# APPENDIX "A"

IN THE

UNITED STATES SUPREME COURT

# United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130


May 21, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-30636 Edwards v. Vannoy
USDC No. 5:18-CV-1007

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Majella A. Sutton, Deputy Clerk
504-310-7680

Mr. Derrick Edwards
Ms. Rebecca Edwards
Mr. Tony R. Moore

# United States Court of Appeals
# for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
May 21, 2021
Lyle W. Cayce
Clerk

No. 20-30636

DERRICK EDWARDS,

*Petitioner—Appellant*,

*versus*

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

*Respondent—Appellee.*

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:18-CV-1007

ORDER:

IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to proceed in forma pauperis is GRANTED.

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
*United States Circuit Judge*

# United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130


June 14, 2021

Mr. Tony R. Moore
Western District of Louisiana, Shreveport
United States District Court
300 Fannin Street
Suite 1167
Shreveport, LA 71101-0000

No. 20-30636 Edwards v. Vannoy
USDC No. 5:18-CV-1007

Dear Mr. Moore,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Majella A. Sutton, Deputy Clerk
504-310-7680

cc:
Mr. Derrick Edwards
Ms. Rebecca Edwards

# United States Court of Appeals
# for the Fifth Circuit



United States Court of Appeals
Fifth Circuit
**FILED**
May 21, 2021
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Clerk

No. 20-30636

DERRICK EDWARDS,

*Petitioner—Appellant*,

*versus*

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

*Respondent—Appellee.*

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:18-CV-1007

ORDER:

IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to proceed in forma pauperis is GRANTED.

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
*United States Circuit Judge*

# APPENDIX "B"

2020 WL 5778113
Only the Westlaw citation is currently available.
United States District Court, W.D. Louisiana,
Shreveport Division.

**Derrick EDWARDS**, Petitioner
v.
Darrel **VANNOY**, Respondent

CIVIL ACTION NO. 5:18-CV-1007-P
Signed 09/28/2020

### Attorneys and Law Firms

**Derrick Edwards**, Angola, LA, pro se.

Rebecca Armand **Edwards**, DA's Office (1st JDC), Shreveport, LA, for Respondent.

**JUDGMENT**

S. MAURICE HICKS, JR., UNITED STATES DISTRICT JUDGE

***1** For the reasons assigned in the Report and Recommendation of the Magistrate Judge previously filed herein, and having thoroughly reviewed the record, including the written objections filed, and concurring with the findings of the Magistrate Judge under the applicable law;

It is ordered that Petitioner's petitions for writ of habeas corpus are **DENIED** and **DISMISSED WITH PREJUDICE.**

Rule 11 of the Rules Governing Section 2254 Proceedings for the U.S. District Courts requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. The court, after considering the record in this case and the standard set forth in 28 U.S.C. Section 2253, denies a certificate of appealability because the applicant has not made a substantial showing of the denial of a constitutional right.

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 28th day of September, 2020.

### All Citations

Slip Copy, 2020 WL 5778113

**End of Document**

**NOTICE FROM U.S. DISTRICT COURT - WESTERN DISTRICT OF LOUISIANA**

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Derrick Edwards (PrisID: 621889 )
Louisiana State Penitentiary
Angola, LA 70712

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Case: 5:18-cv-01007 #12
26 pages printed: Fri Feb 14 15:41:37 2020

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a

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

| | |
|---|---|
| **DERRICK EDWARDS,** **Petitioner** | **CIVIL ACTION NO. 5:18-CV-1007-P** |
| **VERSUS** | **JUDGE S. MAURICE HICKS, JR.** |
| **DARREL VANNOY,** **Respondent** | **MAGISTRATE JUDGE PEREZ-MONTES** |

## REPORT AND RECOMMENDATION

Before the Court is a Petition for Writ of Habeas Corpus filed under 28 U.S.C. § 2254 by *pro se* Petitioner Derrick Edwards ("Edwards") (#621889). ECF No. 1. Edwards is an inmate in the custody of the Louisiana Department of Corrections ("DOC"), incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. Edwards challenges his 2014 conviction and sentence imposed in the First Judicial District Court, Caddo Parish, Louisiana.

Because Edwards has not carried his burden of proving entitlement to habeas relief, his Petition (ECF No. 1) should be DENIED and DISMISSED WITH PREJUDICE.

## I. Background

Edwards was indicted by a grand jury for one count of second-degree murder, in violation of La. R.S. 14:30.1, for the death of Tyrone Miles ("Miles"). ECF No. 11-3 at 13.

According to the Louisiana Second Circuit Court of Appeal:

Derrick Edwards and Patricia Cathron Edwards are the parents of Shanderricka Edwards. When Shanderricka was three years old, her father abandoned her and had little to do with her for the next 14 years. On June 4, 2011, Shanderricka was 17 years of age. She lived in Shreveport in a duplex with her mother.

Tomika Adams, age 30, resided in the upstairs apartment of the duplex. In the preceding few months, both Tomika and Shanderricka had been involved with 27–year–old Tyrone Miles, a point of contention between the two women.

Katrina Brown lived two houses from the duplex. Diane Priest lived in a house next to Katrina, three houses from the duplex. Tomika's mother, Everlerna Adams, lived across the street diagonally. The defendant was a very personal friend with Lavonne Bell, who resided nearby.

**I. The Initial Argument**

In the early afternoon of June 4, 2011, Shanderricka and Tomika argued about:

- a DVD player that Everlerna had loaned to Shanderricka; and
- Shanderricka's belief that Miles had gone back with Tomika.

Diane observed the argument from her front porch, testifying that its duration was about a half hour. Lavonne testified that Tomika refused to fight Shanderricka. The police were called and both women were handcuffed, but not arrested. Lavonne called the defendant to tell him that his daughter had been involved in an argument and was in handcuffs.

The defendant arrived and spoke with the officers. He and Shanderricka discussed the argument, but were not angry with each other at that time.

**II. The Argument Between Shanderricka's Parents**

The defendant and Patricia argued about his disapproval of the relationship between Shanderricka and Miles. Patricia and Shanderricka returned to the duplex. Miles later joined them. The defendant remained in the street, still angry. He asked Lavonne and Tomika to take his truck and go purchase beer. They did so.

After they left, the defendant was in the street in front of the Browns' house, talking to a crowd of people, including Diane. Lavonne testified that when she left, the defendant was not angry or upset.

### III. The Father–Daughter Fight

Shanderricka and her young sister walked by the group of people, when she heard her father saying that he was going to have Lavonne fight Patricia.[1] Shanderricka told him that he couldn't "do that" but that he could "whoop" her. Shanderricka asked her father why he was talking about their family business in public. Shanderricka later said that he must have thought she was disrespectful.

Shanderricka was holding her two-or three-year-old sister when the argument began. She put the child down and Katrina picked up the child. Shanderricka and her father began physically fighting. The defendant, age 37, grabbed his daughter, age 17, by her throat and began hitting her in the face with his fists. Shanderricka fought back, but the defendant pulled her to the ground by her hairpiece.

Patricia swung her crutch at the defendant, but missed. After the fight, Miles helped Shanderricka and Patricia up, and walked them back to the duplex.

Shanderricka identified photographs showing scratches on her neck and bruises on her face.

Everlerna testified that she saw the defendant hit his daughter, but said the marks on Shanderricka's face and neck were caused by Patricia's crutch.

### IV. Invitation to a Killing

After the fight, the defendant followed Miles, Shanderricka, and Patricia down the street, challenging anyone to "come out to the street and get it."

Shanderricka testified that:

- her father told Miles that he would "bust his butt";
- she told Miles not to worry about her father;
- her father continued to taunt and provoke Miles;

[1] Patricia, the mother of Shanderricka, was an amputee.

- she tried to restrain Miles, but he broke away and went into the street;
- it was dark, with minimal to no street lights working;
- Miles, age 27, and the defendant began fist-fighting;[2]
- the fight lasted two to three minutes;
- she never saw Miles with a weapon;
- her father normally carried a pocket knife in his pants pocket; and
- she never saw the defendant stab Miles, though she saw Miles step backward and say, "Man, you stabbed me."

No one testified as to seeing the knife during the fight. Patricia saw Miles stagger into her front yard, but did not know that he had been stabbed until he collapsed on the floor of the duplex.
Diane heard someone say, "he didn't have to stab him."

Shanderricka further testified that:

- Miles ran toward the duplex as the defendant remained in the street, yelling;
- Miles left a bloody handprint on the door of a vehicle parked in the yard;
- he entered the duplex and fell to the floor with blood pouring from his side;
- the photograph of the blood inside the doorway was accurate; and
- she called 911, but Miles lost consciousness before EMS arrived.

The defendant also called 911, reporting that he stabbed Miles. Lavonne said the defendant could have come to her home instead of fighting.

## V. The Investigation

**Corporal Jennie Taylor,** of the Shreveport Police Department, who was the first officer to arrive at the scene, testified that:

- as she exited her unit, the defendant blurted out that he had stabbed Miles;
- she detained the defendant in her vehicle;
- she made contact with Miles and assisted with crowd control;
- she asked the defendant for the knife and he gave it to her;
- the knife was later turned over to a crime scene investigator; and
- the knife shown her in court was the one received from the defendant.

[2] Katrina and Patricia also witnessed Miles walk into the street and fight with the defendant. Patricia saw the men swinging at each other in a side-to-side motion.

**Sergeant Danny Duddy,** supervisor of the Shreveport Police Department crime scene unit, was the on-call crime scene investigator on June 4, 2011. Duddy identified photographs that he took of the crime scene and the participants. He received an open pocketknife from Corporal Taylor.

