NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0593

STATE OF LOUISIANA

VERSUS

CHERAHKEI PARKER

Judgment Rendered: NOV 0 1 2013

* * * * * * *

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 03-09-0334

Honorable Michael R. Erwin, Judge

* * * * * * *

Frederick Kroenke
Louisiana Appellate Project
Baton Rouge, LA

Attorney for Appellant
Defendant – Cherahkei Parker

Hillar C. Moore, III, D.A.
Dale R. Lee, Asst. D.A.
Baton Rouge, LA

Attorneys for Appellee
State of Louisiana

* * * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WELCH, J.

The defendant, Cherahkei Parker, was charged by grand jury indictment with second degree murder on counts one and two, and with attempted second degree murder on count three, in violation of La. R.S. 14:30.1 and La. R.S. 14:27. The defendant entered a plea of not guilty on each count. After a trial by jury, the defendant was found guilty as charged on all three counts. The trial court denied the motion for postverdict judgment of acquittal and the defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on counts one and two, and to fifty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on count three. The trial court ordered that counts one and two be served concurrently, while count three was ordered to be served consecutively to counts one and two. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error to the sufficiency of the evidence to support the convictions. For the following reasons, we affirm the defendant's convictions and sentences.

STATEMENT OF FACTS

On the evening of December 29, 2008, victims Reginald Parker[1] (the defendant's cousin), Kockie Smith, and Tywin Alexander (Parker's cousin who was unrelated to the defendant) were at Parker's residence on Shelley Court in Baton Rouge consuming alcohol, when Smith's girlfriend arrived at Smith's residence, that was located next door. Parker, Smith, and Alexander walked over to Smith's residence and Parker asked Smith's girlfriend to arrange a meeting with one of her female friends and she agreed. Parker's girlfriend, Tequita Williams, arrived with her sister Phileen Carter, the defendant. According to witnesses, it

[1] The defendant is referenced herein as the defendant, while his cousin Reginald Parker (one of the victims), is referenced as the victim or Parker.

was dark, but the streetlights were on. A verbal and physical altercation ensued between Parker and Williams. Parker repeatedly asked Williams to leave, but she refused. As the quarrel escalated, the defendant, who was still in Carter's vehicle, became involved when Parker and Alexander approached the vehicle. After Parker took a swing at the defendant in the vehicle, the defendant opened fire, striking Parker and Alexander with multiple bullets, and injuring Smith's leg with a single gunshot wound. Parker was shot in the back, the chest, the abdomen, and the left elbow, while Alexander was shot in the back, the left arm, and the left leg. Corporal Brandon Ogden of the Baton Rouge City Police Department (BRPD) was dispatched to the scene at approximately 9:15 p.m. According to Corporal Odgen, when he arrived, the victims were lying face down. Parker and Alexander died due to wounds sustained from the shots that entered their backs.[2]

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the offenses were committed in self-defense, and, alternatively, that the evidence warranted only a conviction of manslaughter. The defendant notes that victims Parker and Alexander were at least six feet tall, weighed over 185 pounds, were intoxicated and under the influence of marijuana, and claims that they were the aggressors. The defendant asserts that the evidence shows he was viciously attacked by two much larger, drunken and drugged men, that he initially only brandished the gun and warned the victims to go away, and that he did not fire the gun until Alexander tried to grab it. The defendant contends that the State did not overcome the theory of self-defense and did not show that he was the aggressor. In the alternative, the defendant contends that a rational trier of fact would have concluded that he was provoked to the point that he was deprived of an average person's self-control and

[2] Parker's blood-alcohol analysis had a result of 0.21 grams percent, while Alexander's results were 0.16 grams percent, and both tested positive for marijuana.

cool reflection.

The constitutional standard for testing the sufficiency of the evidence, as enunciated in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. La. C.Cr.P. art. 821. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La. R.S. 15:438; **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (La. 11/17/00), 773 So.2d 732. When a case involves circumstantial evidence and the trier of fact 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).

The crime of second degree murder, in pertinent part, "is the killing of a human being: [w]hen the offender has a specific intent to kill or to inflict great bodily harm[.]" La. R.S. 14:30.1(A)(1). To be guilty of attempted second degree murder, a defendant must have the specific intent to kill and not merely the specific intent to inflict great bodily harm. La. R.S. 14:27(A); **State v. Bishop**, 2001–2548 (La. 1/14/03), 835 So.2d 434, 437. Specific criminal intent is that "state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). The doctrine of transferred intent provides that when a person shoots at an intended victim with the specific intent to kill or inflict great bodily harm and accidentally kills or inflicts great bodily harm upon another person, if the killing or

inflicting of great bodily harm would have been unlawful against the intended victim actually intended to be shot, then it would be unlawful against the person actually shot, even though that person was not the intended victim. **State v. Henderson**, 99--1945 (La. App. 1st Cir. 6/23/00), 762 So.2d 747, 750, writ denied, 2000–2223 (La. 6/15/01), 793 So.2d 1235.

