No. 19-7889

In The
Supreme Court of the United States
_____ Term, 2020

Walter Rosario-Colon — Appellant

v.

STATE OF LOUISIANA — Appellee(s)

On Petition for a Writ of Certiorari to

LOUISIANA FIRST CIRCUIT COURT OF APPEAL

ORIGINAL

Walter Rosario-Colon #737285
MPEY/Spruce-4
La. State Penitentiary
Angola, LA 70712

PREPARED BY:
David Constance #304580
Offender Counsel Substitute III
Main Prison Legal Aid Office
Criminal Litigation Team
La. State Penitentiary
Angola, LA 70712

QUESTION(S) PRESENTED

1. **Reasonable jurists would determine that Walter Rosario-Colon acted in self-defense when he struck Antonio Aguado. In the alternative, there was insufficient evidence to prove that Mr. Rosario-Colon is guilty of Second Degree Murder.**

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows.

District Attorney's Office
Parish of Terrebonne
7856 Main Street, Ste. 220
Houma, LA 70360

Jeff Landry - Louisiana Attorney General
P.O. Box 94005
Baton Rouge, LA 70804-9005

Darrel Vannoy, Warden
Louisiana State Penitentiary
General Delivery
Angola, LA 70712

TABLE OF CONTENTS:

Page

INDEX TO APPENDICES AND EXHIBITS

TABLE OF AUTHORITIES: Page

U.S. CONSTITUTION:

FEDERAL CASES:

STATUTORY PROVISIONS:

STATE CASES:

MISCELLANEOUS:

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "D" to the petition and is the Louisiana Supreme Court in Docket Number 2019-KO-01860.

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the First Circuit Court of Appeal appears at Appendix "B" to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was January 28, 2020. A copy of that decision appears at Appendix "D".

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This conviction was obtained in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Specifically, Mr. Rosario-Colon was denied the right to a fair and impartial trial due to the fact that the time limitations had expired for prosecution.

NOTICE OF PRO-SE FILING

Mr. Rosario-Colon requests that this Honorable Court view these Claims in accordance with the rulings of ***Haines v. Kerner***, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Mr. Rosario-Colon is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court.

REASONS FOR GRANTING THE PETITION

In accordance with this Court's *Rule X, § (b) and (c)*, Mr. Rosario-Colon presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

This Court must note that the Courts in the State of Louisiana have erred in failing to determine that the State has failed to overcome Mr. Rosario-Colon's defense of self-defense in this matter. The Record

is replete with evidence that he had acted in self-defense of himself and others when accosted by a "highly intoxicated" Mr. Aguado. The evidence adduced during the course of the trial showed that Mr. Rosario-Colon ***reasonably believed*** that his life was in danger and that he did not have the opportunity to retreat.

In fact, the owner of the Los Amigos Bar had threatened to have Mr. Aguado removed from the bar due to his high level of intoxication and the fact that he was acting aggressively toward other patrons of the bar immediately prior to his confrontation with Mr. Rosario-Colon.

STATEMENT OF THE CASE AND ACTION OF TRIAL COURT

This is a criminal case resulting in a conviction. On November 15, 2016, the Grand Jury of Terrebonne Parish returned "A True Bill" charging Walter Rosario-Colon with Second Degree Murder of Antonio Aguado on September 18, 2016, a violation of LSA-R.S. 14:30.1. Mr. Rosario-Colon pled not guilty (Rec.pp. 2, 3, 28).

The matter was tried before a jury on July 16, 17, 18, 19, 20, 23, 24, and 25, 2018. Mr. Rosario-Colon was found guilty as charged of Second Degree Murder (Rec.p. 25). Mr. Rosario-Colon filed a Motion for New Trial and a Motion for Post-Verdict Judgment of Acquittal, which the Court denied (Rec.p. 26). The court sentenced Mr. Rosario-Colon to life at hard labor in the Louisiana Department of Public Safety and Correction without the benefit of Probation, Parole, or Suspension of Sentence (Rec.p. 24).