**Dr. Long Jin,** a forensic pathologist at LSU Health Sciences Center, conducted an autopsy the next day, with these findings:

- cause of death was determined to be two sharp force wounds to the chest;
- manner of death was determined to be homicide;
- one wound was a stab wound, located slightly to the left of the middle chest;
- that wound penetrated the right ventricle of the heart;
- the right ventricle is easily penetrated by a two-inch deep jab with a knife;
- the second wound was also a stab wound to the heart;
- both wounds were administered with a knife or sharp object;
- either wound would have been fatal;
- Miles bled to death as a result of his wounds;
- it would have taken a few minutes for Miles to die from his wounds;
- there was a possible defensive wound on the right elbow; and
- there was a slash wound to the right chest.

Trial started on January 28, 2014. The jury's verdict came two days later.

No post-trial motions were filed.

*State v. Edwards*, 49,635 (La.App. 2 Cir. 2/26/15); 162 So.3d 512, 514, *writ denied*, 2015-0628 (La. 2/5/16); 186 So.3d 1163.

Edwards was convicted as charged, and he was sentenced to life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence. *Id.*

On appeal, Edwards presented two assignments of error: (1) improper use of grand jury testimony; and (2) insufficient evidence. *Id.* The conviction and sentence

were affirmed. *Id.* Edwards asserted the same two errors in a writ application to the Louisiana Supreme Court, and the application was denied. *Id.*

Edwards timely filed an application for post-conviction relief alleging the following errors: (1) denial of his right to testify; (2) violation of due process in providing an erroneous jury instruction regarding the burden of proof; (3) ineffective assistance of counsel in failing to preserve Edwards's right to testify and failing to object to the judge's erroneous jury instruction; and (4) cumulative error. ECF No. 11-6 at 47-72. The trial court denied relief. ECF No. 11-6 at 153-4. The Louisiana Second Circuit Court of Appeal denied Edwards's writ application on the showing made. ECF No. 11-6 at 209. The Louisiana Supreme Court also denied writs. *State ex rel. Edwards v. State*, 2017-0232 (La. 4/20/18); 240 So.3d 916.

In his timely-filed § 2254 Petition, Edwards asserts six claims for relief: (1) insufficient evidence; (2) improper use of grand jury testimony; (3) denial of the right to testify; (4) erroneous jury instruction regarding the burden of proof; (5) ineffective assistance of counsel by failing to preserve Edwards's right to testify and failing to object to the judge's erroneous jury instruction; and (6) cumulative error. ECF No. 1 at 3-15; ECF No. 1-2 at 16-42.

## II. Law and Analysis

### A. The Rule 8(a) Resolution standard is applicable.

The Court is able to resolve this Petition without the necessity of an evidentiary hearing because there is no genuine issue of material fact relevant to the Edwards's claims, and the state court records provide the required and adequate

factual basis. *See Moya v. Estelle*, 696 F.2d 329, 332-33 (5th Cir. 1983); *Easter v. Estelle*, 609 F.2d 756, 761 (5th Cir. 1980); Rules Governing Section 2254 Cases, Rule 8(a).

**B. The standard of review is deferential.**

Pursuant to the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, a federal court may not grant habeas relief unless the state court judgment rejecting the petitioner's claims: (1) "was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *North v. Davis*, 18-10306, 2020 WL 370034, at *1 (5th Cir. Jan. 22, 2020) (citing 28 U.S.C. § 2254(d)(1)–(2)).

The role of a federal habeas court is to guard against extreme malfunctions in the state criminal justice systems, not to conduct a de novo review of factual findings and substitute its own opinions for the determinations made by the trial judge. *See Davis v. Ayala*, 135 S. Ct. 2187, 2202 (2015) (citing *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011)).

Section 2254(d) demands an initial inquiry into whether a prisoner's claim has been "adjudicated on the merits" in state court; if it has, the AEDPA's highly deferential standards apply. *See Davis*, 135 S. Ct. at 2198 (citing *Richter*, 562 U.S. at 103)).

A state court decision is "contrary to" clearly established United States Supreme Court precedent if the state court applies a rule that contradicts the governing law set forth in Supreme Court cases, or confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. A state court decision falls within the "unreasonable application" clause when it unreasonably applies Supreme Court precedent to the facts. *See Martin v. Cain*, 246 F.3d 471, 476 (5th Cir. 2001); *see also Rivera v. Quarterman*, 505 F.3d 349, 356 (5th Cir. 2007), *cert. den.*, 555 U.S. 827 (2008).

A federal habeas court making the "unreasonable application" inquiry should ask whether the state court's application of clearly established federal law was objectively reasonable. A federal court cannot grant habeas relief simply by concluding that the state court decision applied clearly established federal law erroneously; the court must conclude that such application was also unreasonable. *See Martin*, 246 F.3d at 476. An unreasonable application is different from an incorrect one. *See Bell v. Cone*, 535 U.S. 685, 694 (2002). Also, if a state court determines that a constitutional violation is harmless, a federal court may not award habeas relief under § 2254 unless the harmlessness determination itself was unreasonable. *See Mitchell v. Esparza*, 540 U.S. 12, 18 (2003); *see also Davis*, 135 S. Ct. at 2199 (citing *Fry v. Pliler*, 551 U.S. 112, 119 (2007)).

C. Edwards cannot establish insufficient evidence.

Citing *Jackson v. Virginia*, 443 U.S. 307 (1979), Edwards claims that the evidence was insufficient to convict him of second-degree murder. ECF No. 1-2 at 16. Edwards argues that the State did not satisfy its burden of proving the charged offense or proving that the homicide was not committed in self-defense. ECF No. 1-2 at 17. Edwards argues the State failed to present any witness to the stabbing or any witness that could contradict Edwards's self-defense claim. ECF No. 1-2 at 19-20.

Edwards's sufficiency of the evidence claim was adjudicated on the merits by the state courts on direct review. *State v. Edwards*, 49,635 (La.App. 2 Cir. 2/26/15); 162 So.3d 512, 516, *writ denied*, 2015-0628 (La. 2/5/16); 186 So.3d 1163. Therefore, Edwards must show that the state court's ruling "was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Edwards can establish neither.

The applicable clearly-established federal law for a sufficiency of the evidence claim is set forth in *Jackson*, which directs the reviewing court to determine "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." 443 U.S. at 319. A jury's determination of witness credibility, the inferences made on the evidence, and the jury's reasonable construction of the evidence are all

entitled to a great deal of deference by a reviewing court. *See Marshall v. Lonberger*, 459 U.S. 422, 433-35 (1983); *Jackson*, 443 U.S. at 319.

Moreover, when a state court has denied a sufficiency of the evidence claim on the merits, the habeas court's review must be doubly deferential, meaning that the state court determination may not be overturned unless it was an objectively unreasonable application of the deferential *Jackson* standard. *See Cullen v. Pinholster*, 563 U.S. 170, 190 (2011); *Parker v. Matthews*, 567 U.S. 37, 43 (2012); *Harrell v. Cain*, 595 F. App'x 439 (5th Cir. 2015). Thus, "a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court." *Cavazos v. Smith*, 565 U.S. 1, 2 (2011).

The federal court must look to the substantive elements of the offense under state law when applying the *Jackson* standard. *See Norris v. Dretke*, 826 F.3d 821, 833 (5th Cir. 2016), *cert. denied*, 137 S.Ct. 1203 (2017). Under Louisiana law, second-degree murder includes "the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm." La. R.S. 14:30.1(A)(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); *State v. Lindsey*, 543 So.2d 886 (La. 1989), *cert. den.*, 494 U.S. 1074 (1990); *State v. Davies*, 35783 (La. App. 2 Cir. 4/5/02), 813 So.2d 1262, *writ. den.*, 2002-1564 (La. 2003), 843 So.2d 389. Specific intent may be inferred from the circumstances surrounding the offense and the conduct of the defendant.

*See State v. Draughn*, 2005-1825 (La. 2007), 950 So.2d 583, *cert. den.*, 552 U.S. 1012 (2007).

The Louisiana Court of Appeal for the Second Circuit considered and rejected Edwards's arguments that the State did not prove he had the specific intent to kill the victim; that the state failed to produce a witness who saw him stab the victim; that he acted in self-defense, having no means of retreat from the aggressor; and that the facts would sustain a manslaughter conviction, at most. *State v. Edwards*, 162 So.3d at 517. The appellate court found that the record provides "overwhelming evidence of the stabbing, including a confession from the defendant and a dying declaration from the victim." *Id.* at 518.

The Second Circuit found that Edwards's actions prove he had the specific intent "to kill or inflict great bodily harm" required under La. R.S. 14:30.1(A)(1). *Id.* at 519. The court found that the altercation began as a fist fight, and that Edwards elevated the fight with the use of a weapon. *Id.* at 519. It stated that no evidence was presented to establish Edwards reasonably believed he was in immediate danger of losing his life, or that killing the victim was necessary to save his own life. *Id.* The Second Circuit noted that a defense witness confirmed Edwards could have retreated to her house. *Id.* It also noted that the evidence showed Edwards was the aggressor, and it pointed out an absence of evidence that Edwards attempted to withdraw from the situation prior to using deadly force. *Id.* The Second Circuit held that a trier of fact could have found, beyond a reasonable doubt, that the act was not committed in

self-defense, and that the essential elements of the crime of second-degree murder were proven. *Id.*

At trial, Edwards offered nothing to substantiate his claim that he told the officers he stabbed Miles in self-defense. Corporal Jennie Taylor ("Corporal Taylor") of the Shreveport Police Department testified that Edwards approached her vehicle when she arrived on scene. He said that he had been in a fight and stabbed the victim ECF No. 11-4 at 174, 180. After she checked on Miles, Corporal Taylor went back to Edwards, who gave her the pocketknife used to kill Miles. *Id.* at 175. Corporal Taylor did not testify that Edwards claimed he acted in self-defense.

Edwards's daughter, Shanderricka Edwards ("Shanderricka"), and her mother, Patricia Cathron ("Cathron"), testified that Miles helped them after their encounter with Edwards, prior to the fight between Miles and Edwards. *Id.* at 94-95, 153-55. Miles was walking back to their house, but responded to Edwards "nagging at him to come fight." *Id.* at 157. Miles went back to meet Edwards in the street where the fight ensued. *Id.* at 106-108, 155-567.

