he said that after stopping at the stoplight at the Monkhouse exit off of the interstate, he heard a loud boom and saw a flash. (Rec. p. 958.) Todd Scruggs said that he looked over and Mark Cornett had been shot and he further stated that Dylan Magluilo had shot him. (Rec. p. 959.) After Lacey Smith started running, Todd Scruggs said that he ran after her and Dylan Magluilo was following. He said that he stopped and told Dylan Magluilo to run and that Magluilo ran the other direction. Todd Scruggs also gave statements to the police after meeting his local attorney. (Rec. p. 963.) He was released after talking with the detectives.

Dylan Magluilo was later arrested, charged with and subsequently convicted of second degree murder.

### **SUMMARY OF THE ARGUMENT**

#### **Insufficient Evidence**

The evidence in this case is insufficient to support the jury verdict of second degree murder. The evidence presented at trial fails to show that Dylan Magluilo is guilty of the second degree murder of Mark Cornett.

### **ARGUMENT**

Second degree murder is a killing when the offender has the specific intent to kill or to inflict great bodily harm. R.S. 14:30.1. The Fifth Amendment to the U.S. Constitution provides that no person shall be "deprived of life, liberty, or property without due process of law." The Fourteenth Amendment imposes the same due process requirement on the States. Implicit in the due process clause is the protection of an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). An accused is entitled to an appellate review of the evidence to the extent that it supports a finding of guilt beyond a reasonable doubt. Jackson v. Virginia, supra.

The constitutional standard for testing the sufficiency of the evidence as enunciated in Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979), requires that a conviction be based upon proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. State v. Bellamy, 599

So.2d 326 (La.App. 2 Cir.), writ denied, 605 So.2d 1089 (1992). This standard is now legislatively embodied in C.Cr.P. Art. 821 and to convict, the State must prove each element of the crime beyond a reasonable doubt. C.Cr.P. Art. 821. It is applicable in cases involving both direct and circumstantial evidence. State v. Cotton, 634 So.2d 937 (La.App. 2d Cir. 1994). All evidence must be sufficient to satisfy a rational juror that the Defendant is guilty beyond a reasonable doubt.

It is acknowledged that it is not the function of appellate courts to reevaluate the credibility of witnesses and then proceed to overturn factual determinations of guilt. State v. Richardson, 425 So. 2d 1228 (La. 1983); State v. Lewis, 577 So. 2d 799 (La.App. 2 Cir. 1991). Absent internal contradiction or irreconcilable conflict with physical evidence, one witness' testimony, if believed by the trier of fact, is sufficient support for the requisite factual conclusion. State v. Wiltcher, 41,981 (La. App. 2d Cir. 5/9/07), 956 So. 2d 769; State v. Burd, 40,480 (La. App. 2d Cir. 1/27/06), 921 So. 2d 219, writ denied, 2006-1083 (La. 11/9/06), 941 So. 2d 35.

In this case, there is internal contradiction and irreconcilable conflict. The testimony from various witnesses revealed that both Lacey Smith and Todd Scruggs had been in much prior trouble. One of Todd Scruggs prior offenses was an armed robbery. (Rec. p. 950.) Both were drug users and had narcotic offenses in their past criminal history. Mark Cornett was also heavily involved in drugs. The testimony of the only two people at the incident, Todd Scruggs and Lacey Smith, is suspect and self serving. Either one could have just as easily shot Mark Cornett as they both allege that Mr. Magluilo did. Many of the State's witnesses' testimony made no sense or was conflicting with evidence. A gun, a .9 millimeter Hi-point pistol, was found and after being tested and compared with the bullet from Mark Cornett's head, it was

determined that this was the gun used to shoot Mark Cornett. (Rec. p. 1236.) However, although there was DNA other than the Defendant's, his DNA was not found on the pistol. (Rec. pp. 1215-16.) There were no fingerprints linking this shooting with Dylan Magluilo.

Under all of these circumstances, it is requested that this Court evaluate the evidence presented at trial to determine whether it was sufficient to sustain the conviction. When a conviction is reversed for insufficient evidence, the double jeopardy provision of Article I, Sec. 15 of the Louisiana Constitution and the Fifth and Fourteenth Amendments to the United States Constitution prohibit a retrial of the defendant. Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978); State v. Williams, 423 So.2d 1048 (La. 1982). Consequently, Dylan Magluilo should be ordered discharged.



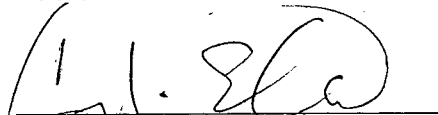
**CONCLUSION**

The verdict of second degree murder should be reversed as the State failed to establish proof sufficient to show that the Defendant, Dylan Magluilo, murdered Mark Cornett. Consequently, Mr. Magluilo should be ordered discharged.

Respectfully submitted,

**LOUISIANA APPELLATE PROJECT**

April 26, 2018

  
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**CERTIFICATE**

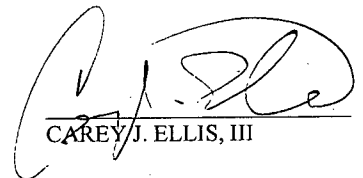
I hereby certify that copies of the foregoing original brief of Appellant, Dylan Magluilo, have been served upon:

1. The State of Louisiana by mailing a copy to the Office of the District Attorney, Attention Appeals, Courthouse, 501 Texas Street, Shreveport Louisiana 71101;
2. The Trial Court, by mailing a copy to Honorable Katherine Dorroh Judge, First Judicial District, at her address of Courthouse, 501 Texas Street, Shreveport, Louisiana 71101;
3. Trial Counsel, Zachary R. Moffett, at his address of 9335 Ellerby Road Shreveport, Louisiana 71106; and,
4. Appellant, Mr. Dylan Magluilo, DOC Number 725838 at his present address of Louisiana State Prison, 17544 Tunica Trace, Angola, Louisiana 70712.
5. Along with his copy of the brief, I have also forwarded Mr. Magluilo the required and properly completed *Pro Se Briefing Notice to Defendant* and I have forwarded a copy to This Court. I did not receive transcripts or the record on behalf of Mr. Magluilo.

The above named parties constitute all opposing counsel, the Trial Court, Trial Counsel and the Appellant in this proceeding, State versus 52,227-KA Dylan Magluilo.

I hereby verify that all attachments to this brief have previously been duly filed and/or accepted into evidence in the lower court, to the best of my knowledge, information and belief. I understand that failure to comply with this local rule may result in the refusal to consider said attachments. I understand that willful failure to comply with this Local Rule may subject me to punishment for contempt of Court.

April 26, 2018

  
CAREY J. ELLIS, III