# APPENDIX "C"

## RULING: FIRST CIRCUIT COURT OF APPEAL

275 So.3d 360
Court of Appeal of Louisiana, First Circuit.

STATE of Louisiana

v.

# Simon QUINN

NO. 2018 KA 0664
Judgment Rendered: March 27, 2019

## Synopsis

**Background:** Defendant was convicted in the 32nd Judicial District Court, Terrebonne Parish, No. 700389, John R. Walker, J., of second degree murder and obstruction of justice, and sentenced for the murder charge to life imprisonment without benefit of parole, probation, or suspension of sentence, and for the obstruction charge to 50 years at hard labor without benefit of probation or suspension of sentence, with sentences order to run consecutively. Defendant appealed.

**Holdings:** The Court of Appeal, Holdridge, J., held that:
1 sufficient evidence supported conviction for obstruction of justice;
2 evidence was not sufficient to support conviction for second degree murder; and
3 defendant failed to demonstrate that absence from record of two unrecorded bench conferences denied him effective appellate review.

Affirmed in part and reversed in part.

Crain, J., dissented in part and assigned reasons.
Appellate ReviewTrial or Guilt Phase Motion or Objection

## West Headnotes (20)

Change View

1 **Criminal Law** ⇨ Reasonable Doubt
No person shall be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.

2 **Criminal Law** Construction in favor of government, state, or prosecution
**Criminal Law** Reasonable doubt
In reviewing claims challenging the sufficiency of the evidence, a reviewing court, examining all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

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3 **Criminal Law** Degree of proof
When circumstantial evidence forms the basis of the conviction, the prosecution's case must exclude every reasonable hypothesis of innocence. La. Rev. Stat. Ann. § 15:438.

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4 **Criminal Law** Construction in favor of government, state, or prosecution
**Criminal Law** Reasonable doubt
**Criminal Law** Circumstantial evidence
In circumstantial evidence cases, a reviewing court does not determine whether another possible hypothesis suggested by a defendant could afford an exculpatory explanation of the events; rather, the reviewing court, examining the evidence in the light most favorable to the prosecution, determines whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under the *Jackson v. Virginia* standard.

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5 **Criminal Law** Weight of Evidence in General
The *Jackson v. Virginia* standard for reviewing sufficiency of evidence does not allow an appellate court to substitute its own appreciation of the facts for that of the factfinder.

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6 **Criminal Law** Weighing evidence
**Criminal Law** Credibility of Witnesses
It is not the province of the reviewing court to assess witness credibility or reweigh the evidence.

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7 **Criminal Law** Construction in favor of government, state, or prosecution
In reviewing sufficiency of evidence, if rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all of the evidence most favorable to the prosecution must be adopted.

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8 **Criminal Law** Weight of Evidence in General

On review of challenge to sufficiency of evidence, irrational decisions to convict will be overturned, rational decisions to convict will be upheld, and the actual fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process. U.S. Const. Amend. 14.

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9 **Obstructing Justice** Offenses relating to evidence

Sufficient evidence supported conviction for obstruction of justice by tampering with evidence; homicide victim's body was found in plastic tote in body of water by fishermen, store surveillance video showed man who had same build and stature as defendant, according to police deputy, buying tote matching the one victim was found inside, defendant's former wife testified that defendant admitted to her that he "put" victim's body "there," and defendant's behavior suggested a guilty mind, as he lied to police when questioned about victim's disappearance. La. Rev. Stat. Ann. § 14:130.1.

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10 **Criminal Law** Suppression or destruction of evidence, or misrepresentations to avoid suspicion or cast it upon another

A finding of purposeful misrepresentation by defendant reasonably raises the inference of a "guilty mind."

1 Case that cites this headnote

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11 **Criminal Law** Criminal Intent and Malice

Specific criminal intent may be formed in an instant. La. Rev. Stat. Ann. § 14:10(1).

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12 **Criminal Law** Intent

**Criminal Law** Elements of offenses in general

Because it is a state of mind, specific criminal intent need not be proven as a fact, but may be inferred from circumstances surrounding the defendant's actions. La. Rev. Stat. Ann. § 14:10(1).

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13 **Criminal Law** Experts

**Homicide** Corpus Delicti

Evidence was not sufficient to support conviction for second degree murder; doctor who performed autopsy on victim's body found that asphyxia was the cause of death, but could not determine whether victim died by murder or by suicide, doctor could not determine whether death was caused by sheet around

victim's neck or plastic bag over victim's head, but he opined that there would have been defensive wounds if bag was placed over victim's head by another person, and suicide was reasonable alternative hypothesis, as victim had stated on social media post that he was going to end his life. La. Rev. Stat. Ann. § 14:30.1.

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14 **Criminal Law** Mootness

Defendant's claim on appeal that trial court erred in ordering his enhanced 50-year sentence for obstruction of justice to run consecutive to his life imprisonment sentence for second degree murder was moot, where Court of Appeal reversed conviction and sentence for second degree murder.

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15 **Criminal Law** Mootness

Defendant's claim on appeal that he was prevented from presenting a suicide defense at trial for second degree murder and obstruction of justice by trial court's ruling on State's motion in limine, which was filed on morning of trial and which sought to preclude defense from introducing all out of court statements by various fact witnesses regarding victim's having suicidal thoughts or tendencies in past, was moot, where Court of Appeal overturned second degree murder conviction.

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16 **Criminal Law** Necessity

A criminal defendant has a right to a complete transcript of the trial proceedings, particularly where appellate counsel was not counsel at trial.

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17 **Criminal Law** Operation and effect

Material omissions from the transcript of the proceedings at trial bearing on the merits of an appeal will require reversal. La. Const. art. 1, § 19.

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18 **Criminal Law** Operation and effect

Inconsequential omissions from the transcript of the proceedings at trial or slight inaccuracies do not require reversal, as an incomplete record may nonetheless be adequate for appellate review. La. Const. art. 1, § 19.

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19 **Criminal Law** Operation and effect

A defendant is not entitled to relief because of an incomplete record absent a showing of prejudice based on the missing portions of the transcripts of trial

proceedings. La. Const. art. 1, § 19.