Mr. Rosario-Colon timely filed his Appeal on April 16, 2019, through Bertha M. Hillman of the Louisiana Appellate Project. On September 27, 2019, in Docket No.: 2019-KA-0406, the Louisiana First Circuit Court of Appeal affirmed Mr. Rosario-Colon's conviction and sentence. On October 22, 2019, Mr. Rosario-Colon timely filed his Pro-Se Writ of Certiorari to the Louisiana Supreme Court. Mr. Rosario-Colon was denied relief on January 28, 2020 in Docket No.: 2019-KO-01806.

Mr. Rosario-Colon now timely files for Writs of Certiorari to this Honorable Court, and respectfully requests that this Honorable Court exercise its Supervisory Authority of Jurisdiction over the lower courts for the following reasons to wit:

STATEMENT OF THE FACTS

Walter Rosario-Colon is an American citizen who grew up in Puerto Rico where he worked as a police officer for eight years. After he was injured in a car accident and then a motorcycle accident, he was unable to work as a police officer. He had an exemplary career as a police officer and was never reprimanded or disciplined. He eventually moved to Louisiana to work as a welder in a plant in Morgan City (Rec.pp. 1335-1340).

On September 16, 2017, Mr. Rosario-Colon worked all day. At eight o'clock in the evening, he went to Los Amigas Bar with his girlfriend, Katherine Batista, to play pool and watch a boxing match on TV. When they arrived they joined friends who were celebrating a birthday. They ordered a bucket of beer, and after the boxing match. Mr. Rosario-Colon played pool for a while and returned to the table (Rec.pp. 1301, 1351).

Antonio Aguado and Filiberto Mendez were friends who had been drinking since nine in the morning and had already consumed at least ten beers each when they arrived at Los Amigos at twelve-thirty in the evening. Filiberto's wife, Anna was with them. Antonio and Filiberto appeared to be drunk when they arrived. They sat at the table with Katherine and Mr. Rosario-Colon and ordered more beer. Mr. Rosario-Colon knew Filiberto, but had never met Antonio or Filiberto's wife (Rec.pp. 845, 811-2).

Mr. Rosario-Colon left the table for another round of pool. The testimony is conflicting concerning the events that followed. However, all parties agreed that Antonio and Filiberto were intoxicated. Filiberto admitted that at this point they had each consumed fifteen beers. Dr. Charles Ledoux testified that at the time of his death, Antonio was "clearly intoxicated" with a blood alcohol level of .237,

almost three (3) times the legal limit of .08 to determine intoxication for drivers (Rec.pp. 592, 605, 577).

Katherine testified that after Mr. Rosario-Colon left the table, Antonio began looking at her in a way that intimidated her and made her feel uncomfortable. Mr. Rosario-Colon noticed that Katherine appeared to be uncomfortable and came to the table to speak to Antonio. After Mr. Rosario-Colon and Antonio spoke softly, Mr. Rosario-Colon returned to the pool table and continued playing pool (Rec.pp. 815, 833, 1305, 1307).

Antonio and Filiberto rose from the table and approached Mr. Rosario-Colon who was still playing pool and had a pool stick in his hand. The testimony is conflicting concerning the manner in which the two drunk men approached him, but, Mr. Rosario-Colon testified that they approached him in a threatening and aggressive manner as if to attack him. This was corroborated by defense witnesses. Mr. Rosario-Colon swung at Antonio once with the pool stick and hit Filiberto with his fist. Both men fell to the floor. Antonio died shortly after he fell.

One of the bar patrons attempted to revive Antonio after he fell, but Filiberto pushed her away and tried to revive Antonio himself. Testimony from defense witnesses indicated that Filiberto was so drunk he kept dropping Antonio's head on the floor causing injury. When the medics arrived, they moved Antonio to administer CPR. As blood stain from dripping blood on a corner post indicated that Antonio may have hit his head on the post (Rec.pp. 976-7, 990, 1014-8, 1249-50). Because the scene was contaminated by the efforts to revive Antonio, it was difficult to determine exactly what caused his death. The coroner determined that an opened head injury, depressed skull fracture, destruction of cerebral matter and alcohol all contributed to his death (Rec.pp. 594, 612, 643).

