Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

No. 52,817-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA Appellee

versus

LEE VESTER CROW, JR. Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 92595

Honorable Robert L. Pittard, Judge

* * * * *

LOUISIANA APPELLATE PROJECT Counsel for Appellant
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* * * * *

Before WILLIAMS, GARRETT, and STEPHENS, JJ.

WILLIAMS, C.J.

The defendant, Lee Vester Crow, Jr., was charged by bill of indictment with second degree murder, in violation of La. R.S. 14:30.1. Following a jury trial, he was found guilty of the responsive verdict of manslaughter, La. R.S. 14:31. He was sentenced to serve 26 years in prison at hard labor. For the following reasons we affirm.

FACTS

On August 30, 2017, at approximately 4:00 a.m., James Morgan was driving down a rural road in Shongaloo, Louisiana, when he saw the tail lights of a vehicle off the road near a line of trees. Morgan recognized the vehicle as the one usually driven by his neighbor's teenage daughter, MiKaylah, who he suspected had been involved in an automobile accident. Morgan turned his vehicle around and called 911. Following the instructions of the 911 operator, Morgan approached the vehicle and called out to its occupant; the person in the vehicle did not respond. As Morgan moved closer to the vehicle, he noticed a hole in the back window on the driver's side and a woman slumped over in the seat. After calling out again and receiving no response, Morgan went to the home where MiKaylah lived with her mother, Kameka Brantley, and the defendant, Lee Vester Crow, Jr. (Kameka's husband of approximately three years). Morgan knocked and MiKaylah eventually answered the door. At that point, Morgan suspected that the woman in the vehicle was Kameka. He took MiKaylah to her grandmother's house located nearby and returned to the vehicle to wait for law enforcement officers to arrive.[1]

[1] The testimony revealed that the incident occurred in an area described as "rural" and that the houses and mobile homes were not located close together.

Detective Scott Tucker, of the Webster Parish Sheriff's Office, was the first detective to arrive on the scene. The deceased female in the vehicle was identified as Kameka Brantley. After interviewing MiKaylah, the deputies quickly developed the defendant as a suspect in the shooting death of Kameka.

A warrant was obtained for the defendant's arrest. Soon after the warrant was issued, the deputies learned that the defendant had been arrested that morning in Claiborne Parish for driving while intoxicated ("DWI"). The officers traveled to Claiborne Parish, where the defendant had just been processed for the DWI offense. The deputies transported the defendant and his vehicle back to Webster Parish.[2] The defendant was advised of his rights and executed a waiver of rights form. Thereafter, he gave a statement to the deputies, during which he initially denied killing Kameka and denied shooting a firearm that morning. However, later during the interview, the defendant admitted that he fired the gun toward Kameka's car, stating, "I didn't say sh*t to her. I just popped off the rounds. *** Evidently I wasn't thinking worth a f**k." The defendant also stated that he needed to go to Haynesville because that was where he had disposed of the gun. Subsequently, Det. Tucker, accompanied by another deputy, drove the defendant to Haynesville and retrieved the gun.

On October 23, 2017, the Webster Parish Grand Jury returned an indictment charging the defendant with second degree murder, in violation of La. R.S. 14:30.1. On March 13, 2018, the defendant filed a motion to

[2] During a search of the defendant's vehicle, the deputies found a bottle of Oxycodone, for which the defendant had a valid prescription.

suppress the statements he made to the law enforcement officers. Following a hearing, the trial court denied the defendant's motion to suppress.

The defendant's trial commenced on September 19, 2018. James Morgan, the neighbor who discovered Kameka's body in the vehicle, testified with regard to the events of that morning.

Dr. Jennifer Forsyth, the pathologist who performed the autopsy of Kameka, also testified at the defendant's trial. Dr. Forsyth testified as follows: the autopsy revealed that Kameka sustained three gunshot wounds; the first gunshot wound entered the left side of her back and penetrated her heart and both of her lungs; the first wound caused a large amount of internal bleeding and caused the injuries that led to Kameka's death; the bullet from the first gunshot wound did not exit the body and was recovered and sent to the Webster Parish Sheriff's Office; the second gunshot wound came from a bullet traveling in the same direction as the first; the second bullet entered and exited Kameka's left breast and did not strike any organs; and the third gunshot wound was a superficial "graze" wound on the back of her right arm.

Det. Tucker testified as follows: the vehicle in which Kameka was discovered had to be covered by a tarp to be processed because it was raining heavily; he was able to partially process the vehicle at the scene; the vehicle was transported to a secure area, out of the rain, where the officers could complete the processing of the vehicle; due to the wetness of the ground, he was able to clearly see how the vehicle traveled before it came to rest in the area near the trees; he observed tire tracks from Kameka's yard to the road, approximately 150 to 200 yards from the home Kameka shared with the defendant; it appeared that the vehicle "left the yard, came up and

just went right back down"; there was "very minor, minor" damage to the front of the vehicle, as it appeared the car "was just rolling"; he did not see any other tire tracks in the yard, and there was no indication that the vehicle went back and forth, or was spinning in the yard; while he was in Kameka's yard, a car pulled up with MiKaylah inside; after talking to MiKaylah, the defendant was developed as a suspect and a warrant was issued for his arrest; while processing Kameka's vehicle, the officers recovered two bullets; one bullet appeared to have entered the driver's side window, hit the console, and entered the passenger seat; the other bullet entered the back driver's side window, struck something metal in the back seat and lodged there; the second bullet did not strike Kameka; later that morning, he learned that the defendant had been arrested in Claiborne Parish; at approximately 1:30 p.m., he and another detective transported the defendant and his vehicle back to Webster Parish; and he searched the defendant's vehicle prior to interrogating him.