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20 **Criminal Law**  Operation and effect

Defendant failed to demonstrate that absence from record of two unrecorded bench conferences denied him effective appellate review such that reversal of his conviction for obstruction of justice was required; defendant did not demonstrate any specific prejudice which he suffered as result of the off-the-record bench discussions not being transcribed, nor did anything in record suggest that the discussions had a discernible impact on proceedings. La. Const. art. 1, § 19; La. Code Crim. Proc. Ann. art. 843.

***362** On Appeal from the 32nd Judicial District Court, Parish of Terrebonne, State of Louisiana, Trial Court No. 700389, The Honorable John R. Walker, Judge Presiding

## Attorneys and Law Firms

Joseph L. Waitz Jr., District Attorney, Ellen Daigle Doskey, Dennis J. Elftert, William S. Dodd, Assistant District Attorneys, Houma, Louisiana, Attorneys for Appellee, State of Louisiana

Cynthia K. Meyer, New Orleans, Louisiana, Attorney for Defendant/Appellant, **Simon Quinn**

**Simon Quinn**, Angola, Louisiana, Defendant/ Appellant, In Proper Person

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

## Opinion

HOLDRIDGE, J.

***363** ****2** The defendant, **Simon Quinn**, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1 (count 1); and obstruction of justice (by tampering with evidence), a violation of La. R.S. 14:130.1 (count 2). He pled not guilty and, following a jury trial, was found guilty as charged on both counts. The defendant filed a motion for new trial and motion for postverdict judgment of acquittal, which were denied. The State filed a habitual offender bill of information, seeking to enhance the obstruction of justice sentence. At a hearing on the matter, the defendant was adjudicated a second-felony habitual offender. [1] For the second degree murder conviction, the trial court sentenced the defendant to life imprisonment without benefit of parole, probation, or suspension of sentence. For the obstruction of justice conviction, the trial court imposed an enhanced sentence of fifty years imprisonment at hard labor without benefit of probation or suspension of sentence. The sentences were ordered to run consecutively. The defendant

made an oral motion to reconsider sentence, which was denied. The defendant now appeals, designating two counseled assignments of error and four pro se assignments of error. We reverse the conviction and sentence for second degree murder. We affirm the conviction for obstruction of justice, habitual offender adjudication, and the enhanced fifty-year sentence at hard labor.

## FACTS

The defendant lived at Ansley Place Apartments in Houma, Louisiana, and worked offshore. Robbie Coulon, the defendant's friend, had been the defendant's roommate for several months. Coulon, who did not have a job, was not listed as a tenant on the defendant's lease, which caused problems with the defendant and the apartment management. On May 6, 2015, while the defendant was working off-shore, ***3*** Coulon pawned an Xbox video game console that belonged to the defendant's child at Cash America Pawn in Houma. This was the second time that Coulon had pawned the Xbox.

On May 7, 2015, at around 12:30 a.m. or 1:00 a.m., the defendant's girlfriend, Jeannie Gamble, arrived at the defendant's apartment. Coulon was at the apartment at the time and Gamble spoke with him for about 15 minutes. Gamble slept at the defendant's apartment and left at around 7:00 a.m. to drive to New Iberia to pick up the defendant, who had completed his offshore shift. Before Gamble left the apartment, Coulon asked her when she and the ***364*** defendant would be returning. Gamble picked up the defendant in New Iberia at approximately 9:00 a.m. in her brother's older model red Ford F-150 pick-up truck.

Gamble drove the defendant to his apartment, where they stayed briefly. Coulon was not at the apartment when they arrived. The defendant discovered that his son's Xbox was gone. According to Gamble, the defendant was "upset" about the Xbox, but was not blatantly irate and did not make any threats toward Coulon. The defendant took a shower, and because there were no clean towels, Gamble went through the apartment looking for dirty towels. Gamble stated that she went into Coulon's room, where she looked into Coulon's closet for dirty towels, and saw "a lot" of empty alcohol bottles. While at the apartment, Gamble and the defendant consumed crystal methamphetamine. Because the defendant was unhappy with the quality of the drugs, the two left the apartment, the defendant dropped Gamble off at a McDonald's restaurant, and went to purchase more drugs.

The defendant returned shortly, picked up Gamble, and the pair went to Gamble's house. On the way there, the defendant spoke of finding an alternative way to get the Xbox out of the pawn shop because his son was supposed to be visiting that weekend. Gamble confirmed that the defendant was texting on the drive, but could not say definitively with whom the defendant was communicating.

***4*** After spending about a half-hour at Gamble's house, where Gamble again consumed drugs, the defendant and Gamble drove back to the defendant's apartment. According to Gamble, the defendant was anxious to return to the apartment and was concerned something may be getting destroyed there. When the two arrived at the apartment at

around 1:00 p.m., Gamble walked into the defendant's bedroom, and the defendant followed her into his room. The defendant then turned around and walked out of the room. Gamble was standing with her back to the door and assumed that the defendant was going to speak to Coulon. Gamble stated that she heard no noises while the defendant was gone and that he returned to his bedroom less than five minutes later. Gamble stated that when the defendant came back to his room, he was "white as a ghost" and was shaking and trembling. The defendant told her, "I can't believe it, I can't believe it, he did it," to which Gamble asked the defendant, "did what[?]" The defendant replied that Coulon had killed himself. The defendant then started rambling about his freedom, having old warrants, having just started to be able to see his children again, and having just started a new job. At trial, Gamble explained that the defendant had recently moved into the apartment and was "starting on a new foot;" she assumed that if the police were called, the warrants would then come to light, and the defendant would be arrested, losing the ability to see his children. Gamble did not go into Coulon's room because she "didn't want to know anything about anything." According to Gamble, the defendant mentioned "moving the body." The two discussed several options, including the defendant's suggestion that they get an "offshore bag" for the body, then left for Gamble's house, without deciding what they would do.

The defendant and Gamble stayed at Gamble's house until about 11:00 p.m. and, according to Gamble, while they were there, they did not discuss what happened at the defendant's apartment. The defendant told Gamble he needed to ***5*** be by the water to think. The defendant and Gamble drove around the Dularge area, near the water, and to the Terrebonne General area. Gamble described the defendant walking alone down a boat launch for approximately ***365*** fifteen minutes. She indicated that at one point the defendant speculated that Coulon might not be dead. Driving her brother's red Ford truck, the defendant dropped Gamble off at her house around 4:00 a.m. The defendant told Gamble he was going to talk to his mother's friend.