Mr. Rosario-Colon and Katherine left the bar. Mr. Rosario-Colon testified that when they left, they did not realize that Antonio had died. After Mr. Rosario-Colon was told that Antonio had died, he

turned himself in to the police and was cooperative.

STANDARD OF REVIEW

In *State v. Ashley*, 33,880, at *3 (La. App. 2nd Cir. 10/04/00), 768 So.2d 817, 819, the Court noted that, "the accused may be entitled to an acquittal ... if a rational trier of fact viewing the evidence in accord with *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the elements of the offense have been proven beyond a reasonable doubt."

Furthermore, criminal statutes of limitation are to be liberally construed in favor of repose in favor of the defendant. *U.S. v. Marion*, 404 U.S. 307, 92 S.Ct. 45, 30 L.Ed.2d 468.

LAW AND ARGUMENT

ISSUE NO. 1

Walter Rosario-Colon acted in self-defense when he struck Antonio Aguado. In the alternative, there was insufficient evidence to prove that Mr. Rosario-Colon is guilty of Second Degree Murder.

Walter Rosario-Colon, a former police officer, had no history of violent behavior and no criminal history. He had a good work ethic, maintained steady employment and sent money to his family in Puerto Rico to help support them. He was in a stable relationship with Katherine Batiste. On the night of Antonio's death he went to Los Amigos Bar to meet friends, play pool and watch a boxing match.

On direct examination in the following exchange with his attorney, Mr. Rosario-Colon testified that he swung the pool stick to block the hit and to defend himself.:

Q: Why did you do that?

A: To block the hit and defend myself.

Q: Were you afraid?

A: Yes – at that moment I felt not scared – scared, but I just wanted to block it. I don't know what it was he was trying to do. Of what to escape from. And the Twerkas (Filiberto) almost immediately – they both were coming at me running. He came at me, too, from the side, to hit me, so I hit.

Q: How hard did you hit him?

A: The truth is I don't know because it was a reaction.

Q: Did you think about what you were doing?

A: No.

Q: Why did you do it, then?

A: To defend myself, to block an attack.

Q: What were you afraid of Walter?

A: That he would hit me – for my life (Rec.pp. 1354-5).

These words negate specific intent to kill or inflict great bodily harm and confirm that Mr. Rosario-Colon was acting in self-defense.

Regarding a claim of self-defense in a homicide case, the State must prove, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. A "self-defense defense" in a homicide prosecution falls under LSA-R.S. 14:20, the Justifiable Homicide statute, which provides: "A homicide is justifiable ... (1) [w]hen committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing was necessary to save himself from danger."

Factors to consider in determining whether a defendant had a reasonable belief that the killing was necessary are the excitement and confusion of the situation, the possibility of using force or violence short of killing, and the defendant's knowledge of the assailant's bad character. ***State v. Hardeman***, 467 So.2d 1163 (La. App. 2nd Cir. 1985). Although there is no unqualified duty to retreat, the possibility of escape is a factor to consider in determining whether a defendant had a reasonable belief that the use of deadly force was necessary to avoid the danger. ***State v. Brown***, 414 So.2d 726 (La. 1982).

The record supports a finding of Justifiable Homicide. Antonio and Filiberto were highly intoxicated and approached Mr. Rosario-Colon together. He did not approach them. If Antonio wanted to approach Mr. Rosario-Colon in a conciliatory manner, as the State suggested, there was no reason

for Filiberto to accompany him. Mr. Rosario-Colon already had the pool stick in his hand. He did not grab it to attack. He was playing pool with the pool stick. It is unlikely that Mr. Rosario-Colon had the intent to kill anyone. He was not armed with a gun, a knife, or a broken bottle.

