STATE OF LOUISIANA

VERSUS

DONOVAN LAFRANCE

NO. 24-KA-392

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 22-4907, DIVISION "L"
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

April 02, 2025

SCOTT U. SCHLEGEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Scott U. Schlegel

AFFIRMED

SUS
FHW
SJW

COUNSEL FOR DEFENDANT/APPELLANT,
DONOVAN LAFRANCE

Kevin V. Boshea

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Thomas J. Butler
Darren A. Allemand
Lindsay L. Truhe
Taylor Somerville

SCHLEGEL, J.

Defendant, Donovan Lafrance, appeals his conviction and sentence for first degree murder in violation of La. R.S. 14:30. For the reasons that follow, we affirm his conviction and sentence.

Procedural History

On January 19, 2023, a Jefferson Parish Grand Jury returned an indictment charging defendant with the first degree murder of Clarence Harvey, by discharging a firearm, while engaged in the perpetration or attempted perpetration of an aggravated burglary of the dwelling of Tanisha Harton, and/or while he was engaged in the perpetration or attempted perpetration of a simple robbery of Tanisha Harton in violation of La. R.S. 14:30(C)(2) on or about September 29, 2022. Defendant was arraigned on January 23, 2023, and entered a plea of not guilty.

The indictment was amended by the State on the day of trial, December 5, 2023, by crossing out the "and/or while he was engaged in the perpetration or attempted perpetration of a simple robbery of Tanisha Harton" language. Ultimately, the indictment alleged that defendant committed first degree murder while "engaged in the perpetration or attempted perpetration of an aggravated burglary." The case proceeded to trial.

On December 7, 2023, the jury returned a verdict of guilty as charged. On December 19, 2023, the day of sentencing, defense counsel filed a motion for new trial and a motion for post-verdict judgment of acquittal. The trial court denied both motions in open court. The trial court sentenced defendant to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. After the sentencing, defendant filed a motion to reconsider sentence. The trial court also denied the motion to reconsider. Defendant filed a motion for appeal, which was granted on January 12, 2024.

Facts

Jacquelyn Harvey testified that she was the mother of the victim, Clarence Harvey. She testified that her son had been dating Tanisha Harton for a year, but that she had never met her. She learned that her son was killed on September 29, 2022, at 1:00 a.m. after receiving a call from her daughter.

Two 911 calls placed on September 29, 2022, at 12:37 a.m. and 12:44 a.m., were played for the jury. In the first call, Ms. Harton is heard screaming defendant's name. She told the operator that someone was shot in her apartment and gave her address. She is heard screaming and crying, "Donovan please. Donovan please. Donovan please. . . . Donovan, please don't shot [*sic*] me. . . . Donovan, please don't kill yourself." In the second call, Ms. Harton is heard desperately asking the operator to please hurry up.

Dr. Dana Troxclair, Chief Forensic Pathologist for the Jefferson Parish Sheriff's Office (JPSO), was qualified as an expert in forensic pathology and testified that she performed the autopsy on Mr. Harvey. She testified that the victim had three perforating gunshot wounds, meaning that the bullets entered and exited the body; each gunshot wound had an entry and exit. Dr. Troxclair explained that one gunshot entered through the victim's right scalp, went through the brain, and exited on the left scalp. The other two gunshots entered through the victim's chest on the right side of the victim's body. Dr. Troxclair testified that all three wounds were potentially fatal without medical intervention.

She stated that none of the gunshot wounds exhibited stippling, which occurs when the gun is a few inches to a few feet away from the victim. She testified that the gunshot wounds on Mr. Harvey were from a gun that was over two feet away when fired. Dr. Troxclair testified that the cause of death was multiple gunshot wounds, and the manner of death was homicide.

Blake Bruno, the property manager at Calypso Bay Apartments, where Ms. Harton lived, testified and identified the lease for Apartment 1202. He explained that the name on the lease was "Patsy Blackman," (who was Ms. Harton's grandmother.) Neither defendant nor Ms. Harton's names were on the lease, although Ms. Harton's e-mail address was listed as the e-mail contact. Apartment 1202 was a one-bedroom apartment with an entrance on the ground level and garage. After entering the door there was a stairwell that led to the second floor where the living room, dining room, kitchen, and bedroom were located. The apartment had a balcony, and there was a door from the garage that accessed the apartment. He stated that residents were given a four-digit code to enter the apartment complex and a separate guest code. The residents were also given two door keys to their apartment and a remote, which accessed the front gate and their garage.

Reil Parker testified that she was Ms. Harton's best friend. They both worked as bartenders at a bar called After Dark. They were previously in a relationship and had previously lived together. Ms. Parker testified that when their relationship ended in 2018, Ms. Harton soon thereafter started a relationship with defendant and moved in with him. She explained that defendant had issues with her and Ms. Harton remaining friends. She stated that defendant would try to control Ms. Harton and became jealous when she and Ms. Harton hung out. She also testified that Ms. Harton was dating Mr. Harvey at the time of his murder and was just friends with defendant.

Ms. Parker testified that she and Ms. Harton worked at After Dark on Wednesday, September 28, 2022. Defendant came into the bar that evening, and Ms. Harton asked Ms. Parker to give defendant an iPad from behind the bar. She testified that defendant's demeanor appeared normal. She stated that Mr. Harvey came into the bar after defendant had already left. Ms. Parker testified that Mr.

Harvey stayed at the bar for approximately an hour. Ms. Parker testified that seven days before the shooting**,** she was bartending while Ms. Harton and Mr. Harvey were talking on a sofa. She stated that defendant walked over to them, gave them both a handshake, and walked out. She stated that everyone appeared normal. She stated that Mr. Harvey stayed at Ms. Harton's apartment on multiple occasions, but that they did not live together.