Shanderricka testified that she did not see Miles with a weapon, and that Edwards usually carried a pocketknife. *Id.* at 108. Shanderricka testified that, although she didn't see the stabbing, Miles and Edwards were fighting, and Miles walked away from the fight "clutching his chest" and bleeding. *Id.* at 109. According to Shanderricka, Miles "hit the floor" bleeding and said: "He stabbed me." *Id.* at 110.

Cathron also testified that she did not see Miles with a weapon. *Id.* at 157. She saw Miles run from Edwards, "staggering," and he "collapsed on the floor" of her house. *Id.*

Diane Priest ("Priest") testified for Edwards, stating that she never saw Edwards with a knife. ECF No. 11-5 at 24-25. Priest also testified that Edwards grabbed Shanderricka, pulled her to the ground, and laid on top of her to hold her down. *Id.* at 33. Priest testified that Edwards was "beating his daughter like a man." *Id.* Priest saw Edwards hand the knife to the police after the fight, and she heard Edwards say that he stabbed "the man." *Id.* at 38-39.

Another defense witness, Everlerna Adams ("Adams"), testified that she did not see Edwards with a knife. *Id.* at 100-01.

The testimony indicates that Edwards could have withdrawn from the conflict when Miles walked Shanderricka back to her mother's house. ECF No. 11-4 at 106-108, 155-167. Thus, a rational trier of fact could have found the essential elements of second-degree murder were proven beyond a reasonable doubt. There is sufficient evidence to support Edwards's conviction of second-degree murder.

Edwards cannot establish that the Second Circuit's adjudication was contrary to or involved an unreasonable application of *Jackson*, or that it made an unreasonable determination of the facts in light of the evidence presented at trial.

**D. Edwards's claim regarding the grand jury testimony is procedurally defaulted.**

Edwards asserts that the trial court erred by failing to order a mistrial after the State used a grand jury transcript without laying the proper foundation or

without an *in-camera* review by the court. ECF No. 1-2 at 20. Edwards presented this claim on appeal. ECF Nos. 11-5 at 201; 11-6 at 14.

"A fundamental prerequisite to federal habeas relief under § 2254 is the exhaustion of all claims in state court prior to requesting federal collateral relief." *Whitehead v. Johnson*, 157 F.3d 384, 387 (5th Cir. 1998) (citing *Rose v. Lundy*, 455 U.S. 509, 519-20 (1982)); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "The exhaustion requirement is satisfied when the substance of the federal habeas claim has been fairly presented to the highest state court." *Id.* (citing *Picard v. Connor*, 404 U.S. 270, 275-78 (1971)).

In his appeal, Edwards only raised the violation of Louisiana Code of Criminal Procedure article 434; he did not present a federal claim. ECF Nos. 11-5 at 201; 11-6 at 14. Because Edwards did not raise the federal nature of the claim in the state courts, the claim is unexhausted. *See Baldwin v. Reese*, 541 U.S. 27, 29-33 (2004); *Wilder v. Cockrell*, 274 F.3d 255, 260 (5th Cir. 2001).

If Edwards now attempted to present a federal claim regarding the purported violation in state court, the claim would be procedurally barred as untimely or repetitive. *See* La. C. Cr. P. arts. 930.8, 930.4. Because Louisiana law would preclude review of Edwards's claim, there is an independent and adequate state procedural ground to prevent federal review. *See Finley v. Johnson*, 243 F.3d 215, 220 (5th Cir. 2001); *Fearance v. Scott*, 56 F.3d 633, 642 (5th Cir. 1995). Thus, Edwards's claim is now procedurally defaulted.

**E. Edwards cannot establish the denial of his right to testify.**

Edwards complains that he was denied the right to testify in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Edwards presented this claim to the state courts on post-conviction review, and relief was denied. ECF No. 11-6 at 58-64, 167-73, 223-30, 238-40, 269. The Louisiana Supreme Court held that Edwards failed to satisfy his post-conviction burden of proof under La.C.Cr.P. art. 930.2. *Id.* at 269. Because the claim was adjudicated on the merits by the highest state court, Edwards must satisfy the showing required by §2254(d).

The right to testify stems from the Due Process Clause of the Fourteenth Amendment and the Compulsory Process Clause of the Sixth Amendment, as well as the Fifth Amendment privilege against self-incrimination. *See Rock v. Arkansas*, 483 U.S. 44, 51 (1987). "Every criminal defendant is privileged to testify in his own defense, or to refuse to do so." *Harris v. New York*, 401 U.S. 222, 225 (1971). "This right is personal to the defendant: only he, not counsel, may make the choice." *United States v. Rodriguez-Aparicio*, 888 F.3d 189, 193 (5th Cir. 2018), *cert. denied*, 139 S.Ct. 592 (2018) (citing *United States v. Mullins*, 315 F.3d 449, 452 (5th Cir. 2002)).

A habeas petitioner has the burden of proving that he was denied this constitutional right, and it is not enough to merely state that he told his trial attorney that he wanted to testify but his attorney forbade him from doing so. *See Murray v. Cain*, 15-CV-0827, 2019 WL 1417442, at *6 (M.D. La. Mar. 5, 2019), *report and recommendation adopted*, 2019 WL 1412932 (M.D. La. Mar. 28, 2019) (citing *Reed v.*

*Cain*, 13-CV-0037, 2014 WL 2050613, *9-10 (E.D. La. Sept. 2, 2014); *Turcios v. Dretke*, 97-CV-0515, 2005 WL 3263918, *6 (S.D. Tex. Nov. 29, 2005); *Underwood v. Clark*, 939 F.2d 473, 475-76 (7th Cir. 1991)).

In *Underwood* the United States Court of Appeals for the Seventh Circuit specifically noted the potential problem posed if a habeas petitioner, arguing that counsel unconstitutionally denied him his right to testify, is not required to satisfy his burden of proof. *See Mosley v. Cain*, 06-CV-6259, 2009 WL 2982930, at *4 (E.D. La. Sept. 14, 2009) (citing *Underwood* 939 F2d at 475-75).

> There is grave practical difficulty in establishing a mechanism that will protect a criminal defendant's personal right (that is, a right not waivable by counsel) to testify on his own behalf without rendering the criminal process unworkable. It is extremely common for criminal defendants not to testify, and there are good reasons for this, as we have seen. Yet it is simple enough after being convicted for the defendant to say, "My lawyer wouldn't let me testify. Therefore I'm entitled to a new trial." That's what Underwood did. His affidavit, which is the only evidence bearing on the question, states, so far as pertinent here, "I was denied the opportunity to testify at my own trial in that I told my attorney that I wished to testify on my own behalf. My attorney told me I could not testify."
>
> We agree with the First Circuit's ruling in *Siciliano v. Vose*, 834 F.2d 29, 31 (1st Cir. 1987), that this barebones assertion by a defendant, albeit made under oath, is insufficient to require a hearing or other action on his claim that his right to testify in his own defense was denied him. It just is too facile a tactic to be allowed to succeed. Some greater particularity is necessary—and also we think some substantiation is necessary, such as an affidavit from the lawyer who allegedly forbade his client to testify-to give the claim sufficient credibility to warrant a further investment of judicial resources in determining the truth of the claim.

*Id.*

There is no evidence to support Edwards's claim. Edwards only offers his conclusory statement that counsel denied him his constitutional right to testify at trial. "Standing alone, such self-serving statements cannot be allowed to succeed or the criminal judicial process would become unworkable." *Turcios v. Dretke*, 97-CV-0515, 2005 WL 3263918, at *6 (S.D. Tex. Nov. 29, 2005) (citing *Underwood*, 939 F.2d at 475–76).

Edwards points to an absence in the record of a waiver of his right to testify. ECF No. 1-2 at 30. "As the Courts have recognized, albeit in other contexts, 'the absence of evidence does not equal evidence of absence.'" *Bolivar v. Davis*, 1:18-CV-139, 2019 WL 7593279, at *8 (S.D. Tex. Oct. 23, 2019), *report and recommendation adopted*, 2020 WL 242425 (S.D. Tex. Jan. 16, 2020) (quoting *Johnson v. PPI Tech. Servs., L.P.*, 613 F. App'x 309, 312 (5th Cir. 2015). The fact that the record is silent about Edwards's "lack of testimony is not conclusive — or even implicit — proof that he was denied his constitutional right to testify." *Id.* The record is similarly devoid of any evidence that Edwards wished to testify and was prevented by his attorney from doing so. *See id.*

The state courts made a factual finding that Edwards did not establish sufficient facts to demonstrate that his rights were violated. This Court must presume that the state court's factual findings were correct. 28 U.S.C. § 2254(e)(1). Edwards cannot overcome that presumption. The record does not indicate that Edwards was prevented from testifying, or that his alleged desire to testify was rebuffed by his counsel or the trial court.

F. Edwards cannot establish a constitutional violation regarding the jury instruction on manslaughter.

Edwards alleges that the trial court gave an improper jury instruction on manslaughter that placed the burden of proof on Edwards. ECF No. 1-2 at 31. Specifically, Edwards complains that his constitutional rights were violated when the trial judge instructed the jury: "The defendant bears the burden to prove, by a preponderance of the evidence, that he acted in 'sudden passion or heat of blood' in order for a verdict of manslaughter to be appropriate." *Id.* Edwards presented this claim to the state courts on post-conviction review. ECF No. 11-6 at 64, 164, 256. The Louisiana Supreme Court held that Edwards failed to satisfy the burden of proof as required by law. ECF No. 11-6 at 169.

Edwards cannot show that the instruction was erroneous. As the Louisiana Second Circuit Court of Appeal noted on direct review: "In its charge, the trial court correctly advised the jury as to the law applicable to this case, including: (1) the required elements to proved [sic] the charged crime and any responsive verdicts; (2) the law of specific intent; (3) self-defense; and (4) the aggressor doctrine." *State v. Edwards*, 49,635 (La. App. 2 Cir. 2/26/15); 162 So.3d 512, 516 n.3, *writ denied*, 2015-0628 (La. 2/5/16); 186 So.3d 1163.