On the morning of May 8, 2015, at around 7:00 a.m., the defendant returned to Gamble's house and told her he had gone back to the apartment with a friend of his mother's and another friend. He told her he stayed in the car while one of the men went upstairs and talked to Coulon, who was alive, and made arrangements for Coulon to leave. The defendant left again in the truck and later that day told Gamble he had helped a friend tow a car and showed her a picture of himself standing by the water.

Gamble testified that she dropped the defendant off at his apartment later that day because his children were visiting. She did not go into the apartment at that time, but did go inside the next day, when she returned the defendant's debit card, which was left in the truck. Gamble stated that they did not discuss Coulon, she did not drive the defendant back to work for his next offshore trip, and she did not see the defendant again.

On May 12, 2015, the defendant went to the Cash America Pawn shop to attempt to retrieve his son's Xbox. The defendant, who was visibly angry at the time, was told he

would need to produce the original pawn receipt or get Coulon to come into the shop with identification. The defendant stated that he did not want to get police involved, and told the pawn shop owner that Coulon was "out of town and he's not coming back."

***6*** On May 13, 2015, fishermen noticed a "tote" floating upside down against the shore near a dock in Cocodrie, Louisiana. On May 14, 2015, the fishermen were going to retrieve the container for their own use; however, when one of the fishermen tossed a rope to his deckhand to tie the boat up on the dock, the fishermen noticed the tote had some clothing coming out of it, saw some pants and an arm, and a call was made to 911. Detectives Glynn Prestenbach, Jr. and Billy Dupre with the Terrebonne Parish Sheriff's Office heard a call over the radio indicating that a body had been found in Cocodrie and headed to the scene. They found Coulon's decomposing body, face-down, half inside a Rubbermaid container and half outside of the container. Detective Prestenbach saw a plastic bag wrapped around Coulon's feet, a dark green sheet over Coulon's head and feet, a plastic bag over Coulon's head, and black electrical tape wrapped around all of this. He also observed some thin rope and a sheet with a gold and white floral pattern that was "kind of under but around the head area" and a cinder block under the body.

Detective Dupre was tasked with the duty to go to local stores to see if he could find a Rubbermaid container that matched the container at the scene. On May 19, 2015, Detective Dupre found a 54-gallon container at a Home Depot in Houma that matched the one in which Coulon's body was found. Detective Dupre discovered from a store associate that a white male purchased such a container on May 8, 2015. The associate provided Detective Dupre with the purchase receipt and video surveillance of the purchase. The surveillance footage showed a man exiting an older model red Ford F-150 truck in the Home Depot parking lot on the morning of May 8, 2015. The man's face was not clearly visible in the surveillance footage; however, according to Detective Dupre, who was familiar with the defendant prior to this investigation, the man in the video ***366*** appeared to have the same body build and stature as the defendant. The man in the video went into the Home Depot and purchased a 54-gallon Rubbermaid container and some ***7*** rope. He was wearing a black baseball hat with white logos on its front and back, and a gray shirt with two emblems on the chest. The man also purchased a package of Manila rope, paid using cash, and loaded the container into the bed of the pick-up truck.

After interviewing various persons, including Gamble, the defendant's ex-wife, Tanya Quinn, and Leslie Rogers, with whom the defendant had a prior relationship, a search warrant was obtained for the defendant's apartment. During two searches, officers found a gray shirt with a Nike logo on one side and a company symbol on the other side, which appeared to match the shirt worn by the man in the Home Depot surveillance video. Officers also collected some brownish colored bedsheets that appeared to match the sheet found with Coulon's body, a black roll of electrical tape, a bundle of black garbage bags, and two green curtains, which, according to Detective Prestenbach, looked similar to the ones found with the body. A black hat matching the one the man in the video wore was located in Rogers' truck. Rogers, who gave the defendant a ride to work prior to his arrest,

identified the hat as belonging to the defendant.

The Terrebonne Parish Sherriff's office took custody of the defendant in Vermillion Parish and brought him to the Terrebonne station on May 15, 2015, for questioning. Detective Prestenbach interviewed the defendant after the defendant waived his **Miranda** rights. At that time, the defendant made a statement. Reading from his report, Detective Prestenbach testified:

> Mr. Quinn advised for the week that he was in we didn't see Robbie much, but they talked to him. I asked him who we, which Simon advised he talked to Rainie and Leslie. Simon advised he came in on Thursday and the [sic] Friday was the last day he had spoke [sic] with Robbie. He advised Robbie sent him a text message to hurry to the apartment. Simon advised that he forbidded [sic] Robbie to drink at the apartment, so he would not stay at the apartment much when Simon was in from work. I asked Simon about the last conversation he had with Robbie, which he advised Robbie was upset and said he wanted to leave. Simon advised Robbie told him he was going with some people that he met, but Robbie had a ***8*** history of lying. Simon advised he told Robbie whatever you want to do as long as you are safe. I asked Simon if he saw Robbie on Friday, which he advised that all of Robbie's items were gone from the apartment. I asked Simon about his XBox, which he advised it was the second time Robbie had pawned the XBox. He advised he spoke with Robbie about the XBox, which Robbie told him he would get it back. Simon advised that he knew the XBox was at the pawn shop on Martin Luther King, but he was unable to get it back. I asked Simon why he did not call the police about the XBox because TPSO could have assisted him with recovering the XBox, which he advised he did not call because of his outstanding arrest warrant. Simon advised he had 2 attorneys working on this warrant. I did ask Simon if he knew what happened to Robbie, which he advised he had some friends call him and told him that TPSO was investigating and was looking to talk to him about Robbie. Simon then advised he did not wish to say anything else without his attorney.

Detective Prestenbach found the defendant's statement inconsistent with information he acquired during his investigation, ***367*** and he placed the defendant under arrest for second degree murder. Detective Prestenbach also obtained the defendant's phone records and cell phone tower information, as well as surveillance videos from several businesses in the Cocodrie area where Coulon's body was found. The videos collectively showed an older model red Ford F-150 truck, resembling Gamble's brother's truck, driving to and from the Cocodrie area on the afternoon of May 8, 2015. Cell phone tower records tracked the defendant's phone moving south on that date, with the phone pinging a cell

tower in Cocodrie, slightly north of where Coulon's body was recovered, at 12:54 p.m. The records then track the phone moving back towards Houma.

