NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 2015

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STATE OF LOUISIANA

VERSUS

LAKEISHA SHANAE ADAMS

Judgment Rendered: May 7, 2010

Appealed from the
Twenty-Second Judicial District Court
in and for the Parish of Washington, State of Louisiana
Trial Court Number 06 CRI 94104
Honorable William J. Burris, Judge Presiding

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Walter P. Reed
Franklinton, LA

Counsel for Appellee,
State of Louisiana

Kathryn W. Landry
Baton Rouge, LA

Margaret Smith Sollars
Thibodaux, LA

Counsel for Defendant/Appellant,
Lakeisha Shanae Adams

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BEFORE: WHIPPLE, HUGHES AND WELCH, JJ.

Hughes, J. dissents.

WHIPPLE, J.

The defendant, Lakeisha Shanae Adams, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. She initially pled not guilty. Prior to trial, the defendant withdrew her not guilty plea and entered a plea of not guilty and not guilty by reason of insanity. Following the appointment of a sanity commission and a sanity hearing, in January 2007, the trial court determined that the defendant was not competent to stand trial. The defendant was remanded to the Feliciana Forensic Facility for treatment. Subsequently, in June 2008, a second competency hearing was held. At the conclusion of this hearing, the defendant was found competent to proceed to trial. In March 2009, the defendant was tried by a jury and convicted as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, urging two assignments of error as follows:

1. A statement must be voluntarily and intelligently given to be admissible evidence at trial. Lakeisha Adams's statements were not free and voluntary because of her delusional state and the use of improper questioning techniques by the police. Therefore, the [t]rial [c]ourt erred in denying the motion to suppress her statements.

2. The conviction in this case cannot stand for it fails to meet the legal standard for sufficiency of the evidence. Lakeisha Adams met her burden of proving by a preponderance of the evidence that she was insane at the time of J.A.'s death.

Finding no merit in the assigned errors, we affirm the defendant's conviction and sentence.

FACTS

This case involves the brutal killing of three-month-old, J.A.[1], at the hands of his mother, the eighteen-year-old defendant. As shown at trial, on December 5, 2005, the defendant placed J.A. inside the clothes dryer at her home and turned it

[1]In accordance with LSA-R.S. 46:1844(W), the infant victim is referenced only by his initials.

on. The child died as a result of blunt force head trauma and thermal injuries, as the infant also sustained second and third-degree burns over fifty percent of his body.

The testimony and evidence at the defendant's trial established the following:

On December 5, 2005, at approximately, 6:50 p.m., the defendant called 911 and advised that someone broke into her home and killed her infant son. Officers from the Bogalusa Police Department were dispatched to the defendant's Roosevelt Street residence to investigate. When the officers arrived, they found the defendant standing in the street, hysterical. The defendant told the officers she momentarily exited the residence to take out some trash and two unidentified males entered the residence and locked the door. She claimed she did not regain entry into the residence until approximately twenty minutes later. At that time, she claimed she learned that the men had placed J.A. inside the clothes dryer. The officers found the body of three-month-old J.A. propped up on a sofa inside the residence. The child's body was covered with thermal injuries. The injuries were red in color and had heat radiating from them. A large bloodstained comforter was found inside the dryer and the dryer's lint filter contained pieces of human skin.

Upon conversing with the defendant again, the investigating officers noted what they believed to be inconsistencies in her story. The officers also noted that although she acted hysterically, the defendant was not actually crying any tears. The officers began to doubt the defendant's story and her sincerity. The defendant was later read her Miranda rights and taken to the police headquarters for questioning. At the station, the defendant again claimed that the unidentified men locked her out of the house and killed her baby before fleeing. The investigating officers advised the defendant that her story did not add up and asked that she tell the truth. The defendant stated, "my family is going to hate me." Thereafter, the

defendant provided a videotaped statement to the authorities. The videotape, admitted into evidence and played for the jury at the trial, recorded the defendant calmly admitting that she placed J.A. inside the clothes dryer to calm him and quiet his crying. The defendant claimed she had done this to the infant at least once before. The defendant was arrested and indicted with murder.

At the trial, Eugene Montrel Jones testified that he was J.A.'s father. He explained that he and the defendant had been involved in a relationship. Jones admitted that he also was involved in a relationship with Zenaida Franklin at the same time. Jones claimed he loved both women. Around the same time in 2005, both the defendant and Franklin became impregnated by Jones. Jones went back and forth, spending time with both women. Both women lived in Bogalusa at the time. These shared relationships ultimately caused friction between the defendant and Zenaida. The women were very hostile towards one another and were involved in many physical fights. Eventually, Zenaida left Bogalusa and moved to Baton Rouge.