A reasonable hypothesis of innocence is that he saw two drunk men aggressively approaching him, and he instinctively swung the pool stick in his hand to protect himself and avoid an attack. Mr. Rosario-Colon's background as a police officer, his history of non-violent behavior and his stable lifestyle support a finding of Justifiable Homicide.

If this Court finds there was no justification for the killing, and Mr. Rosario-Colon did not act in self-defense, the evidence is insufficient to support a conviction of Second Degree Murder. Second Degree Murder is "the killing of a human being ... when the offender has a specific intent to kill or inflict great bodily harm." LSA-R.S. 14:30.1(A)(1).

To convict Mr. Rosario-Colon of Second Degree Murder, the State had to prove beyond a reasonable doubt that Mr. Rosario-Colon specifically intended to kill Antonio. Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. LSA-R.S. 14:10(1). It may be inferred from the defendant's actions and the circumstances of the transaction. ***State v. Brown***, 907 So.2d 1 (La. 4/12/05).

The State failed to prove beyond a reasonable doubt that Mr. Rosario-Colon had the specific intent to kill. Proof of specific intent is required where the statutory definition of a crime includes the intent to produce or accomplish some prescribed consequence. Second Degree Murder is a crime of specific intent. ***State v. Fuller***, 414 So.2d 306 (La. 1982); ***State v. Graham***, 420 So.2d 679 (La. App. 2nd Cir. 1988).

In reviewing the sufficiency of the evidence to support a criminal conviction, the Due Process

Clause of the Fourteenth Amendment to the United States Constitution requires the Court to determine whether the evidence is minimally sufficient. A complete reading of the transcript of this trial shows that the State failed to meet the burden of ***Jackson v. Virginia***, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

In ***Jackson v. Virginia***, supra, the United States Supreme Court set out the standard by which appellate courts are to review the sufficiency of the evidence in criminal prosecutions:

> The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt.

This standard is adopted by the Louisiana Supreme Court in ***State v. Matthews***, 375 So.2d 1165 (La. 1979). The Louisiana First Circuit Court of Appeal in ***State v. Dixon***, 620 So.2d 904 (La. App. 1st Cir. 1993), stated:

> The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude the State proved the essential elements of the crime beyond a reasonable doubt.

In ***State v. Matthews***, 464 So.2d 298 (La. 1985), *Remanded*, Hom. 241, 332, the Louisiana Supreme Court Granted Writs and remanded this matter for reconsideration under the proper standard of review for *Insufficient Evidence*. When the accused asserts justification as a defense to murder, the State bears the burden or proving beyond a reasonable doubt that the killing was not justifiable. ***State v. Lynch***, 436 So.2d 567 (La. 1983); ***State v. Patterson***, 295 So.2d 792 (La. 1974). On review, the question therefore is not whether a rational fact-finder could have found that the State had prove the essential elements of the offense beyond a reasonable doubt. The applicable standard is whether a rational fact-finder, after viewing the evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that the homicide was not committed in self-defense or in defense of others. ***Jackson v. Virginia***, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); ***State v. Faulkner***, 441 So.2d

721 (La. 1983); *State v. Lynch*, supra.

Ultimately, all the evidence in the record viewed in a light most favorable to the State, must satisfy the reviewing court that a rational trier of fact could have found the defendant guilty of the crime for which he was convicted, beyond a reasonable doubt. *State v. Perow*, 616 So.2d 1336 (La. App. 3rd Cir. 1993).

The circumstantial evidence rule is a component of this reasonable doubt standard. On appeal, the issue is whether a rational trier of fact, viewing the evidence in a light most favorable to the State, could find that all reasonable hypothesis of innocence were excluded.

Mr. Rosario-Colon had never met Antonio before and, as noted above, Antonio and Filiberto were highly intoxicated and approached Mr. Rosario-Colon together. He did not approach them. Mr. Rosario-Colon already had the pool stick in his hand. He did not grab it to attack. He was playing pool with the pool stick. He instinctively used it to protect himself. It is unlikely that Mr. Rosario-Colon had the intent to kill anyone. He was not armed with a gun, a knife, or a broken bottle. It is difficult to believe that Mr. Rosario-Colon thought he was using deadly force with a pool stick.