Although intent is a question of fact, it need not be proven as a fact. Intent may be inferred from the circumstances of the transaction. Thus, specific intent may be proven 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. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Buchanon**, 95-0625 (La. App. 1st Cir. 5/10/96), 673 So.2d 663, 665, writ denied, 96-1411 (La. 12/6/96), 684 So.2d 923. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. **State v. Delco**, 2006-0504 (La. App. 1st Cir. 9/15/06), 943 So.2d 1143, 1146, writ denied, 2006-2636 (La. 8/15/07), 961 So.2d 1160. Moreover, the discharge of a firearm in the direction of more than one person or a crowd has repeatedly been recognized in the jurisprudence as sufficient to prove specific intent to kill. See **State v. Mart**, 419 So.2d 1216, 1217 (La. 1982); **State v. Allen**, 94–1941 (La. App. 1st Cir. 11/9/95), 664 So.2d 1264, 1272, writ denied, 95–2946 (La. 3/15/96), 669 So.2d 433; **State v. Powell**, 94–1390 (La. App. 1st Cir. 10/6/95), 671 So.2d 493, 500, writ denied, 95–2710 (La. 2/9/96), 667 So.2d 529; **State in the Interest of L.H.**, 94–903 (La. App. 3rd Cir. 2/15/95), 650 So.2d 433, 435-36; **State v. Thomas**, 609 So.2d 1078, 1083 (La. App. 2nd Cir. 1992), writ denied, 617 So.2d 905 (La. 1993).

In accordance with La. R.S. 14:31(A)(1), manslaughter is a homicide which would be a first or second degree murder, but the offense is 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. La. R.S. 14:31(A)(1). "Sudden passion" and "heat of blood" are not elements of the offense of manslaughter; rather they are mitigatory factors in the nature of a defense that tend to lessen the culpability. **State v. Rodriguez**, 2001-2182 (La. App. 1st Cir. 6/21/02), 822 So.2d 121, 134, writ denied, 2002-2049 (La. 2/14/03), 836 So.2d 131. Because they are mitigatory factors, a defendant who establishes by a preponderance of the evidence that he acted in "sudden passion" or "heat of blood" is entitled to a verdict of manslaughter. **Rodriguez**, 822 So.2d at 134.

Louisiana Revised Statute 14:20(A)(1) provides that a homicide is justifiable 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. On appeal, the relevant inquiry is whether or not, after viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found beyond a reasonable doubt that the defendant did not act in self-defense. **State v. Williams**, 2001-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, writ denied, 2002-0399 (La. 2/14/03), 836 So.2d 135. 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. See La. R.S. 14:21.

When the defendant in a homicide prosecution claims self-defense, the State must prove beyond a reasonable doubt that the homicide was not committed in self-defense. **Williams**, 804 So.2d at 939. However, Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case. **State v. Freeman**, 427 So.2d 1161, 1162–63 (La. 1983). In previous cases dealing with

this issue, the 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. Similarly, we need not decide in this case who has the burden of proving (or disproving) self-defense, because under either standard, as will be discussed herein, the evidence sufficiently established that the defendant did not act in self-defense. See **State v. Taylor**, 97–2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 931.

Kockie Smith testified that he was inside of his home when the altercation escalated. Smith recalled Tequita Williams coming to Parker's home approximately one to two hours before the shooting while Parker was at the store purchasing alcohol. As instructed by Parker, Smith did not allow Williams to enter the house, though she knocked at every point of entry and ultimately began yelling to let her into the home. Parker, Smith, and Smith's girlfriend were standing outside of Smith's house when Williams returned with the defendant and Carter. Smith initially went inside and his girlfriend left. After hearing the commotion outside of his home, Smith opened his door and heard Parker asking Williams to leave. Smith further indicated that Parker pushed Williams, threw a chair at the hood of the vehicle she had arrived in, and began beating the hood of the vehicle and telling them to leave. At that point, the driver of the car told Parker to stop hitting the vehicle and Alexander approached the driver's side and addressed the driver. Parker approached the passenger side where the defendant was sitting and Alexander joined them. Smith testified that the defendant's door was open and Parker was standing in one part of the door and Alexander had one of his arms on the door. He testified that Parker swung at the defendant once, although he was not sure if Parker actually hit the defendant. Smith stated that he heard the defendant say, "Cus, I know you not swinging at me." Smith heard words being