According to Jones, the defendant gave birth to J.A. first. J.A. was born approximately two months premature. After J.A.'s birth, Jones and the defendant were together in Bogalusa. Later, on December 1, 2005, Zenaida gave birth to her baby in Baton Rouge. On December 5, 2005, Jones left Bogalusa and traveled to Baton Rouge to be with Zenaida and his other child. Jones testified the defendant was not pleased with his decision. She repeatedly called Jones on his cellular phone and asked why he was in Baton Rouge. According to Jones, the defendant was jealous because she knew he was in Baton Rouge with Zenaida. She wanted him to return to Bogalusa. Jones testified he told the defendant that Zenaida had given birth to a baby for him also and it was time for him to be with her. Jones claimed that because the defendant kept calling and "aggravating" him, he

eventually turned his phone off. Later, when he turned the phone back on, the defendant called and stated that someone put J.A. in the dryer.

Franklin testified she overheard the phone calls the defendant made to Jones on the day in question. According to Franklin, the defendant called once and told Jones something was wrong with J.A. Approximately 35 to 40 minutes later, the defendant called and said the baby was dead. Franklin also confirmed the violent relationship that existed between herself and the defendant. She admitted to stabbing the defendant once and stated the defendant ran over her with a vehicle.

MOTION TO SUPPRESS EVIDENCE

In her first assignment of error, the defendant argues the trial court erred in failing to suppress her confession. She argues the state failed to carry its burden of proving that the confession was free and voluntary and of proving a knowing and intelligent waiver of her rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Specifically, the defendant asserts that her delusional mental state and the improper questioning techniques employed by the investigating officers vitiated any voluntariness on her part. In response, the state asserts the defendant failed to raise this issue in connection with her motion to suppress filed below and, thus, she is precluded from raising the issue for the first time on appeal. Alternatively, the state contends the record is clear that the defendant's confession was free and voluntary and that she knowingly and intelligently waived her rights.

Initially, we note that the state is correct in its assertion that the defendant failed to raise the issue of her mental condition at the time of the statement in her motion to suppress. The record reflects that the defendant's motion asserted that her confession was inadmissible because it was made "under the influence of fear, duress, intimidation, menaces, threats, inducements, and promises and/or without mover having been advised of her rights to remain silent, right to counsel and other

rights and protections afforded under the Federal and State Constitutions...." The motion is devoid of any reference to the involuntariness of the confession based upon the defendant's mental condition.

At the hearing on the motion to suppress, the defendant's mental condition at the time of the statement was not at issue. The main issue raised was whether the statement was freely and voluntarily given in compliance with LSA-R.S. 15:451 and Miranda. Lieutenant Donald Ray Phelps, of the Bogalusa Police Department, testified that the defendant initially advised that some men broke into her house and killed her baby. Lt. Phelps explained that the defendant's sincerity was questionable because, although she appeared to be crying, no tears were observed. The defendant was eventually transported to police headquarters for questioning. Prior to giving a statement, the defendant was advised of her Miranda rights using an "Interrogation Advice of Rights" form. According to Lt. Phelps, the defendant voluntarily waived her rights and executed the rights-waiver document. Lt. Phelps testified that no promises, inducements, or force was used in connection with the defendant's confession. He explained that the defendant was advised that her story regarding someone else coming into the home and injuring her baby was not adding up. She was urged to tell the truth. Thereafter, the defendant freely and voluntarily confessed to placing J.A. inside the dryer and turning it on. She explained that she was watching a movie with her daughter, C. A., and J.A. was crying. The defendant claimed she left the baby in the dryer for an undisclosed amount of time before taking his body out and sitting him up on the sofa. She also claimed that she had taken several different types of medication that day.

Captain Joe Culpepper, also of the Bogalusa Police Department, testified that he was present when the defendant gave the videotaped confession. He stated the defendant was never threatened, coerced, or promised anything in exchange for her confession. Once the officers advised the defendant that her initial account of

the events contained inconsistencies, the defendant changed the story. The defendant freely and voluntarily provided the statement wherein she indicated she put her baby in the dryer to calm him. She also admitted that she had done this once before. Captain Culpepper further explained that although he had learned that the defendant had been somewhat hysterical when the police initially arrived on the scene, by the time of the statement she appeared to be "very calm."