If this Court determines that Mr. Rosario-Colon was not acting in self-defense, the evidence is sufficient only to support a finding of Negligent Homicide. Negligent Homicide is defined as the killing of a human being by criminal neglect. Criminal negligence exists when, although neither specific intent nor general intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful person under similar circumstances. LSA-R.S. 14:12. The evidence was sufficient only to support the conviction of Negligent Homicide because Mr. Rosario-Colon was criminally negligent in swinging a pool stick and had not intent to kill Antonio.

In the alternative, if the Court finds that Mr. Rosario-Colon had the specific intent, he contends the

verdict is based on insufficient evidence because he established provocation and heat of passion sufficient for Manslaughter. Thus, the State did not establish the offense of Second Degree Murder beyond a reasonable doubt.

Manslaughter is defined, in pertinent part, as a killing "committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection." LSA-R.S. 14:31. "Sudden passion" and "heat of blood" are not elements of the offense of Manslaughter; rather, they are mitigatory factors in the nature of a defense which exhibit a degree of culpability less than that present when the homicide is committed without them." ***State v. Lombard***, 486 So.2d 106, 110 (La. 1986).

LSA-R.S. 14:31 provides:

> A. Manslaughter is:
> (1) A homicide which would be murder under either Article 30 (First Degree Murder) or Article 30.1 (Second Degree Murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection.
> Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed ...

Sudden passion or heat of blood distinguishes manslaughter from homicide. A defendant who shows by a preponderance of the evidence that these mitigatory factors are present is entitled to the verdict of Manslaughter. ***State v. Lombard***, 486 So.2d 106 (La. 1986).

However, the defendant is not obligated to establish the factor affirmatively; instead, the jury may infer them from the overall evidence presented. ***State v. Peterson***, 290 So.2d 307 (La. 1974). The reviewing court's function is to determine whether a rational trier of fact, viewing the evidence in the light most favorable to the State, could have found that the mitigatory factors were not established by a preponderance of the evidence. ***State v. Lombard***, supra at 111.

Given the fact that Antonio and Filiberto were extremely drunk and aggressively approaching Mr. Rosario-Colon, a reasonable hypothesis of innocence is that Mr. Rosario-Colon acted in defense of himself or in the heat of blood.

Although the Court of Appeal addressed the issue of the fact that the victim had a blood alcohol concentration level of 0.237 milligrams per deciliter; and the fact that although this may not be a lethal level, it would have resulted in impaired judgment, reduced alertness, and impaired muscular coordination.

However, it appears as though the Court has failed to consider that according to "Blood Ethanol Testing," by Norman B. Coffman and John J. Fernandes il v81 JAOP: Journal of the American Osteopathic Association, August '91, p. 781(5); See also, Casarett and Doull's Toxicology, Tahe Basic Science of Poisons, Pergamon Press, by editors, Mary O. Amdur, PH.D, John Doull, PH.D., M.D., Curtis D. Klaassen, PH.D., a blood alcohol concentration level of 0.237 milligrams per deciliter would also cause: Mild euphoria, ***increased self-confidence***, decreased inhibitions, ***diminution of attention, judgment, and control***, beginning sensory-motor impairment, slowed information processing, ***emotional instability***, ***loss of critical judgment***, impairment of perception, memory, and comprehension, decreased sensitory response, impaired balance, disorientation, ***mental confusion***, dizziness, ***exaggerated emotional stages*** (fear, rage, sorrow, etc.), disturbances of vision (diplopia, etc.), increased pain threshold, increased muscular in-coordination, staggering gait, slurred speech, apathy, and lethargy,

Subsequently, this Court must note that Dr. Charles Joseph Ledoux (Deputy Coroner for Terrebonne Parish) testified that he agreed with the defense hypothetical theory that multiple blows to or dropping of the victim's head after the pool cue strike could have increased his chance of death. This Court must note that there was testimony of several witnesses that when Mr. Aguado's friends

attempted to move him, his head had struck the floor and chairs several times.