Detective Steven Keller with JPSO's homicide division testified that he and three other detectives were assigned to assist Detective Scott Bradley in the investigation of Mr. Harvey's death. He testified that he arrived to the scene at apartment 1202 of Calypso Bay Apartments after the patrol division had already arrived. Mr. Harvey was found suffering from gunshot wounds, and once he was pronounced dead by EMS, the detectives were notified so they could respond. A search warrant was obtained, and detectives began to process the crime scene with the crime scene technicians. Det. Keller testified that he learned that it was possible that Ms. Harton's ex-boyfriend, Donovan Lafrance, was responsible for the death. Ms. Harton had been located at the scene by deputies, and she was transported to the investigation bureau, where she was later interviewed by Detective Bradley.

Crime scene technicians took photographs of the apartment. Det. Keller testified that it was immediately apparent that the front door of the apartment, located on the first floor, had been kicked in. The frame was cracked in half, and the locking mechanism was bent. He explained that he knew the door had been locked when it was forced open because it was still "engaged and extended outwards." He stated that a shoeprint was observed on the exterior of the door, and that an Adidas symbol was observed within the shoeprint. Det. Keller testified that Ms. Harton's car, a red Camaro, was parked in front of the garage.

Det. Keller testified that there were five, fired cartridge casings clumped together in the hallway outside of the master bedroom where Mr. Harvey was found deceased. The casings were 9 mm Winchester casings. He explained that the location of the casings led him to determine that the shooter of the weapon was "standing within those confines." Det. Keller stated that a sixth casing was found in a suitcase in the bedroom. He stated that this indicated that at some point the shooter advanced from the bedroom doorway into the bedroom to fire the sixth shot. Mr. Harvey was located in the corner of the room on the floor and was nude from the waist down. Det. Keller explained that a glass sliding door in the bedroom that led to a balcony had been struck by a projectile. Defects from the projectiles were found on a ring light and the glass sliding door, which showed the path of travel of the projectile. Det. Keller testified that no firearms were found inside the house or on or around Mr. Harvey.

Det. Keller stated that Ms. Harton had a Ring doorbell camera that was not operable. However, surveillance video was found from a camera that was located on another building across the street. He spoke with the homeowner and learned that a "volley" of four or five shots was heard, which he testified coincided with the six casings found on the scene.

Det. Keller testified that the video displayed a timestamp of September 29, 2022, at 12:32 a.m. He explained that defendant could be seen driving past Ms. Harton's apartment and then returning. He testified that her front door was where the light was, and the blue glow in the second-floor window was from her television. Ms. Harton's red Camaro could be seen in the surveillance video, and defendant's car is seen pulling up next to it. He said that defendant was seen leaving the car running, then going in the direction of the door. The camera is reactivated at 12:44, and defendant is seen fleeing the scene.

Det. Keller testified that defendant eventually turned himself in and was accompanied by a family member. The family member signed a consent to search the truck that the family member drove in with defendant. A 9 mm handgun was located and seized from the vehicle. Five live rounds were removed from the gun. He testified that there was no indication that any weapons were fired at the scene, other than the gun found in the car. He stated that the gun ballistically matched the evidence found at the crime scene, and that defendant was the registered purchaser of the gun.

Linda Tran, a firearm examiner with JPSO's crime lab, was accepted as an expert in firearm and tool mark examination. She examined six Winchester 9 mm fired cartridge casings, a bullet jacket, and the firearm, which were obtained from the crime scene. She identified the firearm that had been recovered as a "Canik, model TP 9 Elite Combat, 9-millimeter caliber semiautomatic pistol." The firearm was test-fired in a water tank, and the casing was compared to the casings found at the homicide scene. Ms. Tran testified that the six casings from the scene bore the same class characteristics as well as having sufficient individual characteristics as the casing produced from the test-fire, which led her to conclude that they were fired from the same firearm. She also compared the casings under a microscope. All were determined to be fired from the same gun.

Ms. Harton testified and stated that she was a bar manager at the After Dark sports bar until September 2022. She and Ms. Parker were best friends, and had previously dated for approximately three years. Although they lived together, she broke up with Ms. Parker in 2018. But they remained friends. Ms. Harton testified that she started dating defendant pretty quickly after their break-up and moved in with defendant and his sister soon after. Defendant proposed to Ms. Harton in 2019. They set a wedding date, but broke up instead. Ms. Harton testified that

they got back together at some point but that defendant later broke up with her in October 2021. She and defendant remained friends though.

Ms. Harton testified that after they broke up, she started dating other people, including Mr. Harvey. Defendant knew she was dating other people. He even hacked her Instagram and saw that she and Mr. Harvey were talking. Defendant also saw them out together at different locations, including at After Dark. Ms. Harton admitted to defendant that she was dating Mr. Harvey. She also testified that defendant was going through "a lot" while they dated, and that he took things out on her.

Ms. Harton testified that in May 2021, she was at defendant's mother's house, when the mother of one of his children came by. She explained that defendant "went off" on the mother of his child, who left. Defendant had to drive Ms. Harton to work. While in the car, she told him that she could not be with him anymore. Defendant responded by hitting her on the head with a toolbox and a gun. She stated that her face "bust open" so he brought her to his mother's house instead. His mother took her to the hospital, where she got stiches in her face. She had a gash on her right eyebrow and bruising.

Ms. Harton testified that in approximately March 2022, she moved to her apartment in Calypso Bay. The apartment was under her grandmother's name because she could not provide the number of paystubs that the apartment required. She explained that while she worked at After Dark and other bars, she was paid in cash. She paid the rent for the apartment. Ms. Harton testified that she paid the Cox bill and that it was later transferred to her name.

Ms. Harton testified that in September 2022, approximately two weeks before the shooting, defendant came to her apartment unannounced. She told him to leave, but he would not. He got violent and physical with her in her living room. She tried to push him off, but defendant choked her with two hands until

she blacked out. Ms. Harton testified that defendant screamed at her saying, "I will really kill you." She stated that when she regained consciousness, defendant was standing over her and looking at her.