The defendant's ex-wife, Tanya Quinn, who was married to the defendant for 11 years, testified at trial that the defendant was not the type of person who would harm anyone. She had known Coulon for approximately three months, and described Coulon as someone who liked "to drink a lot." She also described Coulon as "manic," and testified that Coulon made Facebook posts in which he stated that he "was always going to end his life and stuff like that." Quinn testified that she visited the defendant in jail after his arrest and asked him what happened. ***9*** The defendant told her, "I did that. I put him there." Quinn stated she felt the defendant was lying to her because she could not believe it, and felt like the defendant was "covering something up" and did not sound truthful. When asked specifically what the defendant told her, Quinn stated that he told her only that "he put the body there," but that he did not say that he killed Coulon. Quinn testified that the defendant said he found Coulon "like that" and panicked because he already had a prior charge and did not want to go to prison and be away from his children.

Rogers, the defendant's friend, testified that she had known the defendant since junior high school and had a brief relationship with the defendant from March through May of 2015. Rogers was also friends with Coulon, first meeting him in January of 2015. Rogers indicated that she did not know Coulon well, although she was around him often. During Rogers' relationship with the defendant, Coulon stayed at the defendant's apartment. Rogers testified that the defendant treated Coulon like a brother and helped him financially. Rogers admitted that when she was first contacted by police in this matter, she told them she had not been in contact with the defendant, although she had been in contact with the defendant. She stated that the second time she spoke with police, she told them that she was in a relationship with the defendant and had been in contact with him. Rogers explained that at the first encounter, she thought it was a missing person investigation and was not aware it was a murder investigation. Text messages exchanged between Rogers and the defendant on May 8, 2015, were introduced into evidence. The defendant texted Rogers and told her to tell Coulon's girlfriend, Rainey Voisin, to stay away from the apartment. Rogers texted the defendant that Voisin seemed to think Coulon was dead in the apartment; the defendant replied to tell Voisin that the maintenance people were there that morning, threatened to evict him, and that Coulon had left the night before, saying ***10*** he had somewhere else to stay. On May 14, 2015, Rogers texted the defendant to tell him the police were coming to talk her, and they needed to get their story straight. The defendant replied, "[t]that's okay, we're going to make Rainey out to be the one full of lies. Which she is."

A heavily redacted copy of text messages exchanged by the defendant and Coulon on May 7, 2015, was also introduced ***368*** into evidence. This evidence showed that the defendant texted Coulon that morning to tell him he was onshore and was a couple of hours away from Houma. Coulon texted the defendant that he would be back in a couple of days because he was too embarrassed to see the defendant. Coulon informed the defendant

that he was trying to get a job so that he could move from the apartment. The defendant texted Coulon that he needed to think, he had to make sure he was not evicted, and that he would speak to Coulon later that day around 4:00 p.m. Coulon texted the defendant that he "was so wrong about the Xbox" and was "so wrong about [your kids'] stuff it [doesn't] matter what its for." The defendant texted Coulon, "If you would play by the basic rules we talked about so many times before I left last week ... Don't sell my children's stuff, and Don't get me evicted by walking by the office when they forbid you to be there when I'm not home. It was so easy." The defendant also asked Coulon exactly what days he had walked on and off the property so that he could have some sort of argument with "these people," indicating that they were "pissed off according to the voice-mail." Several minutes later, the defendant texted Coulon to tell him he was not angry and that he was trying to "salvage" their apartment. Coulon exchanged the following texts with the defendant: "I cant do this anymore im finished done. It's ok for Leslie and jeanie but not for me. Put the paper in my room ill sign it then your free ... Ill take care of myself the one way I know how." ***11*** The defendant assured Coulon he was not turning his back on him, and Coulon later replied, "You have a very small window and then im gone." The defendant replied, "I'm coming. I wish you would just get some rest. Sleep it off Robbie."

Dr. Cameron Snider, who performed the autopsy on Coulon's body on May 15, 2015, found Coulon's body to be in a state of mild bloating-type decomposition, which he described as a very early process of decomposition. The body was nude when Dr. Snider received it. It had been reported to Dr. Snider that a plastic bag was around the head when the body was found and that the bag had been removed. He also received information regarding the presence of a bed sheet around the neck. Dr. Snider's examination revealed no evidence of recent injury, including no evidence of any facial, lingual, oral, or ocular injuries, and no hemorrhages of the strap muscles or soft tissue of the neck. Dr. Snider testified that he did not find any defensive wounds or bruises on Coulon's body, confirming that in the state of decomposition Coulon's body was in at the time of the autopsy, he could have seen such evidence. However, there were no skin tears or bruises on Coulon's body.

Dr. Snider was able to determine that Coulon thed from asphyxia, or the lack of adequate oxygen to the body. In Dr. Snider's expert opinion, however, the cause of asphyxia was undetermined, as Dr. Snider could not determine the mechanism and manner of how Coulon was deprived of oxygen and could not determine whether the oxygen deprivation was self-inflicted or a homicide. Dr. Snider stated that he ultimately concluded that the manner of death was undetermined because there were no types of injuries on Coulon's body at all.

Dr. Snider offered three possible mechanisms of Coulon's asphyxia. First, Dr. Snider noted that alcohol was found in Coulon's brain tissue, but because the body was decomposed, he could not determine a quantitative level of alcohol. Dr. Snider opined that one of the possibilities in this case is that Coulon may have died ***12*** from respiratory failure due to marked alcohol intoxication prior to the placement of his body in the Rubbermaid container. He noted, ***369*** however, that death from heavy alcohol intoxication is rare in adults and

with people who are accustomed to drinking alcohol. Dr. Snider found no evidence of chronic use of alcohol in examining Coulon's liver.

The second possibility Dr. Snider proposed for the oxygen deprivation was vascular compression of the large vessels of the neck due to the placement of a bed sheet around the neck, either a self-inflicted hanging or placement by others. Dr. Snider explained that a bed sheet could be wrapped around the neck and compress the jugular veins and the carotid artieries, but because it is so broad and flat it might not leave any significant marks. Dr. Snider noted that he sees this mechanism used by prison inmates who decide to hang themselves.

The last possibility Dr. Snider identified as a source of oxygen deprivation was suffocation by placement of a plastic bag over the head, again either self-inflicted or placed by others. Dr. Snider stated this method may be possible in a suicide situation, but less likely in a homicide situation. According to Dr. Snider, if someone tried to kill a person by placing a plastic bag over his head, such would take longer, and the victim would have time to react and struggle and would probably incur defensive wounds during that struggle. However, Dr. Snider found no defensive wounds on Coulon's body.