Manslaughter is a responsive verdict to second-degree murder. *See* La. Code Crim. P. art. 814(A)(3). According to the Louisiana Supreme Court:

> Manslaughter is a homicide which would be either first or second degree murder, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self control and cool reflection. La.R.S. 14:31(1). Thus, the presence of "sudden passion" or "heat of blood" distinguishes

manslaughter from murder. The court has stated on several occasions, however, that "sudden passion" and "heat of blood" are not elements of the offense of manslaughter; rather, they are mitigatory factors in the nature of a defense which exhibit a degree of culpability less than that present when the homicide is committed without them. *State v. Tompkins*, 403 So.2d 644 (La.1981); *State v. Temple*, 394 So.2d 259 (La. 1981); *State v. Peterson*, 290 So.2d 307 (La. 1974). Since they are mitigatory factors, a defendant who establishes by a preponderance of the evidence that he acted in a "sudden passion" or "heat of blood" is entitled to a manslaughter verdict. Where such proof has been introduced, a second degree murder verdict is inappropriate.

*State v. Lombard*, 486 So.2d 106, 110-11 (La. 1986) (footnotes omitted). Thus, it is the defendant's burden to prove by a preponderance of the evidence that he acted in "sudden passion" or "heat of blood" for a verdict of manslaughter to be appropriate where second-degree murder is charged. *See Lewis v. Rader*, CIV.A. 11-2665, 2012 WL 2280093, at *9 (E.D. La. Apr. 18, 2012), *report and recommendation adopted*, 11-CV-2665, 2012 WL 2280097 (E.D. La. June 18, 2012) (citing *State v. Robinson*, 754 So.2d 311 (La. App. 2d Cir. 2000).

Because the trial court correctly instructed the jury regarding Edwards's obligation to show "sudden passion" or "heat of blood," Edwards cannot establish that the state court's denial of his claim was unreasonable or contrary to any established federal law. 28 U.S.C. § 2254(d).

**G. Edwards cannot establish ineffective assistance of counsel.**

Edwards contends that he was denied effective assistance of counsel because his attorney did not call Edwards to testify and because he failed to object to the manslaughter jury instruction. ECF No. 1-2 at 33. Edwards exhausted the ineffective claim on post-conviction review. ECF No. 11-6 at 55, 165, 221. The trial

court found that Edwards's claim was meritless. *Id.* at 238-39. The court of appeal denied the writ on the showing made. *Id.* at 240. The Louisiana Supreme Court held that Edwards did not show ineffective assistance. *Id.* at 269.

The standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1983), applies to claims alleging an attorney's interference with the right to testify. *United States v. Willis*, 273 F.3d 592, 598 (5th 2001) (citing *Sayre v. Anderson*, 238 F.3d 631, 634 (5th Cir. 2001)). An ineffective assistance of counsel claim requires a showing that: (1) counsel's performance was legally deficient; and (2) the deficiency prejudiced the defense. *United States v. Bernard*, 762 F.3d 467, 471 (5th Cir. 2014) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

"As to the first prong, the proper standard for evaluating counsel's performance is that of reasonably effective assistance, considering all of the circumstances existing as of the time of counsel's conduct." *Bernard,* 762 F.3d at 471. Deficient performance is that which falls "below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. This standard is highly deferential. "Recognizing the 'temptation for a defendant to second-guess counsel's assistance after conviction or adverse sentence,'" the Supreme Court has cautioned that "counsel should be 'strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Bernard*, 762 F.3d at 471 (quoting *Strickland*, 466 U.S. at 690).

Because the state courts denied the claim on the merits, the combined standards of review under *Strickland* and § 2254(d) are "doubly deferential."

*Pinholster*, 563 U.S. at 190. Under § 2254(d), the Court must determine "whether there is any reasonable argument that counsel satisfied *Strickland's* deferential standard." *Harrington*, 562 U.S. at 105.

A bare and conclusory assertion of the denial of the right to testify by counsel is insufficient to establish ineffective assistance under *Strickland*. *See United States v. Martinez*, 181 F.3d 627, 628 (5th Cir. 1999) (citing *Underwood*, 939 F.2d at 476).

Edwards argues that, if he had testified at trial like he did before the grand jury, he could have proven he acted in self-defense. However, Edwards's argument is belied by the fact that his testimony before the grand jury resulted in an indictment for second-degree murder. Thus, Edwards cannot establish that his testimony would have helped his case, or that his attorney violated his constitutional rights by not calling Edwards to testify. Edwards cannot show that the state courts' rulings regarding his attorney's strategy were objectively unreasonable.

Likewise, Edwards cannot establish a violation as to his attorney's failure to object to the manslaughter jury instruction. The trial court correctly instructed the jury regarding Edwards's obligation to show "sudden passion" or "heat of blood." *See Lombard*, 486 So.2d at 110-11. "Failure to raise a meritless objection is not ineffective lawyering; it is the very opposite." *Clark v. Collins*, 19 F.3d 959, 966 (5th Cir. 1994), *cert. denied*, 513 U.S. 966 (1994).

Edwards complains that trial counsel also rendered ineffective assistance by not calling other witnesses on his behalf to support his self-defense claim. "[C]omplaints of uncalled witnesses are not favored in federal habeas review because

allegations of what the witness would have testified are largely speculative." *Evans v. Cockrell*, 285 F.3d 370, 377 (5th Cir. 2002).

Edwards cannot establish that the state court's denial of his claim was contrary to or an unreasonable application of any established federal law. 28 U.S.C. § 2254(d).

**H. Edwards cannot establish cumulative error.**

Edwards claims the cumulative effect of the errors raised denied him of a fundamentally fair adversarial proceeding and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments. ECF No. 1-2 at 39-40. Edwards presented this claim on post-conviction review. ECF No. 11-6 at 70, 180, 221.

Cumulative error on federal habeas review is a narrow and rare form of due process violation. *See Derden v. McNeel*, 978 F.2d 1453, 1461 (5th Cir. 1992) (*en banc*). The petitioner must show that: (1) the individual errors involved matters of constitutional dimension rather than mere violations of state law; (2) the errors were not procedurally defaulted for habeas purposes; and (3) the errors "so infected the entire trial that the resulting conviction violates due process." *Id.* (citing *Cupp v. Naughten*, 414 U.S. 141, 147 (1973)). A habeas petitioner may not just complain of unfavorable rulings or events in an effort to cumulate errors. *See id.*

Edwards has not established individual errors of constitutional dimension, so a cumulative error analysis is not warranted.

## III. Conclusion

Because Edward's claim regarding the introduction of grand jury testimony is procedurally defaulted, and the remaining claims are without merit, IT IS RECOMMENDED that Edwards's Petition (ECF No. 1) be DENIED AND DISMISSED WITH PREJUDICE.

Under the provisions of 28 U.S.C. § 636(b)(1)(c) and Fed.R.Civ.P. 72(b), parties aggrieved by this Report and Recommendation have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. No other briefs (such as supplemental objections, reply briefs, etc.) may be filed. Providing a courtesy copy of the objection to the undersigned is neither required nor encouraged. Timely objections will be considered by the District Judge before a final ruling.

Failure to file written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation within fourteen (14) days from the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Judge, except upon grounds of plain error.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, this Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Unless a circuit justice or district judge issues a certificate of appealability, an appeal may not be

taken to the court of appeals. Within 14 days from service of this Report and Recommendation, the parties may file a memorandum setting forth arguments on whether a certificate of appealability should issue. *See* 28 U.S.C. § 2253(c)(2). A courtesy copy of the memorandum shall be provided to the District Judge at the time of filing.

THUS DONE AND SIGNED in Alexandria, Louisiana, on this 14th day of February 2020.

JOSEPH H.L. PEREZ-MONTES
UNITED STATES MAGISTRATE JUDGE

**U.S. District Court**

**Western District of Louisiana**

**Notice of Electronic Filing**

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| **Filer:** | |
| **Document Number:** | 12 |

**Docket Text:**

**REPORT AND RECOMMENDATIONS IT IS RECOMMENDED that re [1] Petition for Writ of Habeas Corpus filed by Derrick Edwards be denied and dismissed with prejudice. Objections to R&R due by 2/28/2020. Signed by Magistrate Judge Joseph H L Perez-Montes on 2/14/2020. (crt,Roaix, G)**

# APPENDIX "C"

WESTLAW

**State v. Edwards**
Supreme Court of Louisiana. February 5, 2016 186 So.3d 1163 (Mem) 2015-0628 (La. 2/5/16) *(Approx. 1 page)*

186 So.3d 1163 (Mem)
Supreme Court of Louisiana.

**STATE** of Louisiana
v.
**Derrick EDWARDS.**

No. 2015–K–0628.
Feb. 5, 2016.

**Opinion**

In re **Derrick Edwards**;—Defendant; Applying For Writ of Certiorari and/or Review, Parish of Caddo, 1st Judicial District Court Div. 3, No. 297,401; to the Court of Appeal, Second Circuit, No. 49,635–KA.

Denied.

HUGHES, J., would grant.

**All Citations**

186 So.3d 1163 (Mem), 2015-0628 (La. 2/5/16)

**End of Document**

# APPENDIX "D"

**State v. Edwards**
Court of Appeal of Louisiana, Second Circuit. | February 26, 2015 | 162 So.3d 512 | 49,635 (La.App. 2 Cir. 2/26/15) *(Approx. 16 pages)*

162 So.3d 512
Court of Appeal of Louisiana,
Second Circuit.

STATE of Louisiana, Appellee
v.
Derrick EDWARDS, Appellant.

No. 49,635–KA.
Feb. 26, 2015.

## Synopsis

**Background:** Defendant was convicted in the First Judicial District Court, Caddo Parish, No. 297,401, Brady D. O'Callaghan, J., of second-degree murder. He appealed.