Ms. Harton testified that the Friday before the shooting, she, defendant, and his family and friends went to New York. She stated that because she worked at a hotel, she was able to get them a family rate. She stated defendant begged her to go and the only reason she went was because he made her feel guilty about not getting the guest rate without her. She explained that they missed their flight though because she was hesitant to go, so they were only in New York for twenty-four hours. She testified that they shared a room with each other in New York, but did not have sex. She stated that defendant knew she was talking to Mr. Harvey while they were in New York. When they returned, they received a ride from defendant's cousin, Larry Lafrance. Defendant asked if he could stay at her apartment because there were a lot of people at his mother's house so she let him. She explained that defendant did not live with her, but that he lived with his mother at 150 Willowbrook Drive.

Ms. Harton testified that over the following few days and on Wednesday, September 28, 2022, she and defendant were communicating over text and phone calls, trying to be friends again. She testified that she was clear with defendant that she did not want to get back together in a relationship with him because it "was just too much hurt, too much abuse, too much everything."

Ms. Harton stated that defendant's contact information was saved in her phone as "DL." A series of text messages between Ms. Harton and defendant were introduced at trial. Ms. Harton testified that she texted defendant at 7:05 a.m. on September 28, 2022, stating "Goodmorning [heart emoji.] Why you didn't wake me up?" Ms. Harton testified that this was right after the trip, and that they were starting to be friends again. She stated that he would wake up early, and

sometimes in the past he would wake her up. She testified that he did not sleep over the day before. At 9:32 a.m. she sent defendant a longer text that stated,

> Hey I appreciate you for being gentle with me & trying these few days. It means a lot after what you did. I do think I need more space because I'm tired of saying "I need to get my life together". I actually need to get it together and figure out what I really need/want & I don't want to put any pressure on you or mistakenly "talk to you like a child" – so I'm taking all the necessary steps right now to do so. I feel you should do the same. Saturday I have to work but you are more than welcome to come chill/smoke hookah or keep me company at the bar if you would like to.

At 4:15 p.m. she texted him that "I've got to build and sacrifice right now so I can get myself out of this situation I'm in." She testified that while she was in a relationship with defendant, she got a truck in her name for him but that he stopped paying the note. So she was paying two car notes, two insurances, plus rent, so she was in a financial hole. She also let defendant borrow some money, which he never paid back.

Ms. Harton testified that while she was working at After Dark on Wednesday, September 28, 2022, defendant stopped by to pick up his iPad but she did not interact with him because she was busy. She sent him a text at 8:40 p.m. that stated, "You left?" They continued to text about her feelings towards him and that "[i]t's the bad side that hurt me and scare me." At 9:48 p.m. she texted defendant, "Tater[1] and Justin pulled up so I am talking to them. Not to hurt you before you thought that. I didn't even know they was coming." Ms. Harton testified that defendant always thought that she was talking to other people to hurt him. She explained that she was single and wanted to do whatever she wanted. She stated that she was just giving defendant a heads up. At 9:50 p.m., defendant replied, "Lol k." Ms. Harton stated she did not think too much of it. At 9:50 p.m. she sent defendant a text stating, "Seriously," and "I hope you really changed & mature like you been lately."

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[1] "Tater" was Mr. Harvey's nickname.

Defendant and Ms. Harton continued to text, but later on defendant told her that they could not be cool anymore and that he had to keep his distance because he was in love with her. Ms. Harton replied that she understood. Defendant replied that was "it" for him and her. Ms. Harton responded that she did not understand why he would have put his hands on her. He then stated that he was trying to work on himself and sent a screenshot of a therapist.

At 10:51 p.m. defendant sent Ms. Harton a text that stated, "He's sleeping there, huh?" Ms. Harton responded, "No...but they coming by me. And I don't mind them coming by me." Defendant replied, "That's cool, I'm dumb son." Ms. Harton texted defendant back stating that he spent time with other people and why was it wrong when she did it. Defendant texted her saying that he was not talking to anyone and that he loved her and wanted to move forward with her. He stated that it had been a rough week for him, and he could not tolerate the pain. Ms. Harton sent a text replying that defendant had put his hands on her, that she needed to heal, and that she loved him. Defendant replied stating that he was sorry and that he needed her that week. At 11:12 p.m., Ms. Harton stated that she was not going to do anything and that he did not need to worry. She stated that she needed company to get her mind off what he did to her.

Ms. Harton testified that she could not recall what time she left After Dark on the night of the shooting, but that she was home by 11:12 p.m. when she sent the last text message to defendant. She stated that she left work in her own car and Mr. Harvey followed her home in his car. When she and Mr. Harvey arrived to her apartment, she took a shower while Mr. Harvey waited for her in the living room. She testified that she was going to give Mr. Harvey a massage on the massage table, but he was tired so they lay on the sofa. He took off his shirt and bottoms, and she gave him a massage. They relocated to her bedroom, and his clothes remained in the living room. The door to her bedroom was closed and locked.

Ms. Harton explained that she and Mr. Harvey began to get intimate with each other, when they heard a loud banging on the door. She explained that her Ring doorbell was broken, but it would make a faint ringing noise when it was pressed. She heard someone attempting to ring the doorbell multiple times. She grabbed her phone and saw the text message from defendant at 12:33 a.m. that stated, "The worst thing is to not answer." She also saw that she had a missed call from defendant before the text. She testified that she then got a text message from defendant that stated, "Tanisha!"