On cross-examination, Det. Tucker testified that the bullet lodged in the back seat of Kameka's vehicle was recovered before he interviewed the defendant. During Det. Tucker's testimony, the jury was shown the video of the defendant's statement wherein he initially denied any knowledge of Kameka's homicide, boasted about his proficiency in shooting a firearm, and initially denied having fired a gun that day. The video also showed that the defendant became emotional and told the officers that they needed to go to Haynesville, which is where he threw the gun out of his vehicle, and that shooting his wife was an accident. Det. Tucker testified that following the

interview, the defendant directed police officers to the area where he had discarded the gun and that the gun was quickly retrieved.[3]

During his testimony on cross-examination, Det. Tucker testified that he had confirmed that the defendant's blood-alcohol concentration ("BAC") was .143 when he was arrested earlier that day in Claiborne Parish. However, the detective stated that the defendant did not show any signs of intoxication when he was interviewed that afternoon. Det. Tucker also testified that during the interview, he and the other officers were attempting to ascertain what had occurred between the defendant and Kameka when the defendant finally stated that he had fired the gun and that the shooting was an accident.

Kameka's sister, Essence Brantley, testified with regard to the contentious relationship between the defendant and Kameka. More specifically, Essence testified about a previous incident between Kameka and the defendant, after which she observed that Kameka had a "busted" lip.

Webster Parish Sheriff Deputy Terry Brown also testified at trial. He informed the jury of a separate incident of violence involving the defendant and Kameka. He stated that he was able to use his body camera to copy a recording from Kameka's phone, which had captured the incident. According to Deputy Brown, the defendant was subsequently arrested and charged with aggravated assault and domestic abuse battery for allegedly pulling a knife on Kameka.

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[3] Det. Tucker identified a number of state exhibits related to the recovery of the weapon: Exhibit 13 was a Google "earth map" of the area where the gun was located; Exhibit 14 was a photograph of the area where officers searched for the weapon; Exhibit 15 was a photograph of the police officers searching for the weapon; Exhibit 16 was a photograph of the weapon after it was located; and Exhibit 17 was a closeup of the weapon, a "five shot .357," with three spent casings and a live round.

Kameka's mother, Minnie Brantley, also testified. She described the emotional impact Kameka's death has had on her family, particularly MiKaylah. Minnie testified that the defendant and Kameka were "high school sweethearts," who went their separate ways and later reconnected. She stated that the defendant and Kameka had been married for approximately three years when the shooting occurred. On cross-examination, Minnie described the relationship between Kameka and the defendant as "stormy."

Lieutenant Shawn Baker, a narcotics supervisor for the Webster Parish Sheriff's Office, was called to testify as a witness for the defense. He testified that he had known the defendant more than 40 years. He also testified regarding a prior incident involving the defendant and Kameka. He stated that several months before Kameka's death, he went to a store in Shongaloo, driving his personal vehicle, and the defendant pulled up next to him and asked for his help. According to Lt. Baker, the defendant explained that Kameka had called him stating that her vehicle had broken down on Wiley Road, an isolated area about five miles away. He stated that the defendant expressed some apprehension about going to this location alone, particularly because Kameka's car was "fairly new and it should not be breaking down." Lt. Baker testified that the defendant asked him to go with him to the location, and he agreed to accompany the defendant. Lt. Baker further testified that when they arrived, he reached into Kameka's car, turned the ignition, and the vehicle started immediately.

On cross-examination Lt. Baker testified that this incident occurred approximately seven months before the homicide. He also stated that he

followed Kameka and the defendant home, and he did not observe any verbal argument between them.

The defendant also testified at his trial. He testified as follows: he and Kameka were together "on and off" for a number of years; in the last year, their relationship began to become "problematic"; their arguments would sometimes "turn physical," but they did not usually call law enforcement to intervene; he could not recall the prior incident where Kameka had a busted lip; he could not recall the incident Kameka captured on her cellphone; he was "pretty intoxicated" when he was arrested for the incident captured on Kameka's cellphone, to the point where he could hardly stand up; during a prior, unrelated incident, Kameka had threatened him with a sword by swinging the weapon at him and, in return, he grabbed his sawed-off shotgun to get her to stop; at the time, he believed Kameka was going to hurt him; when he picked up the shotgun, Kameka turned around and tripped over some shoes next to the bed and fell, hitting a small refrigerator; and he and Kameka were arguing about his girlfriend, who lived in Haynesville.

With regard to the morning of Kameka's death, the defendant testified as follows: he and Kameka were arguing about his girlfriend; the day before the shooting, Kameka had driven his truck to work and received a note on it from another woman; the note was about the due date of the woman's baby; he was in bed when Kameka returned home from work; Kameka woke him because she was upset about the note the woman had written; he and Kameka argued 20-25 minutes; he told Kameka that he was going to Haynesville the next morning to tell the woman to leave his wife alone; when he awakened the next morning to go to Haynesville, he noticed that all

the lights in the house were on and the television volume was "very loud," which was an unusual occurrence in his household at 3:00 a.m.; he noticed that Kameka was not in the house; he questioned MiKaylah regarding Kameka's whereabouts, but she stated that she did not know; as he was leaving the house, he grabbed his gun and went to his truck, which was parked in the driveway; as he was about to leave, he noticed Kameka sitting in MiKaylah's car, blocking his path; he exited his truck and went to the driver's side of Kameka's car to talk to her; Kameka was still angry and did not want him to go to see the woman in Haynesville; he and Kameka argued approximately 10-15 minutes; he attempted to return to his truck; Kameka "came at" him fast with the car; she passed him and then put the car in reverse, heading in his direction; Kameka told him that she was going to "drag [him] to the crossroad"; Kameka tried to run over him again and he hit his hand on the driver's mirror; he pulled out his gun to get her to stop; as he was falling back, he fired two "quick" shots and then a third "out of reflex"; the incident happened so fast that he did not have time to think; he fell to the ground after he fired the shots; when he looked up, he saw that the car was "down into the woods"; and he "jumped in [his] truck and left."

