

**SUPREME COURT OF LOUISIANA**

**NO. 2017-K-0210**

**STATE OF LOUISIANA**

**VS.**

**TEDRICK JEWAN RICHARDSON**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,**

**THIRD CIRCUIT, PARISH OF RAPIDES**

**JOHNSON, C.J. would grant the writ application and assigns reasons.**

I would grant and docket defendant's writ application to allow the parties to brief and argue the issue of whether the state presented sufficient evidence of negligent homicide.

In this case, defendant was found guilty of negligent homicide and two counts of attempted second degree murder based on three drive-by shootings committed on September 28, 2011 in Alexandria. Generally, on that evening, defendant borrowed a car and then he, Quantavious "Taye" Frazier, and Michael Dotson rode around Alexandria in it shortly before and after midnight. The vehicle was used in three drive-by shootings which took place on three different streets: Texas Avenue, Monroe Street, and Ninth Street. The Texas Avenue shooting produced the only fatality. The timeline of events is unclear and the order in which the shootings occurred is disputed. The State asserted the Texas Avenue shooting occurred first. Defendant claimed the Texas Avenue shooting occurred last, and he claimed he was in the backseat when Dotson, who was driving, fired out of the sunroof. According to defendant, he had been smoking marijuana and had his head leaned back on the headrest when Dotson just started shooting.

Defendant was charged with second degree murder, and the jury found him

guilty of negligent homicide. Negligent homicide is defined as “the killing of a human being by criminal negligence.” R.S. 14:32. Thus, “criminal negligence” is the requisite mental state that the prosecution must have proven to support defendant’s conviction as a principal. For defendant to be guilty as a principal, the state had to meet a two-prong test. It had to prove beyond a reasonable doubt that defendant was: 1) criminally negligent and thereby had the requisite mental state; and 2) “concerned” in the commission of a negligent homicide. *See State v. Martin*, 539 So. 2d 1235, 1238 (La. 1989).

In my view, it does not appear that the state presented sufficient evidence to satisfy either prong. Criminal negligence is defined in R.S. 14:12: “Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender’s conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.” Unlike general or specific criminal intent, criminal negligence is essentially negative. Rather than requiring that the accused intend some consequence of his actions, criminal negligence is found from the accused’s gross disregard for the consequences of his actions. *Martin*, 539 So. 2d at 1238. The majority of the panel of the court of appeal found sufficient proof of negligent homicide reasoning “the jury could have found defendant criminally negligent in this instance because ‘the evidence supports a finding that the circumstances indicate that the [defendant], in the ordinary course of human experience, must have averted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.’” *State v. Richardson*, 16-0107 (La. App. 3 Cir. 12/28/16), 210 So. 3d 340, 357-58 (internal citation removed). This statement was the majority’s only analysis concerning defendant’s negligent homicide conviction, and the majority failed to explain how the ordinary

course of human experience would indicate that the reasonably certain result of one resting in someone's backseat after smoking marijuana would be someone being shot and killed.

At the very least, a determination of whether the state presented sufficient evidence of negligent homicide in the Texas Avenue shooting depends on the order of the shootings. The order which the shootings occurred is relevant in evaluating defendant's *mens rea*. If the Texas Avenue shooting occurred first, it is difficult to agree with the determination of the majority of the panel of the court of appeal that defendant should have known that Dotson would start shooting out of the vehicle while defendant rested his head after smoking marijuana. However, if the Texas Avenue shooting occurred last, after the group rode around and had already shot at two other people, and defendant opted to remain in the car and smoke marijuana, his actions more likely support a negligent homicide conviction. The order of the shootings cannot be determined with any certainty without delving into the record. In my opinion, whether the state presented sufficient evidence of negligent homicide is a very fact-intensive inquiry, which requires a thorough review of the record to answer. Thus, I would grant and docket the defendant's writ to allow for briefing on this issue and oral argument.