**Holdings:** The Court of Appeal, Drew, J., held that:
1 evidence was sufficient to support finding of intent required for conviction, and
2 evidence was insufficient to demonstrate that defendant reasonably believed he was in imminent danger of losing his life or that killing victim was necessary to save his own life, as required for justification defense.

Affirmed.

## West Headnotes (16)

Change View

1 **Criminal Law** Weight and conclusiveness in general
Direct evidence provides proof of the existence of a fact, for example, a witness's testimony that he saw or heard something.

2 **Criminal Law** Circumstantial Evidence
Circumstantial evidence provides proof of collateral facts and circumstances, from which the existence of the main fact may be inferred according to reason and common experience.

3 **Criminal Law** Degree of proof
When jurors reasonably reject the hypothesis of innocence advanced by a defendant, the hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt.

4 **Criminal Law** Weighing evidence
**Criminal Law** Credibility of Witnesses
Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency.

5 **Criminal Law** Credibility of witnesses in general
**Criminal Law** Credibility of Witnesses
**Criminal Law** Province of jury or trial court
The trier of fact is charged to make a credibility determination and may, within the bounds of rationality, accept or reject the testimony of any witness in whole or in part; the reviewing court may impinge on that discretion only to the extent necessary to guarantee the fundamental due process of law. U.S.C.A. Const.Amend. 14.

6 **Criminal Law** Province of jury or trial court
**Criminal Law** Character of witnesses or testimony in general
A victim's or witness's testimony alone is usually sufficient to support the verdict, as appellate courts will not second-guess the credibility determinations of the fact finder beyond the constitutional standard of sufficiency.

7 **Criminal Law** Credibility of witnesses in general
In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the fact finder, is sufficient support for a requisite factual conclusion.

1 Case that cites this headnote

8 **Homicide** Intent or mens rea
Specific intent required for second-degree murder conviction may be inferred from the circumstances surrounding the offense and the conduct of the defendant. LSA–R.S. 14:10(1).

9 **Homicide** Intent or Mens Rea
**Homicide** Intent to injure or cause bodily harm
The stabbing of a victim in the chest with a knife is such an act that indicates a specific intent to kill or to inflict great bodily harm. LSA–R.S. 14:10(1).

1 Case that cites this headnote

10 **Criminal Law** Elements of offenses
**Criminal Law** Particular issues or elements
**Criminal Law** Reasonable doubt
**Criminal Law** Particular issues or elements
The determination of whether the requisite intent is present in a criminal case is for the trier of fact; in reviewing the correctness of such a determination, the court should review the evidence in a light most favorable to the prosecution and must determine if the evidence is sufficient to convince a reasonable trier of fact of the guilt of the defendant beyond a reasonable doubt as to every element of the offense.

11 **Homicide** Self-defense
**Homicide** Degree of proof in general
When self-defense is raised as an issue by a defendant charged with murder, the state has the burden of proving, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. LSA–R.S. 14:20.

3 Cases that cite this headnote

12 **Homicide** Reasonableness of belief or apprehension
**Homicide** Duty to Retreat or Avoid Danger
**Homicide** Manner or Means of Self-Defense
Factors to consider in determining whether a defendant had a reasonable belief that the killing was necessary, so as to make homicide justifiable, include the excitement and confusion of the situation, the possibility of using force or violence short of killing, and the defendant's knowledge of the assailant's bad character; the possibility of retreat may not be considered as a factor in determining whether or not the defendant had a reasonable belief that deadly force was reasonable and apparently necessary. LSA–R.S. 14:20(D).

2 Cases that cite this headnote

13 **Criminal Law** Particular offenses
**Criminal Law** Particular issues or elements

When the defendant challenges the sufficiency of the evidence in a self-defense homicide case, the question becomes whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that the homicide was not committed in self-defense or in the defense of others. LSA–R.S. 14:20.

1 Case that cites this headnote

14 **Homicide** Withdrawal after aggression
In order to claim defense of justification in homicide case, not only must the aggressor withdraw from the conflict, but the withdrawal must be in such a way that the other person knows or should know of the desire to withdraw; if the aggressor's withdrawal is not made sufficiently known to his adversary, he is not eligible to claim the justification of self-defense for the homicide. LSA–R.S. 14:20.

2 Cases that cite this headnote

15 **Homicide** Second degree murder
Evidence that defendant stabbed unarmed victim multiple times in chest area was sufficient to support finding of intent required for conviction of second-degree murder. LSA–R.S. 14:30.1(A)(1).

16 **Homicide** Mutual combat
**Homicide** Apprehension of danger
**Homicide** Amount of force
Evidence was insufficient to establish that defendant reasonably believed he was in imminent danger of losing his life or that killing victim was necessary to save his own life and, thus, defendant was not entitled to defense of justification in second-degree murder prosecution; altercation between defendant and victim began as fist fight, with defendant elevating fight with use of blade, witness confirmed that defendant could have retreated to witness's house rather than provoke deadly struggle, and there was no evidence that defendant attempted to withdraw from situation prior to using deadly force. LSA–R.S. 14:20.

1 Case that cites this headnote

## Attorneys and Law Firms

***513** Washington & Wells, Shreveport, By: Alex J. Washington, for Appellant.

Charles Rex Scott II, District Attorney, Dale G. Cox, Tommy Jan Johnson, George Winston III, Assistant District Attorneys, for Appellee.

***514** Before STEWART, DREW and GARRETT, JJ.

## Opinion

DREW, J.

****1** Derrick Edwards was convicted of second degree murder, in violation of La. R.S. 14:30.1. He was sentenced to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence.

He appeals, urging two assignments of error. We affirm.

**FACTS**

Derrick Edwards and Patricia Cathron are the parents of Shanderricka Edwards. When Shanderricka was three years old, her father abandoned her and had little to do with her for the next 14 years.

On June 4, 2011, Shanderricka was 17 years of age. She lived in Shreveport in a duplex with her mother.

Tomika Adams, age 30, resided in the upstairs apartment of the duplex. In the preceding few months, both Tomika and Shanderricka had been involved with 27–year–old Tyrone Miles, a point of contention between the two women.

Katrina Brown lived two houses from the duplex. Diane Priest lived in a house next to Katrina, three houses from the duplex. Tomika's mother, Everlerna Adams, lived across the street diagonally. The defendant was a very personal friend with Lavonne Bell, who resided nearby.

**I. The Initial Argument**

In the early afternoon of June 4, 2011, Shanderricka and Tomika argued about:

• a DVD player that Everlerna had loaned to Shanderricka; and

• Shanderricka's belief that Miles had gone back with Tomika.

Diane observed the argument from her front porch, testifying that its ***2** duration was about a half hour. Lavonne testified that Tomika refused to fight Shanderricka. The police were called and both women were handcuffed, but not arrested. Lavonne called the defendant to tell him that his daughter had been involved in an argument and was in handcuffs.

The defendant arrived and spoke with the officers. He and Shanderricka discussed the argument, but were not angry with each other at that time.

**II. The Argument Between Shanderricka's Parents**

The defendant and Patricia argued about his disapproval of the relationship between Shanderricka and Miles. Patricia and Shanderricka returned to the duplex. Miles later joined them. The defendant remained in the street, still angry. He asked Lavonne and Tomika to take his truck and go purchase beer. They did so.

After they left, the defendant was in the street in front of the Browns' house, talking to a crowd of people, including Diane. Lavonne testified that when she left, the defendant was not angry or upset.

**III. The Father–Daughter Fight**

Shanderricka and her young sister walked by the group of people, when she heard her father saying that he was going to have Lavonne fight Patricia. [1] Shanderricka told him that he couldn't "do that" but that he could "whoop" her. Shanderricka asked her father why he was talking about their family business in public. Shanderricka later said that he must have thought she was disrespectful.

***3** Shanderricka was holding her two- or three-year-old sister when the argument began. She put the child down and Katrina picked up the child. Shanderricka and ***515** her father began physically fighting. The defendant, age 37, grabbed his daughter, age 17, by her throat and began hitting her in the face with his fists. Shanderricka fought back, but the defendant pulled her to the ground by her hairpiece.

Patricia swung her crutch at the defendant, but missed. After the fight, Miles helped Shanderricka and Patricia up, and walked them back to the duplex.

Shanderricka identified photographs showing scratches on her neck and bruises on her face.

Everlerna testified that she saw the defendant hit his daughter, but said the marks on Shanderricka's face and neck were caused by Patricia's crutch.

**IV. Invitation to a Killing**

After the fight, the defendant followed Miles, Shanderricka, and Patricia down the street, challenging anyone to "come out to the street and get it."

Shanderricka testified that:

• her father told Miles that he would "bust his butt";

• she told Miles not to worry about her father;

• her father continued to taunt and provoke Miles;

• she tried to restrain Miles, but he broke away and went into the street;

• it was dark, with minimal to no street lights working;

• ***4** Miles, age 27, and the defendant began fist-fighting; [2]

• the fight lasted two to three minutes;

• she never saw Miles with a weapon;

• her father normally carried a pocket knife in his pants pocket; and

• she never saw the defendant stab Miles, though she saw Miles step backward and say, "Man, you stabbed me."

No one testified as to seeing the knife during the fight. Patricia saw Miles stagger into her front yard, but did not know that he had been stabbed until he collapsed on the floor of the duplex.

Diane heard someone say, "he didn't have to stab him."

Shanderricka further testified that:

• Miles ran toward the duplex as the defendant remained in the street, yelling;

• Miles left a bloody handprint on the door of a vehicle parked in the yard;

• he entered the duplex and fell to the floor with blood pouring from his side;

• the photograph of the blood inside the doorway was accurate; and

• she called 911, but Miles lost consciousness before EMS arrived.

The defendant also called 911, reporting that he stabbed Miles. Lavonne said the defendant could have come to her home instead of fighting.