The defendant further testified as follows: after he left the scene, he was scared, nervous and unable to believe what had happened; he drove toward Cotton Valley, then down Hwy. 371 to Dixie Inn; he then drove onto the interstate and traveled to Shreveport; he exited North Market Street in Shreveport and drove down Hwy. 1; it began to rain, so he turned around on Hwy. 1 and went to Haynesville; as he was driving, he was drinking from a pint of vodka; he went to his daughter's home in Haynesville, but she was not there; he threw the gun out the passenger's side window of his truck in

Haynesville; he stopped and purchased more alcohol from a liquor store "at the state line," then drove aimlessly, driving toward Arkansas; while driving, he ingested Lortab and OxyContin; he was arrested in Homer, Louisiana (Claiborne Parish), and was there approximately 2½ hours before being transported to Minden (Webster Parish); when he arrived in Minden, he was tired, sleepy, "hung over," "a little intoxicated," and upset; he had never been interrogated before, and he did not really want to speak to the law enforcement officers because he had been up "half the night"; the police officers continued to "suggest things" and scenarios regarding what had happened; and he "just told them what they wanted to hear."

On cross-examination, the defendant testified as follows: his girlfriend was the subject of all of the arguments between him and his wife; other than Lt. Baker, he could not think of anyone who could corroborate any of his testimony; after he fired three shots toward Kameka and saw her vehicle go "into the woods," he did not approach the vehicle to check on her or call 911; he did not call and ask Kameka's mother to check on her; he did not check on MiKaylah; he panicked and fled the scene; and he does not know why he did not call and inform law enforcement that he had shot his wife in self-defense. The defendant admitted that during his interrogation, he stated that Kameka was not trying to run over him with her car. Further, the defendant admitted that he had bragged to the police officers about being a "good shot," and that he had boasted about his ability to use a pistol to "walk" gunshot shells "along the ground."

After deliberating, the jury found the defendant guilty of the responsive verdict of manslaughter.[4] On December 10, 2018, the defendant was sentenced to 26 years' imprisonment at hard labor. Following sentencing, counsel for the defendant made an oral motion to reconsider, arguing that a sentence for a first offender of more than half of the maximum sentence was excessive. The trial court denied the motion to reconsider sentence.

The defendant now appeals.

DISCUSSION

The defendant contends the evidence was insufficient to support his conviction for manslaughter. He argues that the state failed to prove, beyond a reasonable doubt, that he was not acting in self-defense when he fired the gunshots into Kameka's vehicle. The defendant maintains that he fired the shots after Kameka had driven her vehicle toward him, then backed up in another effort to strike him with her car. He argues that he feared for his life, and he pulled his gun in an attempt to convince Kameka to stop the vehicle.

When issues are raised on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should first determine the sufficiency of the evidence. *State v. Hearold*, 603 So. 2d 731 (La. 1992); *State v. Robinson*, 51,830 (La. App. 2 Cir. 2/28/18), 246 So. 3d 725, *writ denied*, 2018-0573 (La. 2/11/19), 263 So. 3d 897. The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal

[4] During deliberations, the jury posed the following question to the trial court: "What is the sentence for manslaughter?" In open court, the trial court responded, "[Y]ou are the judge of the facts in this case and not the law and sentencing is -- is part of the law," and "I'm not legally permitted to answer your question."

under *Hudson v. Louisiana*, 450 U.S. 40, 101 S. Ct. 970, 67 L. Ed. 2d 30 (1981), if a rational trier of fact, viewing the evidence in accordance with *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the essential elements of the offense have been proved beyond a reasonable doubt. *State v. Hearold*, *supra*.

The standard of appellate review for a sufficiency of the evidence claim is whether, after viewing the case in a 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. Robinson*, 50,643 (La. App. 2 Cir. 6/22/16), 197 So. 3d 717, *writ denied*, 2016-1479 (La. 5/19/17), 221 So. 3d 78. This standard, now legislatively embodied in La. C. Cr. P. art. 821, does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the fact finder. *State v. Pigford*, 2005-0477 (La. 2/22/06), 922 So. 2d 517; *State v. Robinson*, *supra*.

The appellate court does not assess the credibility of witnesses or reweigh evidence. *State v. Smith*, 1994-3116 (La.10/16/95), 661 So. 2d 442; *State v. Johnson*, 41,428 (La. App. 2 Cir. 9/27/06), 940 So. 2d 711, *writ denied*, 2006-2615 (La. 5/18/07), 957 So. 2d 150. 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. Crossley*, 48,149 (La. App. 2 Cir. 6/26/13), 117 So. 3d 585, *writ denied*, 2013-1798 (La. 2/14/14),

132 So. 3d 410; *State v. Speed*, 43,786 (La. App. 2 Cir. 1/14/09), 2 So.3d 582, *writ denied*, 2009-0372 (La. 11/6/09), 21 So.3d 299. A reviewing court affords great deference to a jury's decision to accept or reject the testimony of a witness in whole or in part. *State v. Mitchell*, 50,188 (La. App. 2 Cir. 11/18/15), 181 So. 3d 800, *writ denied*, 2015-2356 (La. 1/9/17), 214 So. 3d 863; *State v. Eason*, 43,788 (La. App. 2 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).