When asked to "rank" the various possibilities, Dr. Snider stated, "the bed sheet, maybe plastic bag, unlikely alcohol [over-intoxication]." Dr. Snider acknowledged that one of the main reasons he could not determine which of the three possibilities occurred in this case and why he could not tell whether Coulon's death was self-inflicted or a homicide was because of the decomposed condition of Coulon's body.

****13 SUFFICIENCY OF THE EVIDENCE**

In his first counseled and pro se assignments of error, the defendant argues the evidence was insufficient to support both convictions of second degree murder and obstruction of justice (by tampering with evidence).

1 2 "[N]o person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." **Jackson v. Virginia,** 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); **State v. Crawford,** 2014-2153 (La. 11/16/16), 218 So.3d 13, 26. A conviction based on insufficient evidence cannot stand, as it violates due process. U.S. Const. amend. XIV, La. Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, a reviewing court, examining all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. La. Code Crim. Pro. art. 821B; **State v. Crawford,** 218 So.3d at 26-27.

3 4 When circumstantial evidence forms the basis of the conviction, the prosecution's case must exclude every reasonable hypothesis of innocence. La. R.S. 15:438; **State v. Crawford,** 218 So.3d at 28; **State v. Oliphant,** 2013-2973 (La. 2/21/14), 133 So.3d 1255, 1258 (*per curiam* ); **State v. Captville,** 448 So.2d 676, 678 (La. 1984). In

circumstantial evidence cases, a reviewing court does not determine whether another possible hypothesis suggested by a defendant could afford an exculpatory explanation of the events. Rather, the reviewing court, examining the evidence in the light most favorable to the prosecution, determines whether the possible alternative ***370*** hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under the **Jackson v. Virginia** standard. **State v. Crawford,** 218 So.3d at 26 (citing ****14* State v. Davis,** 1992-1623 (La. 5/23/94), 637 So.2d 1012, 1020.

5 6 7 8 The **Jackson** standard does not allow an appellate court to substitute its own appreciation of the facts for that of the factfinder. **Id.** It is not the province of the reviewing court to assess witness credibility or reweigh the evidence. Rather, as the Supreme Court explained in **State v. Crawford,** 218 So.3d at 20, quoting from **State v. Mussall,** 523 So.2d 1305, 1310 (La. 1988):

> If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all of the evidence most favorable to the prosecution must be adopted. Thus, irrational decisions to convict will be overturned, rational decisions to convict will be upheld, and the actual fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process. (Footnote omitted.)

*Obstruction of Justice Conviction*

The crime of obstruction of justice is:

> [A]ny 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 hereinafter described:
>
> (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.

La. R.S. 14:130.1A (prior to its amendment by Acts 2016, No. 215, § 1).

9 The defendant contends the State did not prove the elements of the crime of obstruction of justice. He suggests that because of the video quality, the State did not prove *he* was the white male who went to Home Depot and bought a plastic tote. He

similarly suggests the State could not prove definitively through the video ***15*** surveillance of several local businesses that he was driving the red truck. Further, the defendant points to the State's "glaring" omission of any "evidence on how [he] moved the body [ (from the apartment,) ] down three flights of stairs[,] and into the truck."

While the man's face was not clearly visible in the Home Depot surveillance footage, Deputy Dupre testified the man in the footage was of the same build and stature as the defendant. The defendant's black hat with logos matching the hat in the video footage was located in a friend's vehicle. Further, during a search of the defendant's apartment, police found a gray shirt with a Nike logo and a company symbol on the other side, which appeared to match the shirt worn by the man in the Home Depot surveillance video.

Moreover, surveillance videos from several businesses in the Cocodrie area where Coulon's body was found depict an older model red Ford F-150 truck resembling ***371*** Gamble's brother's truck driving to and away from the Cocodrie area on the afternoon of May 8, 2015. The defendant's cell phone records revealed that the defendant's cell phone signal hit a tower on May 8, 2015, at 1:54 p.m., in Cocodrie, slightly north of where Coulon's body was found, and the records tracked the phone moving back north toward Houma thereafter.

Additionally, the searches of the defendant's apartment yielded bed sheets that appeared similar to the one found with Coulon's body, black electrical tape, and a bundle of black garbage bags. Also, the defendant's ex-wife testified the defendant admitted to her that he "put" Coulon's body "there."

10 Furthermore, the defendant's behavior and actions upon with respect to the disposal of Coulon's body sufficiently established a guilty mind. Upon discovering the body, the defendant did not call the police or 911, but immediately began discussing how to dispose of Coulon's body. The defendant lied to the police when questioned about Coulon's disappearance. The evidence indicated he sought to ***16*** create an alternative alibi with a far-fetched story that Coulon was actually still alive when he and Gamble left the apartment, and that he returned to the apartment with friends who made arrangements for Coulon to leave. A finding of purposeful misrepresentation reasonably raises the inference of a "guilty mind." **State v. Captville,** 448 So.2d at 680, fn.4. Furthermore, lying has been recognized as indicative of an awareness of wrongdoing. **Id.**

Based on the foregoing, we find that any rational juror could have concluded that the defendant disposed of Coulon's body. Accordingly, we find that the State proved beyond a reasonable doubt that the defendant was guilty of obstruction of justice by tampering with evidence.

*Second Degree Murder Conviction*

11 12 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. La. R.S. 14:30.1A(1). 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." La. R.S. 14:10(1). Specific intent may be formed in an instant. **State v. Mickelson,** 2012-2539 (La. 9/3/14), 149 So.3d 178, 182. Because it is a state of mind, specific intent need not be proven as a fact, but may be inferred from circumstances surrounding the defendant's actions. **State v. Mickelson,** 149 So.3d at 182.

13 The State's theory of the case, presented through arguments to the jury, was that the defendant and Coulon's longtime friendship had deteriorated to the point that the defendant's anger and animosity toward Coulon led the defendant to take out his rage and aggression toward Coulon by murdering him. In opening arguments, the State theorized that the defendant was in Coulon's room for "some 5 plus minutes" and in those "5 plus minutes," the defendant took a bag, put it over Coulon's head and suffocated him. In closing arguments, the State acknowledged ***17** that even if the defendant was with Coulon for only three minutes, such was sufficient time for the defendant to kill Coulon with a bed sheet across the neck. The defendant's attorney argued to the jury that there was no murder.