Ms. Harton testified that she then heard a loud boom, like someone busting through her front door, and someone running upstairs. She stated defendant then burst through her door and started punching her on the back of her head. She stated she was at the foot of her bed, facing toward it, and Mr. Harvey was in the bed. She testified that defendant started yelling at her for her car keys. She said she thought her car keys were on her kitchen counter or near there because defendant got them. Defendant then walked around, looked at Mr. Harvey, and walked out and left. She followed him out of the room to see if she could lock the door behind him but she saw that the door was on the ground. She stated that she went back to her living room and then onto her balcony to see if she could see him leave. But defendant did not leave. Instead, he ran back upstairs quickly to where she was, looked at her, and said, "I really loved you." He then walked toward the bedroom in front of the bedroom door, raised his hand, and started shooting. After she heard the gunshots, she heard Mr. Harvey fall to the floor.

She said that before running into her bedroom, defendant pointed the gun at her. She begged him not to shoot her and to let her get to Mr. Harvey. He kept the gun up, while she ran past him to get to Mr. Harvey, who was bleeding out. Mr. Harvey was lying on the bedroom floor under her television, in front of her bed. Mr. Harvey was choking on his own blood, so she turned him to his side to try to

keep him from choking. At this point, she realized she needed her phone but remembered that she had dropped it when defendant was punching her earlier. She testified that she then ran and got her phone but defendant grabbed it out of her hand. They fought over the phone into the living room. She begged him for it, and eventually he gave it to her. She ran back into the bedroom and called 911.

Ms. Harton testified that she called her mother because her mother worked at a hospital, but her mother did not answer. While she called 911, defendant was pointing a gun at her. She said there were no firearms in the apartment and that neither she nor Mr. Harvey were armed.

She testified that when the police arrived, she ran to put clothes on and went downstairs to call Mr. Harvey's sister. She was taken to the investigation bureau in a JPSO squad car, and then met with Det. Bradley. She gave him defendant's name as the person who shot and killed Mr. Harvey. She was shown a photograph, and identified the person in the photograph as the defendant. Ms. Harton testified that she showed Det. Bradley the text messages between her and defendant and informed him that defendant had previously beaten her.

She stated that she went to her best friend's house after the interview and received multiple calls from defendant, at 12:50 a.m.; 12:51 a.m.; 12:54 a.m.; 1:08 a.m.; 1:12 a.m.; 1:28 a.m.; 1:32 a.m.; and twice at 1:47 a.m. Ms. Harton stated that later that day, on the evening of September 29, 2022, Det. Bradley called her to return for follow-up questioning. She informed him that prior to the shooting, defendant had choked her and that she went on a trip with defendant to New York prior to the shooting.

Det. Scott Bradley of the JPSO was the lead investigator in the case and interviewed Ms. Harton within about an hour after the death of Mr. Harvey. Ms. Harton identified defendant as the shooter and positively identified a photograph of defendant. Det. Bradley examined text messages provided by Ms. Harton. She

told him about an incident between her and defendant that occurred in May 2021. Det. Bradley obtained a subpoena for medical records from Ochsner for this incident and testified that the information on the records corroborated her account that Ms. Harton had been hit in the face with a small unknown object and had sustained a laceration above the right eye. Ms. Harton also informed him that her grandmother leased the apartment for her. She also disclosed that her Ring doorbell was "dead." At this time, Ms. Harton told him that defendant was her ex-boyfriend, and that they had broken up about a year ago. He said that she told him she had started dating Mr. Harvey for about a year, and that she lived in the apartment alone. She said defendant did not have access to the keys to the apartment, and did not have access to the key fob. He did not have access to any of the keys on September 28 and 29, 2022.

In the early morning hours of September 29, 2022, Det. Bradley received a phone call from a Larry Lafrance, before he drove defendant to the Investigations Bureau. Photographs were taken of defendant. Det. Bradley testified that no injuries were visible on defendant's hands. He searched the GMC Sierra that defendant had arrived in and found a firearm. A firearms trace report was conducted, and the owner and purchaser of the firearm was determined to be defendant. Defendant was arrested for the murder of Mr. Harvey and transported to booking.

Det. Bradley testified that the initial crime scene photos depicted a shoeprint on the front door with an Adidas logo on it. He reviewed other crime scene photos and saw an Adidas slipper in the bedroom. He returned to Ms. Harton's apartment the next evening on September 29, 2022 to collect the slipper, which he found in the bedroom. The slipper was tested for DNA, but the results were inconclusive. He also went to After Dark to attempt to obtain surveillance video, but the bar was unable to provide it.

When Det. Bradley went back to the apartment, it was still secure. He did not observe any male clothes except a pair of male tennis shoes in an upstairs closet. Det. Bradley testified that Mr. Harvey's vehicle was towed and searched, but nothing was discovered. Defendant's vehicle was also searched. Det. Bradley testified that a red Apple iPhone was found in the vehicle and sent to the digital forensic unit. He stated that he also issued subpoenas for phone records of Ms. Harton, Mr. Harvey, and defendant. However, phone records were obtained for only two numbers.

Det. Bradley testified that other detectives interviewed Larry Lafrance and Renique Blackmon, Ms. Harton's mother. After receiving information from them as to Ms. Harton's relationship with defendant, Det. Bradley called Ms. Harton back in on the evening of September 29, 2022 for a second interview to clarify her relationship with defendant. He gave her a full opportunity to explain herself. She told him that although she had broken up with defendant a year ago, she remained intimate with him on occasion. She also said that she had been choked by defendant until she became unconscious.

Mr. Brandon Brooks, defendant's cousin, testified that beginning in March 2022, defendant was living with Ms. Harton at the Calypso Bay apartments. He stated that defendant and Ms. Harton asked him to put their Cox bill for Wi-Fi in his name. To Mr. Brooks' knowledge, defendant was not living with his mother and was in a relationship with Ms. Harton. He explained that he went to their apartment often during his lunch break and that defendant would be there. He stated he did not talk to Ms. Harton much. He testified that he saw defendant use a key and a key fob to get into the apartment. He explained that he was unsure whether the Cox bill had been changed from his name to either Ms. Harton's or defendant's because he never got a late payment notice.