In the videotaped statement, prior to answering any questions regarding the events leading up to J.A.'s death, the defendant acknowledged that she had been advised of her rights with an "Interrogation Advice of Rights" form. She confirmed that the form had been read to her, acknowledged her comprehension of the rights contained in the form and indicated she wished to waive said rights.

In denying the motion to suppress, the trial court noted, "[a]t this time, I am going to find that what purports to be a confession has been shown to be freely and voluntarily made and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises."

As the state correctly notes, the defendant's motion to suppress the confession did not include any assertions regarding the effect of her mental condition and/or the interrogation techniques on the voluntariness of the statement. Neither of these particular grounds were articulated by the defendant or addressed by the state during the hearing. The record reflects, and the defendant acknowledges, "[t]he idea of mental illness did not even come into play" at the hearing on the motion to suppress. This new basis for the motion to suppress has been raised for the first time on appeal. LSA-C.Cr.P. art. 703(F). It is well settled that a new basis or ground for the motion to suppress cannot be articulated for the first time on appeal. The articulation on appeal of a new basis or ground for suppression is prohibited under the provisions of LSA-C.Cr.P. art. 841, as the trial court would not be afforded an opportunity to consider the merits of the particular

claim. See State v. Cressy, 440 So. 2d 141, 142-43 (La. 1983). Thus, the defendant herein is precluded from raising a new basis for her motion to suppress on appeal.

Moreover, even if the defendant were not precluded from raising this claim, the assignment of error would fall for lack of merit. The defendant's argument appears to assert that the state has the burden of proving, beyond a reasonable doubt, that the mental defect she allegedly had (i.e., delusions), did not affect the voluntariness of her confession. However, it is well settled that, in proving the voluntariness of a confession, the state may rely on the presumption of sanity provided in LSA-R.S. 15:432, leaving to the defendant the burden to prove the existence of a mental abnormality which, under the circumstances, may have destroyed the voluntary nature of her confession. State v. Waymire, 504 So. 2d 953, 958 (La. App. 1st Cir. 1987) (citing State v. Glover, 343 So. 2d 118 (La. 1976)). If the defendant fails to prove the existence of a mental defect or fails to prove that such disorder prevented the confession from being voluntary, the state is not required to negate the defendant's mental abnormality; however, the state, in all other respects, must prove beyond a reasonable doubt that the confession was voluntary. State v. Waymire, 504 So. 2d at 958. Because a defendant is presumed competent, the defendant has the burden of proving a mental defect making her unable to understand her Miranda rights and, therefore, incompetent to waive them. See State v. Waymire, 504 So. 2d at 958.

In this case, the defendant failed to present any evidence at the suppression hearing regarding her mental condition and/or its effect on the voluntariness of the confession. The testimony and other evidence established that, notwithstanding any depression, the defendant spoke willingly with the investigating officers when she admitted that she placed her infant son inside the clothes dryer and turned it on.

The defendant indicated sufficient presence of mind to concede that she initially lied about what occurred and she was telling the truth at the time she confessed.

This assignment of error lacks merit.

SUFFICIENCY OF THE EVIDENCE

In her second assignment of error, the defendant argues the evidence was insufficient to convict her of second degree murder because the preponderance of the evidence established she was delusional and insane at the time of the commission of the offense.

In Louisiana, a jury considering a defendant's dual plea of not guilty and not guilty by reason of insanity must first determine whether the state has proved the essential elements of the charged offense beyond a reasonable doubt. If the state meets its traditional burden of proof beyond a reasonable doubt, the defendant then bears the burden of establishing that he was insane at the time of the offense and, therefore, exempt from criminal responsibility. State v. Williams, 2001-0944, p. 4 (La. App. 1st Cir. 12/28/01), 804 So. 2d 932, 938, writ denied, 2002-0399 (La. 2/14/03), 836 So. 2d 135.

The standard of review for the sufficiency of evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the state proved the essential elements of the crime beyond a reasonable doubt. See LSA-C.Cr.P. art. 821; State v. Pizzalato, 93-1415, p. 17 (La. App. 1st Cir. 10/7/94), 644 So. 2d 712, 721, writ denied, 94-2755 (La. 3/10/95), 650 So. 2d 1174. The Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of

innocence. State v. McLean, 525 So. 2d 1251, 1255 (La. App. 1st Cir.), writ denied, 532 So. 2d 130 (La. 1988).