It appears that the Courts have overlooked the fact that although some of the testimony from several witnesses actually confirms that Mr. Aguado was "going at" Mr. Rosario-Colon as if they were going to fight prior to being struck. Testimony also proved that Mr. Rosario-Colon had his back turned to Mr. Aguado, playing pool, at the time that the victim approached him. Testimony also adduced that, "the victim pushed her (Fernandez) onto a table and began running at Mr. Rosario-Colon." This must be considered to be "aggressive" on the part of Mr. Aguado.

This Court must consider that the actions of Mr. Aguado forced Mr. Rosario-Colon to protect himself from a "drunken" assailant (who had "aggressively" approached him from behind) at a bar, and that Mr. Rosario-Colon reasonably believed his life was in danger.

In accordance with LSA-R.S. 14:20 of the Louisiana Code of Criminal Procedure, Mr. Rosario-Colon contends that this statute states in pertinent part:

> **§ 20. Justifiable homicide**
>
> A. A homicide is justifiable:
>
> (1) When committed in self-defense by one who **reasonably believes** that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger. (emphasis added).

Mr. Rosario-Colon contends that the law does not state that he has to prove that his life was in imminent danger, just that the defendant reasonably believes that his life is in imminent danger, a defendant may ACT as necessary to prevent the danger. Mr. Rosario-Colon had the subjective belief that his life was in danger at the time of this incident.

Subsequently, in ***State v. Davis***, 680 So.2d 1296 (La. App. 2nd Cir. 9/25/96), the Court ruled that "The absence of a weapon on the victim, however, is not dispositive of the issue. Simply put, the State is not allowed to stipulate that there was no weapon found on the victim as proof that Mr. Rosario-Colon's did not feel that his life was in danger. The laws of the State of Louisiana allow a person to be

convicted of Armed Robbery of another by stipulating that even if the perpetrator had no weapon at the time of the incident (finger in the pocket, etc.), the victim **believed** that the perpetrator had a weapon. See: ***State v. Page***, 837 So.2d 165 (La. App. 5th Cir. 1/28/03)(For purpose of Armed Robbery, no weapon need ever be seen by the victim or witnesses, or recovered by the police for the trier of fact to be justified in finding that defendant was armed with a dangerous weapon); ***State v. Davis***, 975 So.2d 60 (La. App. 5th Cir. 12/27/07)(No weapon need ever be seen by victim, or witnesses, or recovered by police for trier of fact to be justified in finding that defendant was armed with a dangerous weapon, for determining whether defendant can be convicted of Armed Robbery). LSA-R.S. 14:64.

Consequently, the fact is not whether the victim had a dangerous weapon or not, but if Mr. Rosario-Colon **believed** that the victim had a dangerous weapon on his possession at the time of the incident, and whether Mr. Rosario-Colon **believed** that the victim had intentions of using said weapon against him. Although the State wishes the Courts to believe that the victim did not appear to have a weapon in his hand at the time of this incident, Mr. Rosario-Colon knew that Mr. Aguado was highly intoxicated, and that Mr. Rosario-Colon **believed** that at the time of the incident, the victim had intent to cause him death or serious bodily injury, and protected himself. As Mr. Rosario-Colon had already had a confrontation with Mr. Aguado concerning his wife, he ***reasonably believed*** that Mr. Aguado had intended to commit great bodily harm upon him due to the earlier confrontation.

It must also be noted that the State failed to prove that Mr. Rosario-Colon had the "Specific Intent" to commit murder, or inflict great bodily harm upon Mr. Aguado. According to the testimony, it appears that Mr. Rosario-Colon was attempting to prevent any type of harm upon himself, rather than to inflict great bodily harm upon Mr. Aguado (much less the taking of a life). It must be noted that Mr. Rosario-Colon was "ducking and swinging" the pool cue at the time of this incident; and that Mr. Rosario-Colon had struck Mr. Aguado once with the pool cue (as testified by several witnesses).