**V. The Investigation**

**Corporal Jennie Taylor,** of the Shreveport Police Department, who was the first officer to arrive at the scene, testified that:

• ***5** as she exited her unit, the defendant blurted out that he had stabbed Miles;

• she detained the defendant in her vehicle;

• she made contact with Miles and assisted with crowd control;

• she asked the defendant for the knife and he gave it to her;

• the knife was later turned over to a crime scene investigator; and

• the knife shown her in court was the one received from the defendant.

***516** **Sergeant Danny Duddy,** supervisor of the Shreveport Police Department crime scene unit, was the on-call crime scene investigator on June 4, 2011. Duddy identified photographs that he took of the crime scene and the participants. He received an open pocketknife from Corporal Taylor.

**Dr. Long Jin,** a forensic pathologist at LSU Health Sciences Center, conducted an autopsy the next day, with these findings:

• cause of death was determined to be two sharp force wounds to the chest;

• manner of death was determined to be homicide;

• one wound was a stab wound, located slightly to the left of the middle chest;

• that wound penetrated the right ventricle of the heart;

• the right ventricle is easily penetrated by a two-inch deep jab with a knife;

• the second wound was also a stab wound to the heart;

• both wounds were administered with a knife or sharp object;

• either wound would have been fatal;

• Miles bled to death as a result of his wounds;

• ***6** it would have taken a few minutes for Miles to die from his wounds;

• there was a possible defensive wound on the right elbow; and

• there was a slash wound to the right chest.

Trial started on January 28, 2014. The jury's verdict came two days later.

No post-trial motions were filed.

**VI. This Appeal**

***Improper Use of Grand Jury Testimony***

This listed assignment was not argued on appeal. Nonetheless, we have examined the trial court's precise restrictions on the use of the previous contrary sworn testimony of several witnesses. Without exception, the trial court's legal rulings on this issue were exemplary. Moreover, the overwhelming evidence renders any perceived errors harmless beyond a reasonable doubt.

***Sufficiency***

The defendant attacks his conviction, arguing that:

• the state did not prove that he had the specific intent to kill the victim;

• the state failed to produce a witness who saw him stab the victim;

• he acted in self-defense, having no means of retreat from the aggressor; and

• at most, these facts would sustain a manslaughter conviction. [3]

The state argues that the defensive wounds present on the victim's ***7** body, along with penetrating wounds to the heart, indicate the defendant's specific intent to kill. The state further argues that the defendant was the aggressor and is not entitled to claim self-defense. The state asserts that the evidence reflects that the defendant stabbed an unarmed victim twice in the heart during a fight, and that the defendant was the aggressor and made no attempt to withdraw.

1 2 3 4 5 6 7 8 9 10 Our law on appellate review of claims of evidentiary insufficiency is well settled, [4] particularly in cases with factual similarities to this prosecution.

11 12 13 14 ***518 **8** Our law on justifiable homicide is also well settled. [5]

15 ***9** This record provides overwhelming evidence of the stabbing, including a confession from the defendant and a dying declaration from the victim.

Dr. Long Jin testified that Miles died as a result of two penetrating stab wounds to ***519** the chest, each of which pierced the right ventricle of his heart.

The defendant confessed to Corporal Taylor at the scene and gave her the knife he used to stab Miles. The state proved beyond a reasonable doubt that the defendant inflicted the fatal stab wounds.

The defendant's actions prove that he had the specific intent "to kill or to inflict great bodily harm," as required by La. R.S. 14:30.1(A)(1). It ***10** was not unreasonable for a trier of fact to conclude that he actively desired the consequences of his actions, *i.e.*, the death or great bodily harm of the victim.

16 The defendant claims that he acted in self-defense, as he reasonably believed that killing was necessary to defend himself.

The evidence reflects that this altercation began as a fist-fight and that it was the defendant who elevated the fight with the use of a weapon. There was no evidence presented to establish that the defendant reasonably believed that he was in imminent danger of losing his life or that killing Miles was necessary to save his own life. Even Lavonne, a defense witness, confirmed that he could have retreated to her house, rather than provoke the deadly struggle.

The defendant was clearly the aggressor here. [6] No evidence was presented that he attempted to withdraw from the situation prior to his use of deadly force.

There was nothing in the testimony of the witnesses which rendered their testimony implausible, especially on the important points of the defendant being the aggressor and never withdrawing from the conflict with Miles.

This court does not assess the credibility of witnesses or reweigh evidence. Great deference is given to the jury's determinations of credibility.

***11** When viewing the evidence in the light most favorable to the prosecution, the trier of fact could have found, beyond a reasonable doubt, that this senseless murder was not committed in self-defense.

Further, a rational trier of fact could have found the essential elements of the crime of second degree murder were proven beyond a reasonable doubt.

**DECREE**

The defendant's conviction and sentence are AFFIRMED.

### All Citations

162 So.3d 512, 49,635 (La.App. 2 Cir. 2/26/15)

### Footnotes

1 Patricia, the mother of Shanderricka, was an amputee.

2 Katrina and Patricia also witnessed Miles walk into the street and fight with the defendant. Patricia saw the men swinging at each other in a side-to-side motion.

3 In its charge, the trial court correctly advised the jury as to the law applicable to this case, including: (1) the required elements to proved the charged crime and any responsive verdicts; (2) the law of specific intent; (3) self-defense; and (4) the aggressor doctrine. The jury deliberated over four hours.

4 A claim of insufficient evidence is determined by whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). On review, the appellate court considers 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 proven beyond a reasonable doubt. *Jackson v. Virginia, supra; State v. Tate,* 2001–1658 (La.5/20/03), 851 So.2d 921, *cert. denied,* 541 U.S. 905, 124 S.Ct. 1604, 158 L.Ed.2d 248 (2004); *State v. Crossley,* 48,149 (La.App.2d Cir.6/26/13), 117 So.3d 585, *writ denied,* 2013–1798 (La.2/14/14), 132 So.3d 410. The appellate court does not assess the credibility of witnesses or reweigh evidence, and gives great deference to the jury's decision to accept or reject the testimony of a witness or the weight the jury gives to direct or circumstantial evidence. *State v. Smith,* 94–3116 (La.10/16/95), 661 So.2d 442; *State v. Eason,* 43,788 (La.App.2d Cir.2/25/09), 3 So.3d 685, *writ denied,* 2009–0725 (La.12/11/09), 23 So.3d 913, *cert. denied,* 561 U.S. 1013, 130 S.Ct. 3472, 177 L.Ed.2d 1068 (2010).

Direct evidence provides proof of the existence of a fact, for example, a witness's testimony that he saw or heard something. *State v. Lilly,* 468 So.2d 1154 (La.1985). Circumstantial evidence provides proof of collateral facts and circumstances, from which the existence of the main fact may be inferred according to reason and common experience. *Id.* When the state relies on circumstantial evidence to establish the existence of an essential element of a crime, the court must assume every fact that the evidence tends to prove and the circumstantial evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. *State v. Lilly, supra; State v. Robinson,* 47,437 (La.App.2d Cir.11/14/12), 106 So.3d 1028, *writ denied,* 2012–2658 (La.5/17/13), 117 So.3d 918.

The trier of fact is charged with weighing the credibility of this evidence and on review, the same standard as in *Jackson v. Virginia* is applied, giving

great deference to the fact finder's conclusions. When jurors reasonably reject the hypothesis of innocence advanced by a defendant, the hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. *State v. Sosa,* 2005–0213 (La.1/19/06), 921 So.2d 94; *State v. Captville,* 82–2206 (La.2/27/84), 448 So.2d 676.

Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. *State v. Glover,* 47,311 (La.App.2d Cir.10/10/12), 106 So.3d 129, *writ denied,* 2012–2667 (La.5/24/13), 116 So.3d 659; *State v. Speed,* 43,786 (La.App.2d Cir.1/14/09), 2 So.3d 582, *writ denied,* 2009–0372 (La.11/6/09), 21 So.3d 299. The trier of fact is charged to make a credibility determination and may, within the bounds of rationality, accept or reject the testimony of any witness in whole or in part; the reviewing court may impinge on that discretion only to the extent necessary to guarantee the fundamental due process of law. *State v. Casey,* 99–0023 (La.1/26/00), 775 So.2d 1022, *cert. denied,* 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000); *State v. Woodard,* 47,286 (La.App.2d Cir.10/3/12), 107 So.3d 70, *writ denied,* 2012–2371 (La.4/26/13), 112 So.3d 837.

A victim's or witness's testimony alone is usually sufficient to support the verdict, as appellate courts will not second-guess the credibility determinations of the fact finder beyond the constitutional standard of sufficiency. *State v. Davis,* 02–1043 (La.6/27/03), 848 So.2d 557. In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the fact finder, is sufficient support for a requisite factual conclusion. *State v. Robinson,* 02–1869 (La.4/14/04), 874 So.2d 66.

*Applicable Law–Second Degree Murder, La. R.S. 14:30.1*

Second degree murder is defined as the killing of a human being "[w]hen the offender has a specific intent to kill or to inflict great bodily harm." La. R.S. 14:30.1(A)(1). Specific intent is the state of mind that 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); *State v. Lindsey,* 543 So.2d 886 (La.1989), *cert. denied,* 494 U.S. 1074, 110 S.Ct. 1796, 108 L.Ed.2d 798 (1990); *State v. Davies,* 35,783 (La.App.2d Cir.4/05/02), 813 So.2d 1262, *writ denied,* 2002–1564 (La.5/9/03), 843 So.2d 389, citing La. R.S. 14:10(1). Specific intent may be inferred from the circumstances surrounding the offense and the conduct of the defendant. *State v. Draughn,* 2005–1825 (La.01/17/07), 950 So.2d 583, *cert. denied,* 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007).