Louisiana Revised Statute 14:30.1(A)(1) defines second degree murder as follows:

> 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[.]

Thus, to support the conviction for second degree murder, the state was required to show: 1) the killing of a human being; and 2) that the defendant had the specific intent to kill or inflict great bodily harm. State v. Morris, 99-3075, p. 13 (La. App. 1st Cir. 11/3/00), 770 So. 2d 908, 918, writ denied, 2000-3293 (La. 10/12/01), 799 So. 2d 496, cert. denied, 535 U.S. 934, 122 S. Ct. 1311, 152 L. Ed. 2d 220 (2002).

In the instant case, the defendant does not contest that the evidence was sufficient to establish second degree murder, absent a finding that she was insane at the time of the offense. However, the defendant insists that the evidence of her history of mental illness (severe depression), together with the expert testimony regarding the additional diagnosis of postpartum depression and/or posttraumatic-stress disorder, proved that she lost touch with reality during the time that she placed her infant son in the clothes dryer. The defendant argues that she met her burden of proof at trial and the jury acted irrationally in convicting her of second degree murder.

In Louisiana, a legal presumption exists that a defendant is sane and responsible for his actions at the time of an offense. See LSA-R.S. 15:432; State v. Harris, 99-0820, p. 6 (La. App. 1st Cir. 2/18/00), 754 So. 2d 304, 308. Thus, the state is not required to offer any proof of the defendant's sanity. State v. Harris, 99-0820 at p. 6, 754 So. 2d at 308. To rebut the presumption of sanity and avoid

criminal responsibility, a defendant has the burden of proving the affirmative defense of insanity by a preponderance of the evidence. See LSA-C.Cr.P. art. 652. Moreover, criminal responsibility is not negated by the mere existence of a mental disease or defect. To be exempted from criminal responsibility, a defendant must show he suffered a mental disease or mental defect that prevented him from distinguishing between right and wrong with reference to the conduct in question. LSA-R.S. 14:14; State v. Silman, 95-0154, p. 7 (La. 11/27/95), 663 So. 2d 27, 32. The determination of sanity is a factual matter. All the evidence, including expert and lay testimony, along with the defendant's conduct and actions before and after the crime, should be reserved for the fact finder to establish whether the defendant has proven by a preponderance of the evidence that he was insane at the time of the offense. See State v. Silman, 95-0154 at p. 7, 663 So. 2d at 32.

At the trial of this matter, the state presented the testimony of Dr. John W. Thompson, Jr., an expert in the field of forensic psychiatry. Dr. Thompson initially evaluated the defendant as part of the sanity commission and later to determine her sanity at the time of the offense. On the issue of the defendant's sanity at the time of the commission of the offense, Dr. Thompson testified that the defendant suffered from a mental disease, major depression. However, Dr. Thompson was of the opinion that the defendant's depressive condition did not rise to the level where she could not distinguish between right and wrong. The determination of the defendant's appreciation of the wrongfulness of her actions was based upon the inconsistencies in the defendant's accounts of the events (i.e., her attempt to cover up her involvement in the matter), the absence of delusional and/or fixed false beliefs, and the absence of a psychotic motive (i.e., instead, the defendant was frustrated because J.A. was crying). These actions, Dr. Thompson noted, are inconsistent with experiencing psychotic depression or depression that forces one to lose touch with reality. Instead, the defendant's actions indicate a

non-psychotic motive. He explained that the defendant was frustrated or overwhelmed with the situation she was in with the child's father and she chose to use a "primitive method" of attempting to get the baby to stop crying.

The state also presented the testimony of Dr. Charles P. Vosburg and Dr. Herbert W. "Terry" LeBourgeois, both accepted as experts in forensic psychology. Drs. Vosburg and LeBourgeois each testified that the defendant met the first criteria for insanity defense because she had a diagnosable mental illness, major depressive episode. Dr. LeBourgeois also concluded the defendant met the criteria for posttraumatic-stress disorder in response to an earlier life-threatening stabbing by Franklin. Both doctors found that the defendant was under a tremendous amount of stress after the birth of her second child and was likely affected by postpartum depression and stress associated with her dealings with Franklin. However, the defendant did not experience delusions or fixed false beliefs. Both experts noted that although, she reported past hallucinations, the defendant denied any hallucinations on the date of the killing. Each expert was of the firm opinion that the defendant was able to distinguish between right and wrong at the time she committed the offense in question. The defendant's depressed mental condition did not result in her losing touch with reality at the time of the incident. Instead, the doctors opined, her actions resulted from poor judgment in a stressful situation, not from any psychosis.