Defendant also testified during the trial. Defendant testified that he began dating Ms. Harton in March 2018. They were both working at After Dark at the time. He DJ'd and she bartended. They moved in together about three weeks after they met. He stated that they initially lived with his sister and then moved to another location with his sister. They then went back and forth between living with Ms. Harton's grandmother, to his mother's, then back to her grandmother's. He testified that Ms. Harton's grandmother signed a lease for them at Calypso Bay because his credit was bad, and Ms. Harton did not have income. They moved into the apartment in March 2022. He testified that he proposed to Ms. Harton on July 4, 2019, but that they rescheduled the wedding twice. The second wedding date was set for October 1, 2022.

Defendant testified that he and Ms. Harton had arguments, as in any relationship. There was infidelity on his part; they would split up for a few days and then get back together. He testified that toward the end of 2021, he saw from her Instagram account that she was flirting with a lot of men, including Mr. Harvey. She told him that they were just friends, but he was suspicious, and it made him upset. They agreed that she was going to stop talking to Mr. Harvey and that he would stop talking to the people he was talking to.

Defendant testified that in May 2021, Ms. Harton found out that he was cheating on her. She threw a drink at him in the car and started hitting him. When they got to a stop sign, she took the keys out of the car while he was driving and continued to hit him. He stated that he pushed her off to defend himself, but she did not stop, so he reached in the back of the car, got his gun box, and hit her in the face with it. He testified that he immediately took her to his mother's house. His mother took Ms. Harton to the hospital. He said that they got back together that night, after he apologized.

Defendant testified that in June or July of 2022, Ms. Harton's mother and stepdad moved into the Calypso Bay apartment complex. He said he gave Ms. Harton's mother his key to get in and out of the apartment, but that she lost it, so Ms. Harton gave her mother her key. Defendant said he had the code to get into the apartment complex, and that Ms. Harton could use the remote fob to get in and out of the house through the garage through the side door. When Ms. Harton's mother and stepdad moved in, defendant testified that the stepdad gave him (defendant) a gun that was put in a pillowcase in the back closet in the bedroom. Defendant said that he never moved the gun before September 28, 2022, and that he never went into the closet. He said he kept the bulk of his clothes in the washer and dryer and would go to the dryer and see what was there and put it on.

Defendant testified that approximately two weeks before the shooting of Mr. Harvey, Ms. Harton got angry with him. He put two hands around her throat, but she did not black out. He said that she was hitting him with a pan and she cut his finger with a knife. He acknowledged that Ms. Harton was 4'10" and that he was 5'8".

Defendant testified that in August 2022, when the trip to New York was initially planned, Ms. Harton was not supposed to go. But Ms. Harton reached out to his cousin, Larry Lafrance, on Instagram and told him she was going. She booked the hotel, and he paid for the hotel and the flights. He said they missed their flight because she was late doing her hair and makeup, so they had to return to their apartment at Calypso Bay, and then caught a midnight flight. He stated that they were intimate when they missed the flight. Defendant explained that they had two rooms at the Hilton, but she canceled one room so she could stay with him.

Defendant testified that in the days prior to the shooting, Ms. Harton never expressed that she wanted to break up with him. He stated that on Wednesday,

September 28, 2022, he woke up for work while Ms. Harton was still sleeping. He did not wake her up. He testified that Ms. Harton sent him a long text message after a "good morning" text. He stated he thought it was odd that she texted him "out of the blue." Defendant testified that he met Ms. Harton at 6:00 p.m. at his mother's house that night. They discussed "the situation," and he said he was going to stay at his mother's house that night because Ms. Harton "is very aggressive when stuff don't go her way." He stated that he received a long text from Ms. Harton that Mr. Harvey and Justin showed up at the bar after he had already left the bar. Defendant testified that he felt that Ms. Harton was trying to hurt him and make him mad, and that he never asked her about the long text, which is why he responded with "Lol k." He said he was trying to brush it off. Defendant explained that when Ms. Harton told him that Mr. Harvey and Justin were coming to the apartment, he was mad because he paid the bills there. He testified that he paid half the rent, and sometimes all of it, and he paid the internet bill. Ms. Harton paid for the "lights", and everything else was included.

Defendant testified that when Ms. Harton did not respond to his text message, he decided to go to the apartment. He called Ms. Harton, but she did not answer. He drove past the apartment to see who was there. He stated he did not see Justin's car or Ms. Parker's—only Mr. Harvey's. This made him "upset, mad." He was wearing Adidas slides / slippers that night. He did not have a key or a key fob on that date. He banged on the door but when the door was not opened, he kicked the door down and ran up the stairs. He noticed that the massage table was out, which had not been out that morning. He tried to open the bedroom door, but it was locked, so he kicked the bedroom door in too. He saw Ms. Harton standing between the dresser and bathroom door. Mr. Harvey was in the bed. He asked Ms. Harton what she was doing, and where her keys were. He said that earlier that day he had given her some money for the rent, and loaned her money to help pay for

the Rooms To Go bedroom furniture. He explained that he got her keys and went to her car to retrieve his money, his belongings, and his gun from her car.

Defendant stated that he intended to leave after he had gotten his belongings from her car, but he heard Ms. Harton screaming his name. This triggered him to go back upstairs. Ms. Harton was in the living room, located upstairs. He testified that he went to the door of the bedroom and told Mr. Harvey that he (Mr. Harvey) had to leave. He thought that Mr. Harvey was wearing a tank top and underwear. He said that Mr. Harvey responded aggressively, turned to the wall and was reaching for something. Defendant testified that he felt Mr. Harvey "was about to do me something," and that Mr. Harvey's exact words were, "I'm about to do you something, Podna". He said that he felt threatened, so he shot Mr. Harvey five times. He said the sixth shot was fired by accident; "it wasn't pointed at nobody." Ms. Harton ran to him and asked him why he shot Mr. Harvey. She then started looking for her phone. He testified that he found it and gave it to her. Defendant testified that he was scared and turned the gun on himself because he was panicking and did not know what to do.