The State's only evidence regarding how Coulon thed was introduced through the testimony of Dr. Snider, who found that while the cause of death was asphyxia (lack of oxygen to the body), the manner in which Coulon was deprived of oxygen could not be determined. Dr. Snider was unable to determine if Coulon's death was ***372** a murder or a suicide. There was no evidence demonstrating that any injury of any type was inflicted upon Coulon by the defendant that caused Coulon's death. Dr. Snider basically refuted the State's theory that the defendant murdered Coulon by placing a plastic bag over his head, thereby depriving Coulon of oxygen. He acknowledged that it was possible for Coulon to have killed himself in that way, but in a murder situation, the victim of such an attack would have time to react and struggle and would probably have defensive wounds on his body, which Coulon did not. Thus, when asked to rank the possible mechanisms of Coulon's death, the best the Dr. Snider was able to say was "maybe plastic bag," but clearly could not say that Coulon was the victim of murder by another person placing that plastic bag over his head. Dr. Snider further opined that Coulon's neck could have been compressed by a bed sheet, used as a ligature, but noted that, because of the decomposing condition of the body, he could not confirm this manner of death because he could see no marks that may have been detectible had he received Coulon's body sooner. However, Dr. Snider found evidence of Coulon's alcohol consumption, and also theorized that it was possible that Coulon may have died from alcohol intoxication. In any event, Dr. Snider could not determine whether Coulon's death was self-inflicted or caused by another person.

Furthermore, the jury was presented with the reasonable alternative hypothesis that Coulon had committed suicide. According to Gamble, she was ***18** with the defendant in his apartment when the defendant found Coulon dead in Coulon's bedroom. Gamble indicated that the defendant left from his bedroom and came back to his bedroom less than five minutes later and told her that Coulon had killed himself. There is no evidence to refute Gamble's testimony. Importantly, there is no evidence showing that Coulon was alive at the

time the defendant entered Coulon's room, and there is no evidence establishing that the defendant was in fact in Coulon's room for the entirety of the less than five minutes that transpired between the time the defendant left his bedroom and returned to his bedroom to tell Gamble that Coulon had killed himself.

Moreover, there was testimonial evidence that suggested Coulon was, indeed, suicidal. [2] Quinn testified that Coulon liked to drink a lot, and that he was "manic," and had even made Facebook posts saying that he was going to end his life. On May 7, 2015, Coulon had texted the defendant that he could not do this anymore, he was finished, done, and that he would take care of himself the one way he knew how. Coulon wrote, "You have a very small window and then I'm gone."

After reviewing the entire record, we conclude that any rational trier of fact, after viewing all of the evidence as favorable to the prosecution as a rational fact finder can, necessarily must have had a reasonable doubt as to the defendant's guilt on the second degree murder charge. The State did not prove that Coulon was in fact the victim of a murder, and because the jury was presented with the reasonable hypothesis that Coulon committed suicide, the State failed to meet its burden of excluding every reasonable hypothesis of innocence in this case. Thus, examining the evidence in the light most favorable to the prosecution, we find the alternative hypothesis ***373*** that Coulon committed suicide to be sufficiently reasonable that a ****19*** rational juror could not have found proof that the defendant was guilty of murdering Coulon beyond a reasonable doubt under the **Jackson** standard. Under the facts of this case, we can only conclude that the jury engaged in impermissible speculation in determining the defendant's guilt. See **State v. Mussall,** 523 So.2d at 1311.

For the foregoing reasons, we find that the evidence was sufficient to support the obstruction of justice conviction. The evidence, however, was legally insufficient to support the second degree murder conviction and, accordingly, that conviction and the life sentence for that conviction are hereby reversed.

## CONSECUTIVE SENTENCES

14 In his second counseled assignment of error, the defendant argues the trial court erred in ordering the enhanced fifty-year sentence on the obstruction of justice conviction to run consecutive to the life imprisonment sentence imposed on the second degree murder conviction. Because we have reversed the defendant's second degree murder conviction and the sentence imposed on that conviction, this assignment of error is moot.

## RIGHT TO PRESENT A DEFENSE

15 In a pro se assignment of error, the defendant contends that in ruling on the State's motion in limine, filed on the morning of trial and which sought to preclude the defense from introducing all out of court statements by various fact witnesses regarding Coulon's having suicidal thoughts or tendencies in the past, prevented him from presenting a suicide defense. Because we have overturned the defendant's conviction for second degree

murder, this assignment of error is moot.

**DENIAL OF POST-TRIAL MOTIONS**

In his third pro se assignment of error, the defendant argues the trial court erred in denying his motions for new trial and postverdict judgment of acquittal. ***20*** These motions were premised on the alleged lack of evidence supporting the convictions and the trial court's ruling on the motion in limine. We have found no merit in the defendant's sufficiency claim with respect to the obstruction of justice conviction and likewise, as to that conviction, we find this assignment of error meritless. In light of our reversal of the defendant's second degree murder conviction and life sentence, this assignment of error is moot.

**TRIAL TRANSCRIPT**

In his fourth pro se assignment of error, the defendant argues he was deprived of due process and equal protection because the court reporter failed to transcribe his entire trial. Specifically, he complains that the trial transcript does not include the ruling concerning defense counsel's objection to the trial court's granting of the State's motion in limine and arguments and rulings made at two bench conferences, which were not transcribed. The defendant contends that the missing trial transcript concerned his right to submit a "suicide" defense to the jury. The defendant contends that without a complete record of the bench conferences, portions of the proceedings could not be used to prepare his appeal and, as such, his right of appellate review is rendered meaningless. Because we have reversed the defendant's conviction for second-degree murder, these arguments with respect to that conviction are moot. Thus, our review is limited to any error associated with the obstruction of justice conviction.