In support of her insanity defense, the defendant presented lay testimony from her mother, grandmother, aunt, high school teacher, high school guidance counselor, and several friends to establish a history of mental illness. Kerry Berry testified that the defendant was living with her when she became pregnant with J.A., her second child. The defendant, an otherwise happy individual, became obviously depressed. She isolated herself and refused to interact with Berry. Berry explained the defendant's abnormal behavior made her feel "uncomfortable"

in her own home. Berry further explained that despite her change in behavior, the defendant had a good relationship with her children. She cared for her children and was never observed abusing them. Berry was surprised to learn that the defendant had placed her infant son in the dryer, as this was inconsistent with the way the defendant had cared for her children.

Karen Williams, another friend of the defendant, testified she also observed a change in the defendant's personality after she became pregnant with her second child. The defendant became distant and isolated herself from others. The defendant's behavior led Williams to believe she needed mental help. Like Berry, Williams testified that the defendant had exhibited a very loving relationship with her first child.

Karen Sharp, one of the defendant's high school teachers, testified that the defendant approached her one day and advised that she would be dropping out of school. The defendant explained that she needed to get a job to take care of her daughter, because the defendant's mother was trying to take the child. Sharp described the defendant as a very proud and attentive mother. She took good care of her child. The defendant was also a very quiet, well-behaved, good student. Although she never observed the defendant's interaction with the second child, Sharp explained that the incident of placing the baby in the clothes dryer was inconsistent with the type of parent she knew the defendant to be.

The defendant's grandmother, Ella Mae Skiffer, also testified regarding the defendant's mental condition. Skiffer testified that the defendant lived at the Roosevelt Street residence with her at the time of the offense. According to Skiffer, the defendant's personality "changed tremendously" after she gave birth to J.A. She claimed the defendant started seeing and imagining things that did not exist, and talking to herself more. Skiffer explained that the defendant had, on occasion, talked to herself before, but this behavior occurred more frequently after

J.A. was born. The defendant also became very paranoid. She repeatedly accused Skiffer and the defendant's mother of wanting to take her children. Skiffer described the defendant as an overprotective and caring parent.

Skiffer also testified regarding an incident wherein the defendant came home, out of breath, stating that someone in a black vehicle with tinted windows was after her. She stated that the vehicle had just turned around in the driveway. Skiffer stated that although she did not believe anyone was following the defendant (because she had not heard any sound of a vehicle on the gravel in the driveway), she told the defendant she was going to go check things out. When she returned, the defendant had locked her out. When Skiffer finally convinced the defendant to open the door, the defendant was armed with a knife. Her "eyes [were] big like somebody had scared her half to death." Skiffer testified about another vehicle incident in which the defendant collided with the rear of a vehicle that was stopped at a red light. The defendant again claimed that someone in a black car was following her. Skiffer did not believe anyone was following the defendant.

Skiffer stated that the defendant was severely depressed. Skiffer explained that she does not believe the defendant would have harmed J.A. if she had been in her "right mind." Skiffer denied any knowledge of suicide attempts by the defendant.

The defendant's aunt, Janice Johnson, also testified regarding the defendant's tendency to imagine things that did not occur. Johnson recalled a situation in which the defendant threatened to hit her sister with a hammer because she believed her sister had taken something from her. According to Johnson, the defendant's sister had not taken anything from the defendant. Johnson also testified that the defendant believed that the family members wanted her children. Johnson also witnessed the incident in which the defendant came home scared and

told her grandmother that someone was following her, a story Johnson claimed was untrue.

Margie Marie Graves, the guidance counselor at the defendant's high school, testified about an incident in which the defendant came to her office upset and crying. The defendant refused to reveal what was bothering her. She just sat there and cried for approximately 25 to 30 minutes. Graves assured the defendant that she could talk to her about anything. The defendant did not open up. She simply asked Graves if she would call her mother to come and get her. Graves complied. She later observed the defendant seated outside alone, staring at the ground.