Defendant explained that he stayed two to three minutes after the shooting, then went to Ms. Harton's mother's apartment. He stated that she lived in the same complex. He banged on her door, but she did not answer. He called his mother and told her what happened. He said that he then went back to her house, got in another vehicle, and went to Belle Chasse to talk to his family. He later turned himself in. He testified that after he was booked, he was placed on suicide watch because he felt like harming himself. He stated he felt bad for the incident and prayed for Mr. Harvey's family.

Law and Analysis

On appeal, defendant raises four assignments of error. The first three assignments of error relate to the sufficiency of the evidence against defendant.

Accordingly, we address these assignments together. The fourth assignment of error relates to defendant's argument that the trial court improperly denied his motion to continue trial. We address that claim separately.

A. *Sufficiency of the Evidence*

In his first assignment of error, defendant argues that the verdict of guilty of first degree murder is contrary to the law and the evidence. Defendant contends that the circumstances established both sufficient provocation and heat of passion sufficient for manslaughter. Defendant further argues the homicide was committed in self-defense and was therefore justifiable.

In his second assignment of error, defendant asserts that the district court erred in denying his motion for new trial. In his third assignment of error, defendant contends that the district court erred in denying his motion for post-verdict judgment of acquittal.

The constitutional standard for sufficiency of the evidence is whether, upon viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find that the State proved all of the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Gassenberger*, 23-148 (La. App. 5 Cir. 12/20/23), 378 So.3d 820, 829. This directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *Gassenberger*, *supra*. This deference to the fact finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *Id*. Further, a reviewing court errs by substituting its appreciation of the evidence and the credibility of witnesses for that of the fact finder and overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *Id*. As a result, under

the *Jackson* standard, a review of the record for sufficiency of the evidence does not require the reviewing court to determine whether the evidence at trial established guilt beyond a reasonable doubt, but whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. *Id*.

Evidence may be direct or circumstantial. *State v. Robertson*, 22-363 (La. App. 5 Cir. 3/29/23), 360 So.3d 582, 590. When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 provides, "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *Id.* On appeal, the reviewing court does not determine if another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. *State v. Williams*, 14-882 (La. App. 5 Cir. 5/14/15), 170 So.3d 1129, 1136, *writ denied*, 15-1198 (La. 5/27/16), 192 So.3d 741. Instead, the appellate court must evaluate the evidence in a light most favorable to the State and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *Id.*

1. *First Degree Murder / Responsive Verdict of Manslaughter*

Defendant admits that he shot and killed Mr. Harvey. He also admits that he first kicked in the door to the apartment before running up the stairs and kicking in the door to the bedroom where the victim was located. Nevertheless, in his first assignment of error, defendant argues that the verdict of guilty of first degree murder is contrary to the law and the evidence.

First degree murder is defined, in pertinent part, as the killing of a human being "[w]hen the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of …. aggravated burglary[.]" La. R.S. 14:30(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). Such a state of mind can be formed in an instant. *State v. Sly*, 23-60 (La. App. 5 Cir. 11/2/23), 376 So.3d 1047, 1073, *writ denied,* 23-1588 (La. 4/23/24), 383 So.3d 608. Specific intent may be inferred from the circumstances surrounding the offense and the conduct of the defendant, as well as the extent and severity of the victim's injuries. *Id.* Louisiana courts have found that aiming a lethal weapon and discharging it at close range in the direction of a victim is indicative of a specific intent to kill. *Id.* The determination of whether the requisite intent is present is a question of fact, and a review of the correctness of this determination is guided by the *Jackson* standard. *Id.*

Again, defendant does not deny that he shot and killed Mr. Harvey. In fact, defendant said he intentionally fired the gun at the victim five times; the sixth one was an accident. Thus, defendant undoubtedly had the specific intent to kill or inflict great bodily harm upon Mr. Harvey. As a result, the only element at issue is whether the State proved that defendant was also engaged in the perpetration or attempted perpetration of the crime of aggravated burglary at the time of the murder.

Aggravated burglary is defined in La. R.S. 14:60 as the unauthorized entering of any inhabited dwelling, or of any structure, water craft, or movable where a person is present, with the intent to commit a felony or any theft therein, if (1) the offender is armed with a dangerous weapon; or (2) if, after entering, the offender entering arms himself with a dangerous weapon; or (3) the offender commits a battery upon any person while in such place, or in entering or leaving such place.

Defendant argues that an unauthorized entry was not proven because he lived at the apartment and challenges the credibility of Ms. Harton, who testified that defendant did not live with her.

The credibility of a witness is within the sound discretion of the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *State v. Hutchinson*, 22-536 (La. App. 5 Cir. 8/18/23), 370 So.3d 769, 781, *writ denied*, 23-1296 (La. 2/27/24), 379 So.3d 662. In the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *Id.* at 782.

It is apparent that the jury found Ms. Harton's testimony that defendant did not live with her, and that he did not have consent to enter the apartment at the time of the murder, to be more credible than defendant's testimony and the testimony of his cousin. Defendant's name was not on the lease nor were any of the bills related to the apartment in his name. In addition to Ms. Harton's testimony, defendant himself testified that he did not have keys or a key fob on the night of the shooting, and that he kicked in the front door. Thus, we find that viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found defendant guilty of first degree murder beyond a reasonable doubt.

Additionally, defendant contends that the evidence shows the shooting was done in sudden passion or heat of blood sufficient for a verdict of manslaughter. Defendant asserts that this is a "textbook example" of the offense of manslaughter.