La. R.S. 14:31 provides, in pertinent part:

> A. Manslaughter is:
>
> (1) A homicide which would be murder under either Article 30 (first degree murder)[[5]] or Article 30.1 (second degree murder),[[6]] but the offense is

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[5] La. R.S. 14:30 provides, in pertinent part:

> A. First degree murder is the killing of a human being:
> (1) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, second degree kidnapping, aggravated escape, aggravated arson, aggravated or first degree rape, forcible or second degree rape, aggravated burglary, armed robbery, assault by drive-by shooting, first degree robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to juveniles.
> ***

[6] La. R.S. 14:30.1 provides, in pertinent part:

> A. Second degree murder is the killing of a human being:
> (1) When the offender has a specific intent to kill or to inflict great bodily harm; or
> (2) When the offender is engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to inflict great bodily harm.
> ***

> 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.
>
> ***

In the instant case, the evidence presented shows, and the defendant admitted, that he shot his wife three times after a heated argument about the defendant's relationship with another woman. Thus, we are satisfied that there was sufficient evidence to support the defendant's conviction for manslaughter. Consequently, we must consider whether the state met its burden of proving, beyond a reasonable doubt, that the homicide was not committed in self-defense.

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

> A. A homicide is justifiable:
>
> (1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.
> (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.
>
> ***
>
> C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section,

> and may stand his or her ground and meet force with force.
> D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

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. 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. Lensey*, 50,242 (La. App. 2 Cir. 11/18/15), 182 So. 3d 1059, *writ denied*, 2015-2344 (La. 3/14/16), 189 So. 3d 1066; *State v. Johnson*, *supra*. Although there is no unqualified duty to retreat, the possibility of escape is a factor to consider in determining whether a defendant had a reasonable belief that the use of deadly force was necessary to avoid the danger. *State v. Wilkins*, 2013-2539 (La. 1/15/14), 131 So. 3d 389; *State v. Johnson*, *supra*.

In *State v. Wilkins*, *supra*, the Louisiana Supreme Court discussed La. R.S. 14:20, Louisiana's "Stand Your Ground" statute. The Court stated:

> [T]he effect of the 2006 La. Acts 141, amending La.R.S. 14:20 and adding subsections C and D to the statute, was two-fold: a person may choose to defend himself or herself with deadly force under the circumstances defined in R.S. 14:20(A), without considering whether retreat or escape is possible, *i.e.*, a person "may stand his or her ground and meet force with force" (C); and he or she may do so without fear that, if it came to it, a jury may nevertheless second guess the decision not to flee from the encounter in assessing whether

> the use of deadly force was justified (D). The overall effect of the 2006 amendments was thus to supplant a jurisprudential rule so deeply entrenched in Louisiana law that some decisions continue to adhere to it to this day. *See, e.g.*, *State v. Vedol*, 12-0376, p. 7 (La.App. 5 Cir. 3/13/13), 113 So.3d 1119, 1124 ("[T]his Court has continued to recognize that while there is no unqualified duty to retreat from an altercation, the possibility of escape is a recognized factor in determining whether or not a defendant had a reasonable belief that deadly force was necessary to avoid the danger.") (citation omitted).

131 So. 3d at 839-40.

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. Lensey*, *supra*; *State v. Davis*, 46,267 (La. App. 2 Cir. 5/18/11), 69 So. 3d 538, *writ denied*, 2011-1561 (La. 1/13/12), 77 So. 3d 952.

In the instant case, the defendant testified that he fired the gunshots into the victim's vehicle because he feared that his life was in danger because she was attempting to hit him with her car. He stated that he fired two shots, and the third shot was fired as he was falling to the ground. According to the defendant, the victim had driven the car in his direction at a high rate of speed, put the vehicle in reverse in an attempt to back over him, then turned around and tried to hit him again.

It is apparent that the jury did not find the defendant's testimony to be credible. Further, our review of the record reveals that the evidence produced at trial did not corroborate the defendant's testimony that he shot the victim in self-defense. During his interrogation, one of the police

officers asked the defendant whether the victim was attempting to hit him with her vehicle, and the defendant denied that she was doing so. Moreover, the evidence demonstrated that none of the gunshots were fired from the front or back of the vehicle, which indicates that the victim was not driving or reversing in the direction in which the defendant was standing. The evidence revealed that three bullet holes were discovered in the victim's vehicle: two were in the driver's side window, and one was in the back seat on the driver's side. According to Det. Tucker's testimony, the location of the bullet holes indicated that the defendant was standing beside the vehicle when he fired the gunshots.

Additionally, the defendant's testimony that the victim drove toward him at a high rate of speed was not supported by the evidence. The photographs of the victim's vehicle indicated that she struck a tree after her vehicle left the roadway. The damage to the front of the vehicle was described as minimal, which indicated that the vehicle was not traveling at a high rate of speed. Furthermore, the unpaved driveway, after experiencing heavy rain, did not yield tire tracks of a vehicle moving at a high rate of speed, stopping, moving in reverse, and again going forward at a high rate of speed. The only "tracks" in the yard, as described by Det. Tucker, indicated that the vehicle rolled approximately 150-200 yards prior to stopping at the tree line near the victim's home. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found, beyond a reasonable doubt, that the defendant did not shoot the victim in self-defense. This assignment lacks merit.

