NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0553

STATE OF LOUISIANA

VERSUS

TROY M. BATISTE

Judgment Rendered: October 29, 2010.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 460728

The Honorable Richard A. Swartz, Judge Presiding

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

CARTER, C.J.

The defendant, Troy M. Batiste, was charged by bill of information with one count of second degree battery, a violation of La. R.S. 14:34.1, and entered a plea of not guilty. A jury trial found the defendant guilty as charged. He moved for a post-verdict judgment of acquittal and for a new trial.

Thereafter, the State filed a habitual offender bill of information against him, alleging he was a second-felony habitual offender.[1] At the habitual offender hearing, the defendant agreed with the allegations of the habitual offender bill, and the court adjudged him a second-felony habitual offender. He was sentenced to eight years at hard labor without benefit of probation or suspension of sentence. Thereafter, the court denied the defendant's motions for a post-verdict judgment of acquittal and for a new trial and resentenced the defendant to eight years at hard labor without benefit of probation or suspension of sentence. He appeals, contending the evidence was insufficient to support the conviction and that his stipulation to the habitual offender bill of information was invalid.

For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On October 22, 2008, the victim, Derrick Joseph Daniels, was incarcerated at the jail in Covington; the defendant also was incarcerated at the same facility. The victim testified that the defendant approached him and

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[1] The predicate offense was the defendant's August 1, 2008, second degree battery conviction under Twenty-second Judicial District Court Docket No. 338584.

asked whether they were going to watch Sports Center. The victim answered affirmatively and changed the television channel to Sports Center. The victim then changed the channel to see if "Fred Sanford" was playing before changing the channel back to Sports Center. The defendant complained about there being too many commercials. The victim put on his shoes, claiming he did so because he was going to be walking around the dormitory. The defendant ran to put on his shoes and returned to sit with the victim. The defendant stated, "I don't need no damn remote; I can turn this TV without a remote." The victim claimed he did not say anything back to the defendant, and just watched TV until the defendant suddenly knocked him unconscious. The victim claimed the defendant "came around [the victim's] blind side" and punched him in the eye. When the victim regained consciousness, he was bleeding from his face and was being handcuffed by a prison guard. The victim denied threatening the defendant in any way prior to the defendant striking him and indicated he was sitting down and looking up at the TV when the defendant attacked him.

As a result of the incident, the victim suffered a cut to his eye and a broken bone in the area of mouth. At the time of his testimony, the right side of his lip was numb, and he had scars inside his mouth from his injuries.[2] He claimed he was in pain from the day of the incident until he had surgery.

The victim conceded he had convictions for simple burglary, simple burglary of an inhabited dwelling, unauthorized use of a motor vehicle, possession with intent to distribute cocaine, felony theft, and misdemeanor theft.

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[2] The victim testified on October 15, 2009.

St. Tammany Parish Sheriff's Deputy William Justin Guy was the "pod deputy" on duty at the time of the incident. He was seated in the main control area with cameras and controls to open and close the doors. He viewed the incident, through glass, from a distance of fifteen to twenty feet away. He testified that he saw the defendant approach the victim from behind and strike him four times in the face while the victim was sitting at a table, looking up at the television. The victim was knocked unconscious. Deputy Guy did not see the victim make any aggressive moves toward the defendant prior to the incident. Pursuant to jail procedure, Deputy Guy handcuffed both the defendant and the victim and took them to the medical department for evaluation. As Deputy Guy was walking away with the victim, a television remote control fell from the victim's clothing. The defendant commented, "That's why I did that shit; that [m.f.] is trying to run the dorm and TV." Deputy Guy conceded he could not hear what, if anything, was said between the defendant and the victim prior to the incident.

The defendant also testified at trial. He conceded he had been convicted of second degree battery in 2008, battery in 1991, battery in 1987, and negligent discharge of a firearm in 1982. He claimed the victim was upset on the day of the incident due to a letter he had received the day before the incident, a claim the victim denied. He claimed the victim blamed him for the other prisoners being upset because he changed the channel from Sports Center to "Fred Sanford." He claimed he and the victim began arguing and the victim got up, put on his tennis shoes, and stated he was going to "whoop [the defendant]." The defendant claimed the victim then chased him around the dormitory and injured himself after he fell and hit a table while they were

fighting. The defendant claimed his statement to Deputy Guy was, "Man, that right there, that bullshit ass shit right there behind the doggone remote there."

SUFFICIENCY OF THE EVIDENCE

The defendant contends the evidence was insufficient to support the conviction because he acted in self-defense. The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. **State v. Wright**, 98-0601 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 00-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438). In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, assuming every fact to be proved that the evidence tends to prove, in order to convict, every reasonable hypothesis of innocence is excluded. La. R.S. 15:438; see **Wright**, 730 So.2d at 486.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. **Wright**, 730 So.2d at 487. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 730 So.2d at 487.

As is pertinent here, battery is the intentional use of force or violence upon the person of another. La. R.S. 14:33. Second degree battery is a battery committed without the consent of the victim when the offender intentionally inflicts serious bodily injury. La. R.S. 14:34.1 (prior to amendment by 2009 La. Acts No. 264, § 1). Serious bodily injury means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death. **Id.** Second degree battery is a specific-intent offense. Id. Specific intent is that state of mind that exists when the circumstances indicate that the offender actively desired the proscribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent may be proved by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. **State v. Druilhet**, 97-1717 (La. App. 1 Cir. 6/29/98), 716 So.2d 422, 423.