The offense of manslaughter is defined as a homicide that would be 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; *State v. Monterroso*, 22-390 (La. App. 5 Cir. 4/26/23), 361 So.3d 1177, 1190, *writ denied*, 23-745 (La.

11/21/23), 373 So.3d 447. The manslaughter statute further provides that "[p]rovocation 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." La. R.S. 14:31(A)(1).

Sudden passion and heat of blood distinguish manslaughter from murder, but they are not elements of the offense. *Monterroso*, *supra*. Instead, they are mitigating factors that may reduce the grade of the offense. *Id.* In order to be entitled to the lesser verdict of manslaughter, the defendant is required to prove the mitigatory factors by a preponderance of the evidence. *Id.* The question for the appellate court on review is whether a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found that the mitigatory factors were not established by a preponderance of the evidence. *Id.*

The evidence in this case does not show that defendant's act of shooting Mr. Harvey was done in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Defendant drove to Ms. Harton's apartment after receiving a number of texts throughout the night from Ms. Harton that the victim had been at After Dark and that he was on his way to her apartment. Ms. Harton testified that defendant already knew that she had started dating other people, including Mr. Harvey. When he arrived, he drove past the apartment to see who was there and saw the victim's car, which made him upset. As a result, he exited his vehicle and began to bang on the front door of the apartment. When no one answered, he kicked in the door, ran upstairs, and then kicked in the bedroom door too. Once inside the bedroom, he proceeded to punch Ms. Harton on the back of her head multiple times before retrieving her keys. Defendant then ran out of the apartment to Ms. Harton's car, retrieved a gun, went back upstairs and shot at Mr. Harvey six times, killing him.

After careful consideration of the record, we conclude that a rational trier of fact could have found that defendant failed to prove that he committed this murder in sudden passion or heat of blood.

2. *Justifiable Homicide*

Defendant also argues that he was acting in self-defense when he shot and killed Mr. Harvey, thereby making the homicide justifiable. Defendant argues that the standard is whether his subjective belief that he was in danger of death or great bodily harm was reasonable.

A homicide is justifiable "[w]hen committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger." La. R.S. 14:20(A)(1). When a defendant in a homicide prosecution claims self-defense, the burden is on the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. *State v. Tate*, 22-570 (La. App. 5 Cir. 6/21/23), 368 So.3d 236, 245. The fact that an offender's conduct is justifiable, although otherwise criminal, constitutes a defense to prosecution for any crime based on that conduct. La. R.S. 14:18; *Tate, supra.*

When force or violence results in a homicide, the standard for self-defense is set forth in La. R.S. 14:20. *State v. Lavigne*, 22-282 (La. App. 5 Cir. 5/24/23), 365 So.3d 919, 941. Self-defense for homicide requires an objective inquiry into whether the defendant reasonably believed that he was in imminent danger of losing his life or receiving great bodily harm and that deadly force was necessary to save himself. *State v. Richardson*, 92-836 (La. App. 5 Cir. 12/14/94), 648 So.2d 945, 947, *writ denied*, 95-0343 (La. 6/23/95), 656 So.2d 1011, *citing State v. Guinn*, 319 So.2d 407 (La.1975).

Further, the aggressor doctrine provides that "[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." La. R.S. 14:21. And while there is no unqualified duty to retreat, the possibility of escape from an altercation is a recognized factor in determining whether the defendant had a reasonable belief that deadly force was necessary to avoid the danger. *State v. Tate*, 368 So.3d at 245-46.

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. Tate*, 368 So.3d at 246. The determination of a defendant's culpability rests on a two-fold test: (1) whether, given the facts presented, the defendant could reasonably have believed his life to be in imminent danger; and (2) whether deadly force was necessary to prevent the danger. *Id.* The jury is the ultimate fact finder in determining whether the State negated self-defense beyond a reasonable doubt. *Id*.

In this case, the evidence produced at trial does not support defendant's contention that he shot the victim in self-defense. Defendant kicked down two doors before first encountering the victim, who was laying in the bed at the time. Defendant then left, retrieved a firearm and returned. When defendant next encountered the victim, Mr. Harvey was still in the upstairs bedroom wearing nothing but a t-shirt before any alleged threats or movements were made by Mr. Harvey. Mr. Harvey was naked from the waist down.

Furthermore, Ms. Harton testified that there were no firearms in the apartment and that neither she nor Mr. Harvey were armed. Detective Keller testified that no firearms were found inside the apartment or around Mr. Harvey.

Under these facts, we find that a rational trier of fact could have concluded under the *Jackson* standard that defendant was the aggressor in the shooting, so he

cannot claim self-defense. And even if we found that he could, the evidence presented at trial does not show that defendant could reasonably have believed his life to be in imminent danger and that deadly force was necessary to prevent the danger. The jury heard defendant's version of events and Ms. Harton's version of events, and clearly found the State's witnesses to be more credible.

Accordingly, we conclude that defendant's first assignment of error – that the verdict of guilty of first degree murder is contrary to the law and the evidence – is without merit. For the same reasons, defendant's second assignment of error (that the district court erred in denying his motion for new trial), and his third assignment of error (that the district court erred in denying his post-verdict judgment of acquittal), are also without merit.

B. *Denial of the Motion to Continue Trial*

In his fourth assignment of error, defendant argues that the district court erred in denying his motion for continuance when his counsel had just recently enrolled. Defendant argues that when his attorney, Devin Jones, enrolled in the case on November 1, 2023, his counsel was given "virtually no time" to prepare for trial. He argues that the trial court erred in denying the motion to continue given the serious nature of the charge, and defense counsel's lack of knowledge of the State's case. He contends Mr. Jones should have been allowed reasonable time to prepare for trial. Defendant submits that on November 1, 2023, after his former attorney's motion to withdraw was granted, his motion to continue was denied.