The stabbing of the victim in the chest with a knife is such an act that "indicates a specific intent to kill or to inflict great bodily harm." *State v. Tran,* 1998–2812 (La.App. 1 Cir. 11/5/99), 743 So.2d 1275, 1291, *writ denied,* 1999–3380 (La.5/26/00), 762 So.2d 1101. In *State v. Ruffins,* 597 So.2d 171 (La.App. 2d Cir.1992), this court held that evidence showing that the defendant intentionally thrust a knife blade five inches into a victim's chest was sufficient to prove that the defendant had the specific intent to kill or at least inflict great bodily harm. Likewise, in *State v. Martinez,* 09–740 (La.App. 5 Cir. 3/23/10), 38 So.3d 926, the court held that stabbing a victim multiple times, even if the deepest wound inflicted was not life threatening, was an act in furtherance of the intent to kill.

The determination of whether the requisite intent is present in a criminal case is for the trier of fact. *State v. Huizar,* 414 So.2d 741 (La.1982). In reviewing the correctness of such a determination, the court should review the evidence in a light most favorable to the prosecution and must determine if the evidence is sufficient to convince a reasonable trier of fact of the guilt of the defendant beyond a reasonable doubt as to every element of the offense. *Jackson v. Virginia, supra; State v. Huizar, supra.*

5 La. R.S. 14:20 Justifiable homicide, provides, in pertinent part:

> A homicide is justifiable:
>
> (1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.
>
> (2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

When self-defense is raised as an issue by a defendant, the state has the burden of proving, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. *State v. Johnson,* 41,428 (La.App.2d Cir.9/27/06), 940 So.2d 711, 716, *writ denied,* 2006–2615 (La.5/18/07), 957 So.2d 150; *State v. Garner,* 39,731 (La.App. 2d Cir.9/08/05), 913 So.2d 874, *writ denied,* 2005–2567 (La.5/26/06), 930 So.2d 19. Factors to consider in determining whether a defendant had a reasonable belief that the killing was necessary include the excitement and confusion of the situation, the possibility of using force or violence short of killing, and the defendant's knowledge of the assailant's bad character. *State v. Johnson, supra.* The possibility of retreat may not be considered as a factor in determining whether or not the defendant had a reasonable belief that deadly force was reasonable and apparently necessary. La. R.S. 14:20(D).

When the defendant challenges the sufficiency of the evidence in a self-defense case, the question becomes whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that the homicide was not committed in self-defense or in the defense of others. *State v. Davis,* 46,267 (La.App.2d Cir.5/18/11), 69 So.3d 538, *writ denied,* 2011–1561 (La.1/13/12), 77 So.3d 952. There is ample jurisprudence suggesting that the use of deadly force against an unarmed victim, even in the midst of a physical altercation, may be an excessive use of force. *State v. Ingram,* 45,546 (La.App.2d Cir.6/22/11), 71 So.3d 437, *writ denied,* 2011–1630 (La.1/11/12), 77 So.3d 947; *State v. Fields,* 38,496 (La.App.2d Cir.6/23/04), 877 So.2d 202, *writ denied,* 2004–1865 (La.11/24/04), 888 So.2d 229.

A person who is the aggressor or who brings on a difficulty cannot claim self-defense, unless he withdraws from the conflict in good faith. La. R.S. 14:21. Not only must the aggressor withdraw from the conflict, but the withdrawal must be in such a way that the other person "knows or should know" of the desire to withdraw. If the aggressor's withdrawal is not made sufficiently known to his adversary, he is not eligible to claim the justification of self-defense for the homicide. *State v. Wells,* 2011–0744 (La.App. 4 Cir. 7/11/14), 156 So.3d 150.

6 The defendant argues that Miles was the aggressor because he left the safety of the front yard to confront him. However, Miles, Shanderricka, and Patricia testified that they retreated after the initial fight between father and daughter. The defendant followed them, rather than end the conflict. Katrina, Patricia, and Shanderricka all testified that the defendant taunted Miles.

**End of Document**

# APPENDIX "E"

STATE OF LOUISIANA FILED NUMBER 297,401, SECTION 3

VERSUS SEP 29 2016 FIRST JUDICIAL DISTRICT COURT

DERRICK EDWARDS CADDO PARISH, LOUISIANA

FARON BLANEY
DEPUTY CLERK OF COURT
CADDO PARISH, LOUISIANA

**RULING**

Currently before the Court is an "Application for Post-Conviction Relief" ("Application") filed by Derrick Edwards ("Petitioner") filed on August 31, 2016. For the reasons that follow below, Petitioner's Application is **DENIED**.

On January 30, 2014, Petitioner was convicted of Second Degree Murder and sentenced to life in prison without the benefit of probation or parole. Petitioner's conviction and sentence were affirmed on appeal. *State v. Edwards*, 49,635 (La. App. 2d Cir. 2/26/15), 162 So.3d 512, *writ denied*, 2015-0628 (La. 2/5/16), 186 So.3d 1163.

Petitioner asserts that he was denied effective assistance of counsel in that his trial attorney allegedly refused to let him testify, thereby denying Petitioner constitutional rights guaranteed to him under the Fifth, Sixth, and Fourteenth Amendments. Petitioner also claims that the trial judge denied Petitioner of a fair trial by giving an erroneous instruction to the jury.

To succeed on an ineffective assistance of counsel claim, Petitioner must first satisfy the test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner must show (1) that counsel's performance was deficient, (2) that the deficiency prejudiced him, (3) and that counsel's error was so serious that it violated Petitioner's right to effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution. *Id.* at 686. The Petitioner must prove actual prejudice before relief will be granted. It is not sufficient for the Petitioner to show that the error had some conceivable effect on the outcome of the proceedings. Rather, he must show that, but for counsel's unprofessional errors, there was a reasonable probability the outcome would be different. *Id.* at 693. The performance and conduct of the defense attorney must be evaluated from that counsel's perspective at the time of the occurrence. Petitioner has not met his burden under *Strickland* of showing a different outcome.

Petitioner has failed to show that counsel's performance was deficient, that it prejudiced him, and that the error was *so serious* that it violated his right to effective assistance of counsel. Further, even if Petitioner can show an error, it is not sufficient to merely show that the error had

some conceivable effect on the outcome of the proceedings, he has to show that *but for* the error, there was a reasonable probability that the outcome would be different.

Petitioner also claims that the trial judge denied Petitioner of a fair trial by erroneously instructing the jury regarding responsive verdicts. Petitioner alleges that the trial court improperly instructed the jury on the charge of Manslaughter as a responsive verdict. This issue was already addressed on appeal by the Second Circuit in Footnote 3 of their opinion wherein the Court stated that the "the trial court correctly advised the jury as to the law applicable to this case, including: (1) the required elements to prove[] the charged crime and any responsive verdicts[.]" *Edwards*, 162 So.3d at 517. This claim is repetitive under La. C. Cr. P. art. 930.4 and should be dismissed.

Accordingly, this motion is **DENIED. The Clerk of Court is directed to provide a copy of this Ruling to the District Attorney and Petitioner.**

Signed this 26th day of September, 2016, in Shreveport, Caddo Parish, Louisiana.

BRADY D. O'CALLAGHAN
DISTRICT JUDGE

**DISTRICT:**

Derrick Edwards #621889
Louisiana State Penitentiary
Angola, LA 70712

Caddo Parish District Attorney's Office
501 Texas Street, 5th Floor
Shreveport, LA 71101

ENDORSED FILED
FARON BLANEY, Deputy Clerk
SEP 30 2016
A TRUE COPY ATTEST
CADDO PARISH DEPUTY CLERK

# APPENDIX "F"

**STATE OF LOUISIANA**
**COURT OF APPEAL, SECOND CIRCUIT**
**430 Fannin Street**
**Shreveport, LA 71101**
**(318) 227-3700**

NO: 51363-KH

STATE OF LOUISIANA

VERSUS

DERRICK EDWARDS

FILED: 10/27/16
RECEIVED: PM 10/21/16

On application of Derrick Edwards for POST CONVICTION RELIEF in No. 297,401 on the docket of the First Judicial District, Parish of CADDO, Judge Brady D. O'Callaghan.

Pro se — Counsel for: Derrick Edwards

James Edward Stewart, Sr. — Counsel for: State of Louisiana

**Before BROWN, WILLIAMS, and CARAWAY, JJ.**

**WRIT DENIED.**

Applicant Derrick DeWayne Edwards seeks supervisory review of the trial court's denial of his application for post-conviction relief. On the showing made, this writ is hereby denied. La. C. Cr. P. arts. 841, 930.2; *Strickland v. Washington*, 466 U.S. 668, 104. S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Hampton*, 00-0522 (La. 03/22/02), 818 So. 2d 720; *State v. Blank*, 16-0213 (La. 05/13/16), 192 So. 3d. 93. Edwards is not precluded from obtaining the requisite support to substantiate his allegation that he was denied the right to testify in his own behalf. *State v. Davis*, 15-1934 (La. 09/23/16), 199 So. 3d 1139.

Shreveport, Louisiana, this 2nd day of December, 2016.

HNB FTW by JJC

FILED: December 2, 2016

Karen Green McGee
DEPUTY CLERK

SECOND CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA
Endorsed Filed December 2, 2016
Lillian Evans Richie
LILLIAN EVANS RICHIE, CLERK OF COURT
A TRUE COPY - Attest

# APPENDIX "G"

# The Supreme Court of the State of Louisiana

**STATE EX REL. DERRICK EDWARDS**

NO. 2017-KH-0232

**VS.**

**STATE OF LOUISIANA**

- - - - - -

IN RE: Derrick Edwards; - Plaintiff; Applying For Supervisory and/or Remedial Writs, Parish of Caddo, 1st Judicial District Court Div. H, No. 297,401; to the Court of Appeal, Second Circuit, No. 51363-KH;

- - - - - -

**April 20, 2018**

Denied. See per curiam.

SJC

JLW

GGG

MRC

JTG

HUGHES, J., would grant the writ in part.

Supreme Court of Louisiana
April 20,2018

Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 17-KH-0232

STATE EX REL. DERRICK EDWARDS

V.