Also, although the testimony proved that Mr. Rosario-Colon had decided that, "It's over here, nothing happened," the testimony still proves that Mr. Aguado was the one who had approached Mr. Rosario-Colon "aggressively" with his friend. It appears that the Court has overlooked the fact that the owner of the bar had confronted Mr. Aguado about being "drunk and disorderly." The owner of the bar was pushed down by Aguado after he had been informed that he had to leave immediately prior to his encounter with Mr. Rosario-Colon.

In *State v. Matthews*, 464 So.2d 298 (La. 1985), 84-K-2083, *Remanded*, Hom. 241, 332, Insufficient Evidence, Supervisory Writs Granted. Remanded for proper standard of review. This case is remanded to the Court of Appeal for reconsideration under the proper standard of review. When the accused asserts justification as a defense to murder, the State bears the burden or proving beyond a reasonable doubt that the killing was not justifiable. *State v. Lynch*, 436 So.2d 567 (La. 1983); *State v. Patterson*, 295 So.2d 792 (La. 1974). On review, the question therefore is not whether a rational fact-finder could have found that the State had prove the essential elements of the offense beyond a reasonable doubt. The applicable standard is whether a rational fact-finder, after viewing the evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that the homicide was not committed in self-defense or in defense of others. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Faulkner*, 441 So.2d 721 (La. 1983); *State v. Lynch*, supra.

Mr. Rosario-Colon had a right to defend himself from an attack. While Mr. Aguado's death is tragic, the wounds could be interpreted as his simply refusing to stop an attack on Mr. Rosario-Colon in his intoxicated state.

A homicide is justifiable when committed in self-defense by a person who reasonably believes he is in imminent danger of losing his life or receiving great bodily harm and the killing is necessary to save himself. If that person is not engaged in an unlawful activity and is in a place

where he has a right to be, he has no duty to retreat prior to using deadly force. See: LSA-R.S. 14:20. See also: ***State v. Wells***, 209 So.3d 709 (La. 12/08/15).

The burden of proof did not lie with Mr. Rosario-Colon. When a defendant in a homicide case claims to have acted in self-defense, the State has an affirmative burden to prove beyond a reasonable doubt the homicide was not perpetrated in self-defense. Mr. Rosario-Colon had no burden of proof on that issue. ***State v. Garner***, 913 So.2d 874 (La. App. 2nd Cir. 11/17/2005).

As defense counsel had informed the State of the defense of self-defense in this matter, through the use of testimony from various witnesses, the State had the burden of disproving this theory as one of sustenance. The court was presented with evidence that Mr. Aguado was ***highly intoxicated*** prior the start of this horrible incident. The State irrefutably failed to present **any** evidence to contradict Mr. Rosario-Colon's account of the events preceding this altercation.

In ***State v. Patterson***, 63 So.3d 140 (La. App. 5th Cir. 1/11/11), *writ denied*, 63 So.3d 1037 (La. 6/17/11), the Louisiana Court held that: "The determination of a defendant's culpability rests on a two-fold test: 1) whether, given the facts presented the defendant could reasonably have believed his life to be in imminent danger; and 2) whether deadly force was necessary to prevent the danger. (citations omitted). However, as the State has failed to meet its burden of proving that Mr. Rosario-Colon, in fact, did not **FEEL** that his life was in danger at the time of the incident.

Mr. Rosario-Colon contends that the State has the burden of proof that the defendant had not acted in self-defense. However, in this matter, the State did not meet its burden of proving that he had not acted in self-defense, as Mr. Rosario-Colon's statement stated that he, in fact, **FELT** that his life was in danger when he was "aggressively approached" by Mr. Aguado, shows that his subjective belief that he was in danger was reasonable. Furthermore, the ***fact*** that Mr. Aguado was the aggressor in this incident was fully supported with the testimony of many of the witnesses. See: ***State v. Brown***, 640 So.2d 488

(La. App. 3rd Cir. 5/4/94). LSA-R.S. 14:20.

