

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

06-1115

STATE OF LOUISIANA

VERSUS

JAKE C. DESOTO

**APPEAL FROM THE
TWELFTH JUDICIAL DISTRICT COURT
PARISH OF AVOYELLES, NO. 127704
HONORABLE FRANK FOIL, DISTRICT JUDGE AD HOC**

ON REHEARING

**ULYSSES GENE THIBODEAUX
CHIEF JUDGE**

Court composed of Ulysses Gene Thibodeaux, Chief Judge, Sylvia R. Cooks, and Elizabeth A. Pickett, Judges.

COOKS, J., CONCURS AND ASSIGNS WRITTEN REASONS.

PICKETT, J., DISSENTS AND ASSIGNS WRITTEN REASONS.

**CONVICTION REVERSED; SENTENCE
VACATED; JUDGMENT OF
ACQUITTAL ENTERED.**

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THIBODEAUX, Chief Judge.

We granted rehearing to consider the propriety of our original opinion and conclusion therein. We now reverse and set aside the conviction and sentence of the Defendant, Jake C. DeSoto. The evidence adduced at trial does not support a finding of criminal negligence under La.R.S. 14:32 and La.R.S. 14:12.

As my dissent to the original opinion pointed out, the salient issue is whether the Defendant believed he shot at a deer. In *State in the Interest of S.T.*, 95,2187 (La.App. 1 Cir. 6/28/96), 677 So.2d 1071, the juvenile saw the high neck, rear end, and horns of a deer. He then fired. The area in which the juvenile fired was free from obstructions. The first circuit found there was no evidence of criminal negligence. The Defendant in this case stated that he saw the white on the neck or underneath the deer and fired his gun. He fired when it was dark into an area that may have had weed cover. Based on *S.T.*, the only question to be asked is whether the Defendant believed he saw a deer. The Defendant informed Detective Schaub that Roy alerted him that a deer was in the area. Additionally, he told Detective Schaub that he shot at a deer. There is no testimony to contradict the Defendant's statements that he believed he shot at a deer or what he thought was a deer. Based on those comments, there is no evidence of criminal negligence in this case just as there was no evidence of criminal negligence in *S.T.*

The State compares the factual circumstances of this case to *State v. Parker*, 431 So.2d 114 (La.App. 1 Cir.), *writ denied*, 435 So.2d 433 (La.1983), and asserts that the Defendant herein knew Roy was hunting in front of him. First, because the Defendant did not see Roy enter the field, there is nothing to prove the Defendant knew Roy was hunting in front of him. Additionally, *Parker* is distinguishable in that the defendant therein intentionally shot at a person, through a door, without knowing who the person was.

The fact that the Defendant left his stand and moved to a point thirty-four yards from the Eiffel Tower did not amount to criminal negligence, as Lee Clay testified that a person could safely shoot from the area where the shell casing was found to the area where Roy was found without hitting anyone in the Eiffel Tower. Additionally, answering a cell phone minutes before the shooting would not constitute criminal negligence. Furthermore, even if the Defendant was negligent in failing to see that Roy was in the area, it would not amount to a “gross” deviation below the standard of care to shoot when there was no evidence that he knew Roy had left the Eiffel Tower or that he saw Roy when he fired the gun. We note that Dr. Mayeux testified that Roy’s neck was parallel to the ground when he was shot.

CONCLUSION

For the foregoing reasons, we conclude our original conclusion of the Defendant’s culpability was erroneous. We, therefore, reverse the conviction of the Defendant, vacate and set aside his sentence, and order the entry of a judgment of acquittal.

**CONVICTION REVERSED; SENTENCE VACATED;
JUDGMENT OF ACQUITTAL ENTERED.**