STATE OF LOUISIANA

APR 20 2018

ON SUPERVISORY WRITS TO THE FIRST JUDICIAL DISTRICT COURT, PARISH OF CADDO

SJC PER CURIAM:

Denied. Relator fails to show he received ineffective assistance of counsel under the standard of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As to his remaining claims, relator fails to satisfy his post-conviction burden of proof. La.C.Cr.P. art. 930.2.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

Hughes, J., would grant the Writ in part.

SUPREME COURT OF LOUISIANA

2017-KH-232

STATE EX REL. DERRICK EDWARDS

VS.

APR 20 2018

STATE OF LOUISIANA

ON SUPERVISORY WRITS TO THE 1st JUDICIAL DISTRICT COURT
FOR THE PARISH OF CADDO

Hughes, J. would grant the writ in part.

# EXHIBIT
# A

# CHARGE TO THE JURY P.5

| | | |
|---|---|---|
| STATE OF LOUISIANA | : | NUMBER: 297,401 – SECTION 3 |
| VERSUS | : | FIRST JUDICIAL DISTRICT COURT |
| DERRICK DEWAYNE EDWARDS | : | CADDO PARISH, LOUISIANA |

# CHARGE TO THE JURY

MEMBERS OF THE JURY:

You have now heard all the evidence and the arguments of counsel.

It is now my duty to instruct you on the law that applies to this case and to your deliberations. The jury is the judge of the law and of the facts on the question of guilt or innocence. The jury has the duty to accept and apply the law as given by the court. The jury alone shall determine the weight and the credibility of the evidence.

1 (*) In deciding this case, you should not be influenced by sympathy, passion, prejudice or public opinion. You are expected to reach a just verdict.

Under our law, a person accused of a crime is presumed by law to be innocent until each element of the crime, necessary to constitute his guilt, is proven beyond a reasonable doubt. The defendant is not required to prove that he is innocent. Thus, the defendant begins the trial with a clean slate.

An indictment is only a written, formal accusation against a defendant charging the defendant with a crime. You are not to consider the indictment as evidence against the defendant. You may not infer guilt from the mere filing of an indictment.

The burden of proof in a criminal case is upon the State to prove the defendant's guilt beyond a reasonable doubt. While the state must prove guilt beyond a reasonable doubt, it does not have to prove guilt beyond all possible doubt. Reasonable doubt is doubt based on reason and common sense and is present when, after you have carefully considered all the evidence, you (2) cannot say that you are firmly convinced of the truth of the charge. It is the duty of the jury, in considering the evidence and in applying to that evidence the law as given by the court, to give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack

of evidence in the case. It is the duty of the jury if not convinced of the guilt of a defendant beyond a reasonable doubt, to find him not guilty.

The statements and the arguments made by the attorneys at any time during the trial are not evidence.

The evidence which you should consider consists of the testimony of witnesses, as well as any documents and exhibits which were introduced into evidence.

Evidence is either direct or circumstantial. Direct evidence is evidence which, if believed, proves a fact. Circumstantial or indirect evidence is evidence which, if believed, proves a fact and from that fact you may logically and reasonably conclude that another fact exists.

(3) You cannot find a defendant guilty solely on circumstantial evidence unless the facts proven by the evidence exclude every reasonable hypothesis of innocence.

It is your duty to determine the credibility of the witnesses and to determine how much weight to give to the testimony of a witness. You may consider the probability or improbability of the statements; their opportunities for knowledge of the facts to which they testify; their reliability in noting and remembering facts; their demeanor on the witness stand; their interest or lack of interest in the outcome of the case; and the extent to which the testimony is supported or contradicted by other evidence. You have the right to accept as true, or reject as false, the testimony of any witness, in whole or in part, as you are impressed with his or her credibility.

If the state offers evidence of a statement by the defendant, you must first determine whether the statement was in fact made. You must then consider whether the statement, if made, was accurately recorded or repeated.

If you find that defendant made a statement, you must also determine the weight or value that the statement should be accorded, if any. In determining the weight or value to be accorded a statement made by a defendant, you should consider all the circumstances under which the statement was made. In making that determination, you should consider whether the statement

was made freely and voluntarily, without the influence of fear, duress, threats, intimidation, inducement, or promises.

The defendant is not required to call any witnesses or to produce any evidence.

The defendant is not required to testify. No presumption of guilty may be raised, and no inference of any kind may be drawn from the fact that the defendant did not testify.

The testimony of a witness may be discredited by showing that the witness will benefit in some way by the defendant's conviction or acquittal, that the witness is prejudiced, or that the witness has any other reason or motive for not telling the truth.

The testimony of a witness may be discredited by showing that the witness previously was convicted of a crime. The conviction does not necessarily mean that the witness is failing to tell the truth. It is a circumstance you may consider, along with all other evidence, in deciding whether you believe any or all of his [her] testimony.

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. The prior statement may also be considered by you for the truth of the matter contained therein.

An expert is a person who is learned in a particular area and he is permitted to express his opinion upon matters in issue, but an expert is not called into court for the purpose of deciding the case. You the jurors are responsible for deciding the case. An expert is merely a witness and you have the right to either accept or reject his testimony and opinion in the same manner and for the same reasons for which you may accept or reject the testimony of other witnesses in the case.

In this case the defendant is charged with Second Degree Murder [La. R.S. 14:30.1] by killing Tyrone Miles.

The possible verdicts you may render in this case as to each count are as follows:

1. Guilty as charged of Second Degree Murder, or
2. Guilty of Manslaughter, or
3. Guilty of Negligent Homicide, or
4. Not Guilty.

If you are convinced beyond a reasonable doubt that the defendant is guilty as charged of Second Degree Murder, your verdict should be: guilty as charged.

If you are not convinced beyond a reasonable doubt that the defendant is guilty of the offense charged as to a respective count, but you are convinced beyond a reasonable doubt that the defendant is guilty of a responsive verdict, your verdict should be guilty of the appropriate responsive verdict.

If the State has failed to prove beyond a reasonable doubt that the defendant is guilty of either the offense charged or of the lesser responsive offense as to a respective count, your verdict should be not guilty.

The crime of Second Degree Murder is defined in pertinent part in our law as the killing (6) of a human being when the offender has a specific intent to kill or to inflict great bodily harm.

> Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence."

The crime of Manslaughter is defined in pertinent part in our law as follows:

(7)

"A. Manslaughter is ...

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

(2) A homicide committed without any intent to cause death or great bodily harm;

a. When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30 or 30.1, or of any intentional misdemeanor directly affecting the person.

1. Battery is the intentional use of force or violence upon the person of another.

2. Simple battery is a battery committed without the consent of the victim and is an intentional misdemeanor directly affecting the person.

3. Aggravated battery is a battery committed with a dangerous weapon and is a felony not enumerated in Article 30 or 30.1.

4. Assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery.

5. Simple assault is an assault committed without a dangerous weapon and is an intentional misdemeanor directly affecting the person.

6. Aggravated assault is an assault committed with a dangerous weapon and is an intentional misdemeanor directly affecting the person.

The defendant bears the burden to prove, by a preponderance of the evidence, that he acted in "sudden passion or heat of blood" in order for a verdict of manslaughter to be appropriate.

(8) The crime of Negligent Homicide is defined in pertinent part in our law as follows:

A. Negligent homicide is the killing of a human being by criminal negligence.

Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.

(9) Criminal intent has been referred to in this case. Our law provides that criminal intent may be specific or general.

(1.) Specific criminal intent is that state of mind which exists when the circumstances indicate that the defendant actively desired the prescribed criminal consequences to follow his act or failure to act.

(2.) General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the defendant in the ordinary course of human experience must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.

Whether criminal intent is present must be determined in light of ordinary experience.

(10) A homicide is justifiable if committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

(11)

The danger need not have been real as long as the defendant reasonably believed that he was in actual danger.

Some factors that you should consider in determining whether the defendant had a reasonable belief that the killing was necessary are:

(1) the excitement and confusion of the occasion;

(2) the possibility of preventing the danger to himself by using force less than killing; and

(3) the defendant's knowledge of his assailant's dangerous character.

A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict

Thus, if you find:

(1) That the defendant was not the aggressor or did not bring on the difficulty, or that he withdrew from the conflict in good faith and in such a manner that his adversary knew or should have known that he desired to withdraw and discontinue the conflict; and

(2) that the defendant killed in self-defense; and

(3) that the defendant believed that he was in danger of losing his life or receiving great bodily harm; and

(4) that the defendant believed the killing was necessary to save himself from the danger; and

(5) that the defendant's beliefs were reasonable in light of the circumstances;

then you must find the defendant not guilty.

(12)

A defendant who raises the defense that he acted in self-defense does not have the burden of proof on that issue. The state must prove beyond a reasonable doubt that the homicide was not committed in self-defense.

When you enter the jury room, you should consult with one another, consider each other's views, and discuss the evidence with the objective of reaching a just verdict.

I will hand you a typewritten list of the forms of the possible verdicts you may render in this case as to both counts.

When you retire to deliberate, you will elect one of your members to serve as foreperson.

When you reach a verdict the foreperson must write the verdict on the back of the list of responsive verdicts, sign and date the verdicts, and deliver the verdicts to me in open court.

You need not be unanimous in your verdict. Ten of twelve jurors must agree on the verdict you render in this case.

When you have reached your verdicts, please advise the bailiff, and court will reconvene to receive your verdicts.

The case is now yours to decide.

January ____, 2014

BRADY D. O'CALLAGHAN
DISTRICT JUDGE

ATTORNEYS AND REPRESENTATIVES:

Dale G. Cox, Asst. District Attorney, State of Louisiana
George Winston, Asst. District Attorney, State of Louisiana
Sarah M. Hood, Asst. District Attorney, State of Louisiana
John Bokenfohr, Defense Counsel for Derrick Dewayne Edwards

DERRICK DEWAYNE EDWARDS
Petitioner,

versus

DARREL VANNOY, Warden
Louisiana State Penitentiary
Respondent

# APPENDIX