Louisiana Revised Statutes 14:19 in pertinent part provides:

> A. The use of force or violence upon the person of another is justifiable when committed for the purpose of preventing a forcible offense against the person ... provided that the force or violence used must be reasonable and apparently necessary to prevent such offense, and that this Section shall not apply where the force or violence results in a homicide.

However, La. R.S. 14:21 provides:

> A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

In a non-homicide situation, a claim of self-defense requires a dual inquiry: first, an objective inquiry into whether the force used was reasonable under the circumstances; and second, a subjective inquiry into whether the force used was apparently necessary. **State v. Taylor**, 97-2261 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 931. In a homicide case, the state must prove, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. **Taylor**, 721 So.3d at 931. However, Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case. **Id.** In previous cases dealing with this issue, this Court has analyzed the evidence under both standards of review, that is, whether the defendant proved self-defense by a preponderance of the evidence or whether the state proved beyond a reasonable doubt that the defendant did not act in self-defense. **Id.** Similarly, we need not decide in this case who has the burden of proving (or disproving) self-defense because, under either standard, the evidence sufficiently established that defendant did not act in self-defense. **Id.**

After a thorough review of the record, we are convinced that any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree battery, the defendant's identity as the perpetrator of that offense against the victim, and that the defendant's attack on the victim was not justified. The verdict rendered against the defendant indicates the jury rejected the defense theory that the victim was the aggressor in this case. When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence

presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). No such hypothesis exists in the instant case. The verdict also indicates the jury accepted the testimony offered against the defendant and rejected the testimony offered in his favor. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. **State v. Lofton**, 96-1429 (La. App. 1 Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. Moreover, when 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. **Lofton**, 691 So.2d at 1368. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 662.

Additionally, any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could find that the evidence presented by the State established that the defendant was the aggressor in the conflict and, thus, was not entitled to claim self-defense. Moreover, even if it could be found that the defendant was not the aggressor, any rational trier of fact could find, beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant did not act in self-defense.

Testimony at trial indicated that the defendant approached the victim from behind and repeatedly punched him while he was seated in a chair, watching television.

This assignment of error is without merit.

ADVICE OF RIGHT TO REMAIN SILENT AT HABITUAL OFFENDER HEARING

In assignment of error number 2, the defendant argues his stipulation to being a habitual offender was invalid because the trial court failed to advise him of his right to remain silent at the habitual offender hearing.

After a habitual offender bill of information is filed, the court in which the instant conviction was had shall cause the defendant to be brought before it, shall inform him of the allegations contained in the information, shall inform him of his right to be tried as to the truth thereof according to law, and shall require the defendant to say whether the allegations are true. La. R.S. 15:529.1D(1)(a). The statute further implicitly provides that the court should advise the defendant of his right to remain silent. **State v. Griffin**, 525 So.2d 705, 706 (La. App. 1st Cir. 1988).

In the instant case, on November 13, 2009, with the benefit of counsel, the defendant was arraigned on the habitual offender bill of information. The court advised him of the allegations of the habitual offender bill, advised him he had a right to a hearing to be tried as to the truth of the allegation contained in the bill, advised him that the State had to prove the allegations contained in the bill at the hearing, and advised him of his right to remain silent. The defendant stood mute, and the court set the matter for a hearing on December 4, 2009.

At the habitual offender hearing, the defendant indicated he wanted to admit the allegations of the habitual offender bill. The court did not again advise him of his right to remain silent before accepting his agreement to the allegations of the habitual offender bill.

The defendant was sufficiently advised of his rights at his arraignment and that advice of rights was sufficient to comply with the requirements of La. R.S. 15:529.1D(1), (3). The defendant, who was represented by counsel, clearly understood those rights by choosing to remain silent at the arraignment hearing, which prompted the setting of the hearing concerning the habitual offender allegations. It would be unnecessarily redundant to advise him again of his right to remain silent at the second hearing, particularly because the only reason he was there was because he had exercised his right to remain silent, after being advised he had this right. The law does not expressly state that the court is required to inform the defendant of his rights at each phase of the habitual offender proceeding. See **State v. Gonsoulin**, 03-2473 (La. App. 1 Cir. 6/25/04), 886 So.2d 499, 502 (*en banc*), writ denied, 04-1917 (La. 12/10/04), 888 So.2d 835. The law requires that the record demonstrate that *the proceedings as a whole* were fundamentally fair and accorded the defendant due process of law. See **Gonsoulin**, 886 So.2d at 502.

This assignment of error is without merit.

REVIEW FOR ERROR

The defendant requests that this court examine the record for error under La. Code Crim. P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under La. Code Crim. P. art. 920(2), we are limited in our review to errors

discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 05-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123-125 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So.2d 1277.

We note, however, on December 4, 2009, the trial court sentenced the defendant to eight years at hard labor without benefit of probation or suspension of sentence, prior to ruling on the motions for a post-verdict judgment of acquittal and for a new trial. On March 16, 2010, noting it had failed to rule on the motions for a post-verdict judgment of acquittal and for a new trial, the court denied the defendant's motions and resentenced the defendant to the sentence previously imposed. Although it is apparent from the court's actions that it intended to vacate the original sentence, out of an abundance of caution, we vacate the sentence imposed on December 4, 2009. See **State v. Meneses**, 98-0699 (La. App. 1 Cir. 2/23/99), 731 So.2d 375, 376 n.1.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.