The defendant also contends the trial court erred in denying the motion to suppress his statement to law enforcement officers. He argues that

his statements were not free and voluntary because when he arrived in Minden, he was "tired, sleepy, hung over, upset, and still somewhat intoxicated." According to the defendant, after the shooting, he spent the early morning hours driving around drinking alcohol and taking Lortab and OxyContin. He maintains he was arrested for DWI in Claiborne Parish at approximately 9:19 a.m., and at that time, his BAC was .143.[7] He maintains that he was interviewed regarding the homicide of his wife approximately three hours later, and there is no evidence that he was given a subsequent Breathalyzer to determine his BAC level at the time of his interview. Further, the defendant argues that the police officers did not attempt to ascertain whether he was under the influence of any narcotics, despite the fact that oxycodone had been found during the search of his vehicle. According to the defendant, he was under the influence of alcohol and drugs, and he was no position to knowingly and voluntarily waive his right to remain silent, or to make a conscious choice to give a statement to law enforcement officers.

In reviewing a trial court's pretrial ruling on a motion to suppress, the appellate court must look at the totality of the evidence presented at the hearing on the motion to suppress and may review the entire record, including testimony at trial. *State v. Bates*, 51,890 (La. App. 2 Cir. 2/28/18), 246 So. 3d 672; *State v. Howard*, 49,965 (La. App. 2 Cir. 6/24/15), 169 So. 3d 777, *aff'd*, 2015-1404 (La. 5/3/17), 226 So. 3d 419. Great weight is given to the trial court's ruling on a motion to suppress in regard to its

[7] In the defendant's appellate brief, he maintains that he was arrested at 9:19 a.m. However, at the hearing on the motion to suppress, Det. Gene Hanson testified that the defendant was arrested for DWI at 11:19 a.m. The Claiborne Parish incident report indicates that the defendant was stopped at 10:26 a.m., which supports Det. Hanson's testimony.

factual findings because it had the opportunity to observe the witnesses and weigh the credibility of their testimony. *State v. Thibodeaux*, 1998-1673 (La. 9/8/99), 750 So. 2d 916, *cert. denied*, 529 U.S. 1112, 120 S. Ct. 1969, 146 L. Ed. 2d 800 (2000); *State v. Odums*, 50,969 (La. App. 2 Cir. 11/30/16), 210 So. 3d 850, *writ denied*, 2017-0296 (La. 11/13/17), 229 So. 3d 924; *State v. Crews*, 28,153 (La. App. 2 Cir. 5/8/96), 674 So. 2d 1082. Accordingly, appellate courts review rulings on motions to suppress under the manifest error standard for factual determinations, while applying a de novo review to its findings of law. *State v. Bates*, *supra*; *State v. Hemphill*, 41,526 (La. App. 2 Cir. 11/17/06), 942 So. 2d 1263, *writ denied*, 2006-2976 (La. 3/9/07), 949 So. 2d 441.

Before the state may introduce a confession into evidence, it must demonstrate that the statement was free and voluntary and not the product of fear, duress, intimidation, menace, threats, inducements or promises. La. R.S. 15:451; La. C. Cr. P. art. 703(D); *State v. Blank*, 2004-0204 (La. 4/11/07), 955 So. 2d 90. If a statement is a product of custodial interrogation, the state additionally must show that the person was advised before questioning of his right to remain silent; that any statement he makes may be used against him; and, that he has a right to counsel, either retained or appointed. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

A trial court's finding as to the free and voluntary nature of a statement carries great weight and will not be disturbed unless not supported by the evidence. *State v. Benoit*, 440 So. 2d 129 (La. 1983); *State v. Washington*, 51,818 (La. App. 2 Cir. 4/11/18), 245 So. 3d 1234, *writ denied*, 2018-0783 (La. 12/17/18), 259 So. 3d 343; *State v. Freeman*, 45,127 (La.

App. 2 Cir. 4/14/10), 34 So. 3d 541, 546, *writ denied*, 2010-1043 (La. 11/24/10), 50 So. 3d 827. When deciding whether a statement is knowing and voluntary, a court considers the totality of circumstances under which it is made, and any inducement is merely one factor in the analysis. *State v. Blank*, *supra*; *State v. Washington*, *supra*; *State v. Platt*, 43,708 (La. App. 2 Cir. 12/3/08), 998 So. 2d 864, *writ denied*, 2009-0265 (La. 11/6/09), 21 So. 3d 305. Testimony of the interviewing police officer alone may be sufficient to prove that a defendant's statement was given freely and voluntarily. *State v. Washington*, *supra*; *State v. Platt*, *supra*.