Omika Johnson, another friend, testified that she and the defendant went to high school together. Omika described the defendant as a very playful and interactive individual. However, she explained that in January 2005, after the defendant and her oldest child moved in with Omika and her family, the defendant became very distant and antisocial. The defendant did not join Omika's family at mealtime and did not converse with anyone. Instead, she regularly chose to sit in her room in the dark. Omika testified she once observed the defendant sitting on the bed in the dark, rocking back and forth, and mumbling to herself. At that point, Omika concluded that the defendant was "crazy."

The defendant's mother, Jacqueline Brown, also testified about the defendant's bizarre behavior following J.A.'s birth. According to Brown, among other things, the defendant started isolating herself from others, started talking to herself, and began imagining people who did not exist. Brown testified that one day the defendant left home walking and wandered aimlessly in the area for approximately two hours. Concerned for her daughter's safety, Brown accompanied her. The defendant did not talk to Brown during the walk and she refused to reveal what, if anything, was bothering her. To Brown, this behavior was strange.

Brown further testified that the defendant suffered from depression and she acknowledged that a history of depression existed in their family. On the issue of parenting, Brown, like the other lay witnesses, testified that the defendant was a good mother and loved her children.

As further evidence of the defendant's state of mind on the day of the child's death, Brown testified the defendant called and told her that someone broke into the house and killed her baby (the same story she told the 911 operator and initially the police). However, Brown stated that once she arrived at the residence, the defendant, with a blank stare on her face, asked, "what is wrong with my baby?"

The defendant also presented expert testimony from forensic psychiatrist, Dr. Sarah Deland. Dr. Deland testified that she participated in evaluating the defendant's competence to stand trial and her sanity at the time of the commission of the offense. Her diagnostic impression was major depressive episode severe, with psychotic features, with postpartum onset in partial remission. She also thought the defendant may have been dealing with posttraumatic-stress disorder (stemming from the event where Franklin attacked her with a knife). The defendant was actively psychotic, actively paranoid. Dr. Deland testified she was of the opinion that the defendant was unable to distinguish right from wrong at the time of the offense due to her mental illness.

On appeal, the defendant essentially argues that the jury failed to give proper weight to the lay testimony of the defendant's family and friends and the expert testimony of Dr. Deland, which led to a verdict of guilty instead of not guilty by reason of insanity. Essentially, she appears to request that this court reweigh the evidence and overturn her conviction.

Although the defendant clearly had a history of major depression and the expert testimony presented conflicting views as to her state of mind at the time of the commission of the offense, the jury was free to evaluate and accept or reject, in

whole or in part, the testimony of the witnesses offered by the parties, including that of the experts. The jury, faced with the conflicting psychiatric evidence, obviously rejected Dr. Deland's opinion and accepted the opinions of Drs. Thompson, Vosburg, and LeBourgeois, thus, discrediting the possibility of insanity at the time of the offense. We find no error in this determination.

Considering the totality of the evidence, we find that reasonable jurors could have concluded that the defendant failed to prove by a preponderance of the evidence that she was incapable of distinguishing between right and wrong at the time of the offense. As previously noted, while there was evidence of defendant's history of severe depression presented at trial, there was also evidence, from multiple experts, that the depression was not at a psychotic level, and thus, the defendant was capable of distinguishing right from wrong at the time of the offense. Even though Dr. Deland opined that the defendant was unable to distinguish right from wrong at the pertinent time, the evidence established that the defendant attempted to conceal her involvement in the infant's murder when she initially talked to the police and to her mother to hide what she had done. Defendant fabricated the claim of an attack by unidentified males. As specifically noted by Dr. LeBourgeois in his testimony, if the defendant had suffered from some delusion or fixed false belief that her actions were not wrong, she would have disclosed her participation in the child's death when initially questioned. Also, in her taped statement to the police on the night in question, the defendant specifically stated that she "did not mean to kill him." This statement further supports a finding that the defendant was aware that the harm she inflicted upon J.A. by placing him in the dryer was wrong. The defendant's statement expressing concern that her family would "hate her" provides even further insight into her appreciation of the wrongful nature of her conduct. As Dr. LeBourgeois reasoned, if the defendant had not understood that placing the baby in the dryer was wrong,

there would have been no reason for her to believe that her family would hate her for having done it. Based on these facts, a rational trier of fact could have found defendant failed to rebut the presumption of sanity by a preponderance of the evidence.

For the above reasons, when all the evidence is viewed in the light most favorable to the state, we find any rational trier of fact could have concluded, beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence, that the state established each essential element of second degree murder.

This assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.