The State responds that the "motion to enroll and omnibus" filed by Mr. Jones on November 1, 2023, makes only an oblique reference to an attached "motion to continue trial date," but the record does not contain a specific request for a continuance. Therefore, the State argues that the issue is not preserved for review. Alternatively, the State avers that the denial of the motion to continue was not an abuse of discretion because Mr. Jones had over a month to prepare for trial.

A motion for a continuance must be in writing, allege the specific grounds for the continuance, and be filed at least seven days before trial. La. C.Cr.P. art. 707. At any time, upon written motion and after contradictory hearing, the court may grant a continuance but only upon a showing that the motion is in the interest of justice. *Id*.

According to La. C.Cr.P. art. 712, "[a] motion for continuance, if timely filed, may be granted, in the discretion of the court, in any case if there is good ground therefor." The decision of whether to grant or refuse a motion for a continuance rests within the sound discretion of the trial judge, and a reviewing court will not disturb such a determination absent clear abuse of discretion. *State v. Perilloux*, 21-448 (La. App. 5 Cir. 12/20/23), 378 So.3d 280, 314, *writ denied*, 24-104 (La. 9/4/24), 391 So.3d 1055; *State v. Shannon*, 10-580 (La. App. 5 Cir. 2/15/11), 61 So.3d 706, 715, *writ denied*, 11-559 (La. 9/30/11), 71 So.3d 283. Generally, a conviction will not be reversed, even on a showing of an improper denial of a continuance absent a showing of specific prejudice. *State v. Gray*, 17-166 (La. App. 5 Cir. 12/20/17), 235 So.3d 1270, 1288; *Shannon*, *supra*.

In this case, the record reflects that defendant was represented by Eddie Jordan from October 2022 when defendant was arrested until shortly before the commencement of trial in December 2023. On September 12, 2023, Mr. Jordan attempted to withdraw as counsel of record, citing "serious and irreconcilable differences." This motion was denied because the trial was already set for September 25, 2023. Mr. Jordan filed a motion to continue trial on September 18, 2025, which was denied.

On September 25, 2025, the district court granted a joint motion to continue trial, and trial was reset for October 10, 2023. The trial date of October 10, 2023 was continued again on October 10, 2023. A new trial date of December 4, 2023 was selected.

On October 2, 2023, Gregory Carter, attempted to enroll as defendant's counsel. This motion was denied on October 12, 2023.

On November 1, 2023, Devin Jones filed a "motion to enroll and omnibus", which stated that a motion to continue trial date was attached. However, a separate motion to continue was not attached. In any event, the "motion to enroll and omnibus" was denied by the district court on November 2, 2023.

On December 1, 2023, Mr. Jordan filed a second motion to withdraw as counsel of record, which included the allegation that defendant had retained new counsel, who had enrolled and would represent defendant at the trial set for December 4, 2023.

The State, Mr. Jordan, and Mr. Jones appeared before the court on December 4, 2023. The district court indicated that he did not realize that Mr. Jordan had filed a motion to withdraw and orally granted Mr. Jordan's motion to withdraw. The district court and counsel of record discussed evidentiary matters. Mr. Jones stated that he was still obtaining evidence from the state, including that he was just discovering new La. C.E. 412.4 (prior domestic violence) allegations against defendant. The record contains no evidence that Mr. Jones made an oral (or written) motion for continuance of the trial. The trial proceeded on December 5, 2023.

In the present case, we find that defendant failed to preserve for review the issue of a denial of a request for continuance of the trial. The "motion to enroll and omnibus" filed by Mr. Jones on November 1, 2023, makes only an oblique reference to an attached "motion to continue trial date," but the record does not contain a specific motion for a continuance. The motion to enroll and omnibus were denied. There is no record of defendant moving for a continuance of the trial after November 1, 2023.

Even if a separate motion for continuance of trial had been filed on November 1, 2023, Mr. Jones had over a month to prepare for trial. Nothing in the record suggests that counsel was not sufficiently familiar with the case. Defense counsel cross-examined all of the State's witnesses at trial, and called defendant and defendant's cousin as witnesses during defendant's case-in-chief. Defendant fails to show how his strategy would have differed even if defendant had actually moved for a continuance and the trial court had granted it. Defendant has not shown a clear abuse of discretion by the trial court. Defendant's fourth assignment of error is without merit.

Errors Patent Review

We reviewed the record for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990).

On December 19, 2023, after sentencing defendant, the trial court informed defendant that he had "two years from the date the conviction has since become final to seek post-conviction relief." The sentencing minute entry reflects that the trial court informed defendant that he had "two (2) years after judgement of conviction and sentence has become final to seek post-conviction relief." When there is a discrepancy between the transcript and the sentencing minute entry, the transcript prevails. *State v. Lynch*, 441 So.2d 732, 734 (La. 1983).

If a trial court fails to advise, or provides an incomplete advisal, pursuant to La. C.Cr.P. art. 930.8, the appellate court may correct this error by informing the defendant of the applicable prescriptive period for post-conviction relief by means of its opinion. *State v. Becnel*, 18-549 (La. App. 5 Cir. 2/6/19), 265 So.3d 1017, 1022.

Accordingly, pursuant to La. C.Cr.P. art. 930.8, defendant is hereby advised that no application for post-conviction relief, including applications which seek an

out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922. *See State v. Harris*, 23-233 (La. App. 5 Cir. 12/27/23), 379 So.3d 152, 161, *writ denied*, 24-118 (La. 4/23/24), 383 So.3d 607.

Decree

For the foregoing reasons, we affirm defendant's conviction and sentence.

AFFIRMED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

24-KA-392

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)
KEVIN V. BOSHEA (APPELLANT)
DARREN A. ALLEMAND (APPELLEE)
JULIET L. CLARK (APPELLEE)
THOMAS J. BUTLER (APPELLEE)

MAILED
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