In *State v. Shapiro*, 431 So. 372 (La. 1983), the defendant appealed his conviction for second-degree murder, arguing, *inter alia*, that the trial court erred in denying his motion to suppress on the basis that he was under the influence of drugs and alcohol at the time of his interrogation. During the hearing on the motion, a police officer testified that the defendant did not appear to be intoxicated or under the influence of drugs at the time his statement was obtained. Another police officer testified that the defendant was "upset" when his statement was obtained, but he appeared to understand what was taking place. The Louisiana Supreme Court rejected the defendant's argument with regard to the denial of the motion to suppress, stating:

> We do not find from the evidence adduced that defendant was so drugged (or intoxicated) or in such an emotional state that he was unaware of what he was saying, or that his statements were involuntary. We reiterate the standard by which we determine the free and voluntary nature of a defendant's inculpatory statement challenged on the ground that the defendant was drugged or intoxicated at the time: the "confession (inculpatory statement) will be rendered inadmissible only when the intoxication is of such

> a degree as to negate defendant's comprehension and to render him unconscious of the consequences of what he is saying. Whether intoxication exists and is of a degree sufficient to vitiate the voluntariness of the confession are questions of fact. The admissibility of a confession is in the first instance a question for the trial judge. His conclusions on the credibility and weight of the testimony relating to the voluntariness of a confession will not be overturned unless they are not supported by the evidence." *State v. Godeaux*, 378 So.2d 941 (La.1979); *State v. Rankin*, 357 So.2d 803 (La.1978).
>
> Under the circumstances of the instant case, we do not find that the trial court erred in finding that the defendant's inculpatory statements were free and voluntary. The defendant's drugged condition (intoxication), or emotional state, if it did exist, was not of such a degree as to negate his comprehension and consciousness of the consequences of what he was saying.

Id. at 373-374.

In the instant case, in the defendant's pretrial motion to suppress, he argued as follows: he did not knowingly and voluntarily waive his right to counsel or his right to remain silent, as his limited mental capacity and intoxication rendered him unable to understand his rights to make a knowing waiver; the actions of the police officers were "intimidating, threatening and designed to compel a confession"; the law enforcement officers promised him he would be released on a reduced charge in exchange for a confession; and the recording of the interrogation was incomplete.

A hearing on the defendant's motion to suppress was held on September 17, 2018. During the hearing, the defendant introduced into evidence the incident report detailing the shooting; the state introduced into evidence a copy of the waiver of rights form signed by the defendant, and transcript of the defendant's statement and a copy of the incident report. At

the conclusion of the hearing, the trial court found that the state met its burden of proving that the defendant's statement was free and voluntary and denied the motion to suppress.

Additionally, several witnesses testified during the hearing on the motion to suppress. Det. Gene Henson, a deputy with the criminal investigation division of the Webster Parish Sheriff's Office, testified as follows: he was one of the detectives that worked the homicide of Kameka Brantley; he was dispatched between 3:00 a.m. and 4:00 a.m.; the defendant was developed as a suspect within one hour into the investigation; at approximately 10:00 a.m., a warrant was issued for the defendant's arrest; the defendant was arrested in Claiborne Parish approximately one hour after the warrant was issued; the defendant's BAC was approximately .14 when he was arrested by the Claiborne Parish Sheriff's Office; he came into contact with the defendant approximately three to four hours after his BAC was obtained; and the defendant did not appear to be under the influence of drugs or alcohol when he came into contact with him. With regard to the defendant's appearance and demeanor, the colloquy during Det. Henson's testimony was as follows:

> Q: In the course of you being a sheriff's deputy, have you had an occasion to come in[to] contact with people that have been under the influence of drugs or alcohol?
>
> A: Yes, sir, I have.
>
> Q: More than once?
>
> A: More than once.
>
> Q: [H]ow many years have you been a sheriff's deputy?
>
> A. Almost thirteen.

Q: So in thirteen years, would you say you've had occasion to come in contact with those folks on many, many occasions?

A: Yes, I would.

Q: What is it that you look for in a person that you're dealing with to determine whether they are too drunk or too drugged to give you a voluntary statement?

A: Slurred speech, movement, not good balance, dilation of eyes.

Q: Well, let's – let's just deal with those. When you began speaking with Mr. Crow on, I think it was August the 30th, of last year, was his speech slurred?

A. No.

Q: Could you smell any odor of alcoholic impurities on his breath?

A: A faint smell, not much.

Q: Did you have occasion to watch him walk from wherever he was in the Claiborne jail into your car?

A: No, I saw him when they brought him back from Claiborne.

Q: All right. Well, he wasn't carried by them, was he?

A: No, no, sir.

Q: Well, did he have trouble walking?

A: No, sir.

Q: Was he stumbling?

A: No, sir.

Q: When you actually were speaking with him, were his eyes blood-shot?

A: No.

Q: All right. Based on your conversation with him, did he appear to be cognizan[t] of where he was and what was going on?

A: Yes, sir.

> Q: Was there anything about the questions that you asked him that he didn't seem to understand?
>
> A: No, sir.
>
> Q: Were the answers to any of the questions that you asked him off the wall or did he say anything that didn't make any sense like he was out of his mind in any way?
>
> A: No, sir.

***

During his testimony on cross-examination, Det. Henson admitted that ingesting a controlled dangerous substance could possibly exacerbate the effects of alcohol. Det. Henson also testified that he did not ask the defendant about his alcohol consumption or whether he had taken any controlled dangerous substances. According to Det. Henson, the defendant's statement was obtained approximately "an hour or two" after he was advised of his *Miranda* rights and he had executed an acknowledgment of those rights.

Det. Tucker also testified during the hearing. He stated that nothing about his interactions with the defendant led him to believe the defendant was under the influence of drugs or alcohol. Det. Tucker acknowledged that he detected an odor of alcohol on the defendant's person. However, according to Det. Tucker, the defendant's speech was not slurred, and he was able to answer questions that were posed to him. Det. Tucker stated, "[W]ith my dealing with people who abuse prescription drugs and alcohol over the years, Mr. Crow, in my opinion, seemed to be, I mean, he did not appear to be under the influence to the point to where he could not talk or cooperate." Additionally, Det. Tucker testified that during the interview, the defendant asked to be taken to Haynesville so that he could retrieve the

firearm used in the homicide. He stated that the defendant directed the officers, through a heavy rainstorm, to the exact location of the gun he had thrown on the side of the road.