Questions to consider concerning self-defense:

(1) Did the defendant reasonably believe that he was in imminent danger of losing his life; or **(Mr. Rosario-Colon answers: Yes)**.

(2) Did the defendant reasonably believe that he was in imminent danger of receiving great bodily harm; and, **(Mr. Rosario-Colon answers: Yes)**

(3) Was the killing necessary to save the defendant from that danger? A factor to consider is retreat. Could the defendant have escaped the danger? *State v. Brown*, 414 So.2d 726, 729 (La. 1982); and. **(Mr. Rosario-Colon answers: Yes, and there was no possibility of retreat)**.

(4) Was the defendant the aggressor. **(Mr. Rosario-Colon answers: No)**.

When a defendant presents the defense of self-defense, the State must prove ***beyond a reasonable doubt*** that the homicide was not committed in self-defense. *State v. Brown*, 414 So.2d 726, 728 (La. 1982).

WHEREFORE, for the foregoing reasons, and the reasons stated in the Original Brief filed by appellate counsel, The State has failed to meet its heavy burden of proof of guilt beyond a reasonable doubt, and this matter should be dismissed.

SUMMARY

The Record supports a finding of Justifiable Homicide. Antonio and Filiberto were highly intoxicated and aggressively approached Mr. Rosario-Colon together. He did not approach them. If Antonio wanted to approach Mr. Rosario-Colon in a conciliatory manner, there was no reason for Filiberto to accompany him. Mr. Rosario-Colon already had the pool stick in his hand. He did not grab it to attack. Mr. Rosario-Colon was playing pool with the pool stick. It is unlikely that Mr. Rosario-Colon had the intent to kill anyone. He was not armed with a gun, a knife or a broken bottle. It is difficult to believe that Mr. Rosario-Colon thought he was using deadly force with a pool stick.

A reasonable hypothesis of innocence is that Mr. Rosario-Colon saw two drunk men approaching him, he swung the pool stick in his hand to protect himself to avoid an attack.

If this Court finds that there was no justification to the killing, and Mr. Rosario-Colon did not act in self-defense, the evidence is insufficient to support a conviction of Second Degree Murder. Second Degree Murder is "the killing of a human being ... when the offender has a specific intent to kill or to inflict great bodily harm." LSA-R.S. 14:30.1.

To convict Mr. Rosario-Colon of Second Degree Murder, the State had to prove beyond a reasonable doubt that Mr. Rosario-Colon specifically intended to kill Antonio. Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. LSA-R.S. 14:10(1).

The State failed to prove that Mr. Rosario-Colon had the specific intent to kill Antonio with one swing of a pool stick. The evidence was sufficient only to support the conviction of Negligent Homicide because Mr. Rosario-Colon was criminally negligent in swinging a pool stick and had no intent to kill Antonio.

However, even if this Court does find that the State proved specific intent to kill, the verdict is based on insufficient evidence because the evidence established provocation and heat of passion sufficient for Manslaughter. Mr. Rosario-Colon was provoked by two extremely drunk men who were approaching him aggressively, and he acted out of fear to protect himself.

WHEREFORE, for the aforementioned reasons, the arguments in Mr. Rosario-Colon's pleadings during Appeal, Mr. Rosario-Colon respectfully requests this Honorable Court to invoke its Supervisory Authority of Jurisdiction over the lower court; and after a thorough review of the merits of such Grant the relief deemed necessary by this Court.

CONCLUSION

For the reasons stated above and in the previous filings in the State of Louisiana Courts, Mr. Rosario-Colon's Writ of Certiorari should be granted, and this matter be remanded to the district court for a dismissal; or in the alternative, a new trial. Mr. Rosario-Colon has shown that this conviction is contrary to clearly established federal law as established by the United States Constitution and the United States Supreme Court; and that reasonable jurists would debate the validity of the conviction.

Respectfully submitted,

Walter Rosario-Colon

Date: February 17, 2020