16 17 18 19 A criminal defendant has a right to a complete transcript of the trial proceedings, particularly, whereas here, ***374*** appellate counsel was not counsel at trial. See **Hardy v. United States,** 375 U.S. 277, 84 S.Ct. 424, 11 L.Ed.2d 331 (1964); **State v. Robinson,** 387 So.2d 1143 (La. 1980). Further, in Louisiana, a defendant is constitutionally guaranteed the right of appeal "based upon a complete record of all the evidence upon which the judgment is based." La. Const. art. I, § 19. Thus, material omissions from the transcript of the proceedings at trial bearing on the ***21*** merits of an appeal will require reversal. On the other hand, inconsequential omissions or slight inaccuracies do not require reversal, as an incomplete record may nonetheless be adequate for appellate review. See **State v. Castleberry,** 1998-1388 (La. 4/13/99), 758 So.2d 749, 773, cert. denied, 528 U.S. 893, 120 S.Ct. 220, 145 L.Ed.2d 185 (1999); **State v. Hawkins,** 1996-0766 (La. 1/14/97), 688 So.2d 473, 480; **State v. Allen,** 95-1754 (La. 9/5/96), 682 So.2d 713, 722. Finally, a defendant is not entitled to relief because of an incomplete record absent a showing of prejudice based on the missing portions of the transcripts. See La. Code Crim. P. art. 843; **State v. Deruise,** 1998-0541 (La. 4/3/01), 802 So.2d 1224, 1234, cert. denied, 534 U.S. 926, 122 S.Ct. 283, 151 L.Ed.2d 208 (2001).

20 The record indicates that during the testimony of Rogers, two discussions were held off the record which were not transcribed. The defendant has not demonstrated any

specific prejudice which he suffered as a result of those off-the-record bench discussions not being transcribed; nor does anything in the record suggest that these discussions had a discernible impact on the proceedings. See **State v. Deruise,** 802 So.2d at 1236-37. There is nothing in these two unrecorded exchanges that would suggest the defendant was prevented from presenting any relevant evidence or that any prejudice resulted from the absence in the record. Accordingly, the absence from the record of two unrecorded bench conferences did not deny the defendant effective appellate review. See **State v. Brumfield,** 1996-2667 (La. 10/20/98), 737 So.2d 660, 669-70, cert. denied, 526 U.S. 1025, 119 S.Ct. 1267, 143 L.Ed.2d 362 (1999). This pro se assignment of error lacks merit.

****22 CONCLUSION**

For the foregoing reasons, the defendant's conviction for obstruction of justice, habitual offender adjudication, and enhanced fifty-year sentence at hard labor without benefit of probation or suspension of sentence are affirmed. The defendant's conviction and life sentence for second degree murder are hereby reversed.

**CONVICTION FOR OBSTRUCTION OF JUSTICE, HABITUAL OFFENDER ADJUDICATION, AND ENHANCED FIFTY-YEAR SENTENCE AT HARD LABOR WITHOUT BENEFIT OF PROBATION OR SUSPENSION OF SENTENCE AFFIRMED; CONVICTION AND LIFE SENTENCE WITHOUT BENEFIT OF PAROLE, PROBATION OR SUSPENSION OF SENTENCE FOR SECOND DEGREE MURDER REVERSED.**

McDonald, J. concurs.

Crain, J. dissents in part and assigns reasons

CRAIN, J., dissents in part.

****1*** Louisiana's circumstantial evidence test does not supplant the *Jackson* standard of review and does not provide a reviewing court with a vehicle for substituting its appreciation of what the evidence has or has not proven for that of the factfinder. *State v. Mack,* 13-1311 (La. 5/7/14), 144 So.3d 983, 989. The jury considered the evidence presented at trial, including the defendant's revelation that Coulon was dead, the defendant's physical reaction in making that revelation, the defendant's ****375*** failure to seek help or report Coulon's death to the police, and the defendant's actions in disposing of Coulon's body. 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. *See State v. Mitchell,* 99-3342 (La. 10/17/00), 772 So.2d 78, 83. Stated another way, the majority impinges on the jury's discretion beyond the extent necessary to guarantee the fundamental protection of due process of law by

accepting a hypothesis of innocence reasonably rejected by the jury. *State v. Mire,* 14-2295 (La. 1/27/16), 269 So.3d 698, —— (*per curiam* ) (2016 WL 314814). The defendant's murder conviction and sentence should be upheld with his conviction and sentence for obstruction of justice.

## All Citations

275 So.3d 360, 2018-0664 (La.App. 1 Cir. 3/27/19)

## Footnotes

1 The defendant has a prior felony conviction for possession of a Schedule IV controlled dangerous substance. In its habitual offender bill of information, the State sought to enhance only the obstruction of justice sentence.

2 The record reflects that the State actively sought to exclude evidence of Coulon's suicidal thoughts or tendencies, filing a motion in limine on the morning of trial seeking to exclude all statements made by Coulon to the State's fact witnesses regarding Coulon's suicidal thoughts on the basis that such statements constituted inadmissible hearsay.

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# APPENDIX "E"

## RULING: LOUISIANA SUPREME COURT

2020 WL 415827
Supreme Court of Louisiana.

STATE of Louisiana

v.

**Simon QUINN**

No. 2019-KO-00730
January 14, 2020

Applying For Writ Of Certiorari, Parish of Terrebonne, 32nd Judicial District Court Number(s) 700389, Court of Appeal, First Circuit, Number(s) 2018 KA 0664.

## Opinion

*1 Writ application granted.

Weimer, J., recused.

Crain, J., recused.

Attachment

***2 SUPREME COURT OF LOUISIANA**

**No. 2019-KO-00730**

**STATE OF LOUISIANA**

**VERSUS**

**SIMON QUINN**

On Writ of Certiorari and/or Review Thirty-Second Judicial District Court, Parish of Terrebonne, No. 700,389; Court of Appeal, First Circuit, No. 2018 KA 0664.

And, whereas, the Court has this date, pursuant to Article 5, Section 5, of the Constitution of Louisiana, made and issued the following order, to wit— "It is ordered that the writ of review issue; that the District Court and the Court of Appeal send up the record in Duplicate of the case; and that counsel for all parties be notified."

Now, therefore, the said District Court and the Court of Appeal is hereby commanded, in the name of the State of Louisiana and of this Honorable Court, to send up forthwith to this

Court, in accordance with Supreme Court Rule 1, at the City of New Orleans, the record in duplicate of the above-entitled case.

Witness the Honorable Justices of the Supreme Court of the State of Louisiana, on this 14th day of January, in the year of our Lord, Two Thousand-Twenty.