After hearing the testimony and reviewing the evidence submitted, the trial court denied the defendant's motion to suppress. The court noted that the defendant was stopped in Claiborne Parish at 10:26 a.m., at which time the police officer noted that he observed a "strong odor" of alcohol emitting from the defendant. The trial court stated:

> [T]he level of impairment over time, even if he was – even if he was impaired to an extent that he could not have given a complete knowing statement at 10:26 a.m., certainly by 2:25 p.m. that that would have changed.
> ***
> [Det.] Tucker also testified that and the Court found it significant that he took them to the exact location of where the gun was placed. Obviously, some of that had, if he was impaired, a very low level of impairment if he's in the back seat of a car and directing people where they need to take him, so that's pretty much overwhelming evidence.
> ***

After reviewing this record, we find that the record establishes that the defendant's statement was freely and voluntarily made. As stated above, the defendant signed his waiver of rights form and was interrogated by the law enforcement officers approximately four hours after his BAC was obtained. Det. Henson and Det. Tucker testified that the defendant did not exhibit any signs of being under the influence of alcohol or drugs to the degree that it would negate his ability to comprehend. During the hearing on the motion to suppress, the defendant did not present any evidence to establish that he was under the influence of alcohol or drugs "to such a degree as to negate

his comprehension and consciousness of the consequences of what he was saying." See *State v. Shapiro*, *supra*.

Further, the defendant argues that his statement was not recorded in its entirety. He asserts that pursuant to La. R.S. 15:450, when the state introduces into evidence a defendant's pretrial statement, the statement must be admitted in its entirety. According to the defendant, the initial portion of his statement, relative to his understanding of what was happening, was omitted from the transcript introduced into evidence at trial.

Every confession, admission or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford. La. R.S. 15:450. Thus, if the state introduces portions of a defendant's pretrial statement, the defendant is entitled to have the remaining portions admitted so that the jury is not misled as to the statement's true nature. *State v. Manning*, 44,403 (La. App. 2 Cir. 6/24/09), 15 So. 3d 1204, *writ denied*, 2009-1749 (La. 4/5/10), 31 So. 3d 355. To satisfy the requirements of La. R.S. 15:450, it suffices that the substance of the statement be shown. *State v. McDonald*, 387 So. 2d 1116 (La. 1980); *State v. Marmillion*, 339 So.2d 788 (La. 1976).

In *State v. Wilson*, 50,865 (La. App. 2 Cir. 11/16/16), 208 So. 3d 999, *writ not cons.*, 2017-0217 (La. 4/24/17), 219 So. 3d 329, the defendant appealed the denial of his motion to suppress, citing La. R.S. 15:450. He argued that problems with the audio content of his recorded statement created an incomplete and inaccurate record. This Court rejected the defendant's argument, finding that "the entire available recording of the interview" was played for the jury, and "the most crucial portions of the

interrogation, including Defendant's confession, were adequately recorded with audio content."

In the instant case, during the trial, Det. Tucker explained that part of the defendant's statement, approximately one minute at the beginning, was not recorded because the officers had to relocate the defendant to another interrogation room, as members of the victim's family were still at the police station. Det. Tucker testified that he read the transcript of the defendant's statement and compared it to the audio/video recording of the statement. According to Det. Tucker, there were no "major substantive changes" between the recording and the transcript. He explained that some of his statements appeared to have been confused with statements made by the other officer and vice versa. Because there appeared to be some technical difficulties with regard to the recording of the defendant's statement, the trial court allowed Det. Tucker to be cross-examined regarding the transcript before the audio/video was played for the jury. While the audio/video recording was being played, the jury was provided with a copy of the transcript to read along with the recording.

During cross-examination, Det. Tucker testified that he was "not sure" of how much of the defendant's interview was not recorded. He also testified that the video did not capture him advising the defendant of his *Miranda* rights. He stated that he advised the defendant of his rights when he picked him up in Claiborne Parish, and Det. Henson advised the defendant of his rights when he arrived in Webster Parish.

We find that the evidence presented shows that the jury was provided with the entire substance of the defendant's statement to the law enforcement officers. Det. Tucker explained that "one or two minutes, at

most," of the defendant's interview was not recorded due to a transfer to another interrogation room. However, the most crucial portions of the interrogation, including the defendant's denial that he shot the victim, the officers' prolonged interrogation as to whether the shooting was intentional, the defendant's statement that the shooting was an accident, and the defendant's request to be taken to Haynesville to retrieve the gun, were adequately recorded and transcribed. Consequently, we find that the trial court did not err in denying the defendant's motion to suppress his statement to the law enforcement officers.

The defendant also contends his sentence is constitutionally excessive. He argues that the trial court did not specifically note that it was considering the aggravating and mitigating factors set forth in La. C. Cr. P. art. 894.1. The defendant also argues that the sentence imposed will not further the ends of justice and represents nothing more than a needless and purposeless imposition of pain and suffering. According to the defendant, the trial court merely discussed the facts of the case and expressed its "personal opinion" that the evidence was sufficient to find the defendant guilty of second degree murder, rather than manslaughter.

The test imposed by the reviewing court in determining the excessiveness of a sentence is two-pronged. First, the record must show that the trial court took cognizance of the criteria set forth in La. C. Cr. P. art. 894.1. The trial court is not required to list every aggravating or mitigating circumstance so long as the record reflects that it adequately considered the guidelines of the article. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Watson*, 46,572 (La. App. 2 Cir. 9/21/11), 73 So. 3d 471. The articulation of the factual basis for a sentence is the goal of La. C. Cr. P. art. 894.1, not

rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C. Cr. P. art. 894.1. *State v. Lanclos*, 419 So. 2d 475 (La. 1982); *State v. Swayzer*, 43,350 (La. App. 2 Cir. 8/13/08), 989 So. 2d 267, *writ denied*, 2008-2697 (La. 9/18/09), 17 So. 3d 388. The important elements which should be considered are the defendant's personal history (age, family ties, marital status, health, and employment record), prior criminal record, seriousness of offense and the likelihood of rehabilitation. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. Ates*, 43,327 (La. App. 2 Cir. 8/13/08), 989 So. 2d 259, *writ denied*, 2008-2341 (La. 5/15/09), 8 So. 3d 581. There is no requirement that specific matters be given any particular weight at sentencing. *State v. Taves*, 2003-0518 (La. 12/3/03), 861 So. 2d 144; *State v. Caldwell*, 46,718 (La. App. 2 Cir. 11/2/11), 78 So. 3d 799.

Second, the court must determine whether the sentence is constitutionally excessive. A sentence violates La. Const. art. I, § 20, if it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering. *State v. Smith*, 2001-2574 (La. 1/14/03), 839 So. 2d 1; *State v. Dorthey*, 623 So. 2d 1276 (La. 1993); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A sentence is considered grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice. *State v. Weaver*, 2001-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Washington*, 46,568 (La. App. 2 Cir. 9/21/11), 73 So. 3d 440, *writ denied*, 2011-2305 (La. 4/27/12), 86 So. 3d 625. As a general rule, maximum or near maximum sentences are reserved for the worst offenders and the worst

offenses. *State v. Williams*, 48,525 (La. App. 2 Cir. 11/20/13), 128 So. 3d 1250.

Ordinarily, appellate review of sentences for excessiveness utilizes the two-step process. However, when the motion to reconsider sentence raised only a claim that the sentence imposed was constitutionally excessive, a defendant is relegated to review of the sentence on that ground alone. *State v. Williams*, 51,667 (La. App. 2 Cir. 9/27/17), 245 So. 3d 131, *citing* La. C. Cr. P. art. 881.1; *State v. Turner*, 50,221 (La. App. 2 Cir. 1/20/16), 186 So. 3d 720, *writ denied*, 2016-0283 (La. 2/10/17), 215 So. 3d 700.

The trial judge is given wide discretion in the imposition of sentences within the statutory limits, and the sentence imposed should not be set aside as excessive in the absence of a manifest abuse of his discretion. *State v. Williams*, 2003-3514 (La. 12/13/04), 893 So. 2d 7; *State v. Diaz*, 46,750 (La. App. 2 Cir. 12/14/11), 81 So. 3d 228. On review, an appellate court does not determine whether another sentence may have been more appropriate, but whether the trial court abused its discretion. *State v. Williams, supra*; *State v. Free*, 46,894 (La. App. 2 Cir. 1/25/12), 86 So. 3d 29.

As stated above, the defendant was charged with second degree murder and was found guilty of the responsive verdict of manslaughter. Whoever commits manslaughter shall be imprisoned at hard labor for not more than 40 years. La. R.S. 14:31(B).

Prior to imposing the defendant's sentence, the trial court reviewed the presentence investigation report and noted that the defendant had expressed remorse. Thereafter, the court did not state that it was considering specific factors set forth in La. C. Cr. P. art. 894.1. However, it noted the defendant's lack of criminal history, stating that he had led a crime-free life

until he killed his wife. The court also noted the defendant's work history as a log-truck driver, describing him as a "hard-working man." The trial court stated that it believed that the defendant was truly remorseful for the crime. Nevertheless, the court expressed its belief that the evidence was sufficient to find the defendant guilty of second degree murder and that the defendant benefited from the jury's decision to find him guilty of the lesser offense of manslaughter. Subsequently, the trial court stated:

***

> I would note sir that you had no juvenile record and your criminal history outside of this existed of December 15, 2016, aggravated assault and domestic abuse battery on this victim which is pending before the court. I'm assuming that – I don't know what the district attorney's office will end up doing with those cases. But then the DWI offense that occurred or occurred at the time and that's pending -- I'm sorry, it shows that you actually pled guilty and received a sixty-day sentence with credit for time that you served. So up until December 15 of 2016 you led a crime – a crime-free life. The problem is you started off at the top[.]
>
> ***
>
> Considering this is not – this is the hard part of this job to consider all of this and – and take into consideration on one hand the fact that he took her life and on the other end the fact I believed that the maximum penalties are left for those offenders who have repeatedly offended and are a menace to society, so based on all that I sentenced Mr. Crow to twenty-six years with the Louisiana Department of Corrections[.]
>
> ***

We find that the record demonstrates that the trial court fully complied with Article 894.1 in considering the appropriate sentencing factors and articulating the reasons for sentencing. Based upon the circumstances of this case, in which defendant armed himself with a gun and fired three shots into his wife's vehicle, striking her three times, we find that

the 26-year sentence imposed is neither grossly out of proportion to the severity of the offense nor the needless imposition of pain and suffering. There is no abuse of discretion, and the sentence imposed is not constitutionally excessive. The assignment of error lacks merit.

CONCLUSION

For the reasons set forth herein, the defendant's conviction and sentence are affirmed.

AFFIRMED.