John Tarlton Olivier

Clerk of Court

/s/

Deputy Clerk of Court

## All Citations

--- So.3d ----, 2020 WL 415827 (Mem), 2019-00730 (La. 1/14/20)

**End of Document**

**State v. Quinn**
Supreme Court of Louisiana. January 14, 2020 286 So.3d 429 (Mem) 2019-00647 (La. 1/14/20) *(Approx. 2 pages)*

286 So.3d 429 (Mem)
Supreme Court of Louisiana.

STATE of Louisiana

v.

**Simon QUINN**

No.2019-K-00647
January 14, 2020

Applying For Writ Of Certiorari, Parish of Terrebonne, 32nd Judicial District Court Number(s) 700,389, Court of Appeal, First Circuit, Number(s) 2018 KA 0664;

## Opinion

Writ application granted.

Weimer, J., recused.

Crain, J., recused.

Attachment

**SUPREME COURT OF LOUISIANA**

**No. 2019-K-00647**

**STATE OF LOUISIANA**

**VERSUS**

**SIMON QUINN**

On Writ of Certiorari and/or Review Thirty-Second Judicial District Court, Parish of Terrebonne, No. 700,389; Court of Appeal, First Circuit, No. 2018 KA 0664.

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duplicate of the above-entitled case.

Witness the Honorable Justices of the Supreme Court of the State of Louisiana, on this 14th day of January, in the year of our Lord, Two Thousand-Twenty.

John Tarlton Olivier

***430** Clerk of Court

/s/

Deputy Clerk of Court

## All Citations

286 So.3d 429 (Mem), 2019-00647 (La. 1/14/20)

**End of Document**

# APPENDIX "H"

## RULING:
## LOUISIANA SUPREME COURT

2020 WL 5406137
Supreme Court of Louisiana.

STATE of Louisiana

v.

# Simon QUINN

No. 2019-K-00647, No. 2019-KO-00730
09/09/2020

## Synopsis

**Background:** Defendant was convicted in the 32nd Judicial District Court, Terrebonne Parish, No. 700389, John R. Walker, J., of second degree murder and obstruction of justice, and sentenced for the murder charge to life imprisonment without benefit of parole, probation, or suspension of sentence, and for the obstruction charge to 50 years at hard labor without benefit of probation or suspension of sentence, with sentences order to run consecutively. Defendant appealed. The First Circuit Court of Appeal, Holdridge, J., 275 So.3d 360, affirmed in part and reversed in part. The State and the defendant both sought further review.

**Holdings:** The Supreme Court held that:
1 the state presented insufficient evidence to support defendant's conviction for second degree murder; but
2 sufficient evidence existed to support defendant's conviction for obstruction of justice; and
3 defendant was not entitled to be resentenced under the amended habitual offender statute.

Affirmed.

Johnson, C.J., concurred in part and dissented in part and assigned reasons.

Crichton, J., concurred in part and dissented in part and assigned reasons.

Kirby, J., concurred in part and dissented in part and assigned reasons.
Appellate ReviewSentencing or Penalty Phase Motion or Objection

## West Headnotes (9)

Change View

1 **Homicide** Second degree murder

The state presented insufficient evidence to support defendant's conviction for second degree murder; while there was evidence that defendant moved and tried to dispose of the victim's body, there was simply no evidence presented from which the jury could have reasonably determined whether the defendant killed the victim or found him already deceased. La. Rev. Stat. Ann. § 14:30.1.

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2 **Criminal Law** Construction in favor of government, state, or prosecution

**Criminal Law** Reasonable doubt

In reviewing the sufficiency of the evidence to support a conviction, the 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.

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3 **Criminal Law** Degree of proof

Where a conviction is based on circumstantial evidence, the evidence must exclude every reasonable hypothesis of innocence.

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4 **Criminal Law** Inferences from evidence

A jury is not allowed to speculate on the probabilities of guilt where rational jurors would necessarily entertain a reasonable doubt.

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5 **Criminal Law** Degree of proof

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.

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6 **Obstructing Justice** Weight and Sufficiency

Sufficient evidence existed to support defendant's conviction for obstruction of justice in a second degree murder proceeding or investigation, even though his second degree murder conviction was set aside on appeal; there was overwhelming evidence that defendant tried to conceal the victim's death and dispose of his body due to his 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 his girlfriend. La. Rev. Stat. Ann. §§ 14:30.1, 14:130.1(A)(1).

7 **Obstructing Justice** Interfering with Performance of Official Duties
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. La. Rev. Stat. Ann. § 14:130.1.

8 **Criminal Law** Decisions of Intermediate Courts
Defendant failed to preserve for review by Supreme Courthis claim that his sentence for obstruction of justice was excessive on the basis he was a non-violent offender and it exceeded sentences imposed on comparable offenders, where defendant did not present those arguments to the Court of Appeal. La. Rev. Stat. Ann. § 14:130.1(A)(1).

9 **Criminal Law** Effect of change in law or facts
Defendant sentenced to 50 years for obstruction of justice under the habitual offender statute in effect at the time of the crime was not entitled to be resentenced under the amended statute, in the absence of any reason to believe that the district court would impose a lesser sentence if defendant were resentenced under a provision in which the minimum sentence had been reduced from one-half the maximum unenhanced sentence to one-third the maximum unenhanced sentence. La. Rev. Stat. Ann. § 15:529.1(A)(1).

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

## Opinion

PER CURIAM: *

*1 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 ***2*** 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.

***3*** 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 ***4** 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 ***5** 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, ***6** 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.

1 2 3 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 ***7** innocence." La.R.S. 15:438.

4 5 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. ***8** Accordingly, the court of appeal did not err in setting aside defendant's conviction for second degree murder.

6 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).

7 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 ***9** 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:

***10** 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.

8 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 ***11*** 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 (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.").

9 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 ***12*** *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**

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.

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, 99 S.Ct. 2781, 61 L.Ed.2d 560 (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, 132 S.Ct. 2060, 182 L.Ed.2d 978 (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*, —— U.S. ——, 136 S. Ct. 709, 715, 193 L.Ed.2d 639 (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.

**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.
>
> ...

> 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.

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 (La. 9/9/20), —— So. 3d ——, 2020 WL 5406137, 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. *Davies, 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, 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 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.

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.

**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.

## All Citations

--- So.3d ----, 2020 WL 5406137, 2019-00647 (La. 9/1/20)

## Footnotes

* 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.

1 With regard to obstruction, the indictment provided:

> 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.

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.

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, —— So.3d ——.

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.

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.

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 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.

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.

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.

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