exchanged and then heard the first shot go off. Smith started running behind the car, making his way to the neighbor's house. Smith testified that he did not realize he had been shot until he got to his neighbor's house. According to Smith, three or four shots were fired initially, there was a pause, and three or four more shots were fired. Smith identified the defendant as the person who fired the gun. He further indicated that he did not see anyone other than the defendant shooting and that to his knowledge, no one else out there had a gun.

During cross-examination, Smith stated that he remembered the driver (Carter) from previous visits and that prior to the shooting, he saw her with a gun that she kept in a carrying pouch with a zipper. Smith also testified that he saw the other victims on the ground when he limped back to his house. He initially testified that they were face down, but then without specification stated, "I think one of them was face down and one of them was face up." Though he admitted that they consumed gin, Smith denied being intoxicated and described Alexander as "tipsy" and Parker as "kind of drunk."

Valarie Montgomery, Alexander's friend, testified that she witnessed the shooting. She stated that she came to the scene to pick up Alexander and parked on the street because there was a vehicle already in the driveway with the lights on. She waited inside her vehicle, which was running with the headlights on. Montgomery observed Alexander arguing with a female occupant of the vehicle in the driveway. Montgomery observed the male occupant on the passenger side (whom she did not know and was unable to identify) as he tried to stop the arguments. She stated that the male passenger got out of the car and she heard him say, "We're cousins," and that they should not be fighting. Montgomery indicated that the male passenger's tone changed as they continued to argue, and he verbally threatened to "pull it" before pulling out a gun and firing it as he stood in the door of the passenger side of the vehicle. Montgomery stated that the passenger shot

Alexander four or five times while Alexander was behind the car near the trunk, and then shot Parker about four times while he was standing in front of the hood of the vehicle. When asked if Parker hit the passenger before the gun was fired, Montgomery stated, "He never touched them; neither one of them did." She added, "I didn't even see them get into his personal space, like." Montgomery also stated that the victims did not have anything in their hands at the time of the shooting. Montgomery acknowledged that this was the first time she ever witnessed a shooting and that she was "in shock" and unable to move at the time. According to Montgomery, after shooting the victims, the shooter spotted Montgomery's vehicle, aimed the gun towards her, and asked, "Who the 'f' is that?" At that point, Montgomery sped away from the scene.

Parker's girlfriend, Tequita Williams, also testified at the trial. She indicated that she had made two other attempts to visit Parker the day of the shooting. No one was at his residence or responded when she first arrived and when she returned, she saw Smith shut the door, but he would not reopen it to let her in, so she left again. She contacted Parker by phone and he told her she could come back. When she went back for the third time, her sister, Phileen Carter, and the defendant were with her. When they arrived, Parker, Smith, and a woman she did not recognize were next door in front of Smith's house. She stated that when she approached Parker, he could barely walk. She helped Parker walk over to a chair located near the front of the door of his house. She did not recall Parker throwing a chair or hitting her. She also denied that Parker asked her to leave. Williams heard a pounding noise on the car and realized that Parker had approached Carter's vehicle. She observed Parker as he punched the defendant in the face and appeared to be in a rage. She noted that Alexander was standing behind the vehicle at the time, adding that it sounded like he was verbally threatening the defendant and encouraging Parker to hit the defendant. Williams

recalled Smith attempting to stop them from fighting just before she heard gunshots. Williams observed the defendant shoot Parker and Alexander. She testified that Alexander and Parker were unarmed to her knowledge and that she did not see anything in their hands. Williams did not know the defendant was armed with a gun before the shooting took place. Williams stated that she was standing three to four feet away from the vehicle when the shooting occurred.

Tamira Patterson grew up with Parker and lived next door at the Shelley Court and McClendon Court intersection, in the home that Smith fled to during the shooting. Patterson observed the shooting from her bedroom window. She was watching television when she heard noises and looked out of the window. She first observed Parker and his girlfriend arguing. The defendant, who she recognized as Parker's cousin, and another female were sitting in the vehicle parked in the driveway at the time. She saw Parker push his girlfriend, but did not see him hit the vehicle. She observed Parker as he approached the vehicle and began arguing with the defendant, and she saw the defendant step out of the vehicle. She noted that Alexander came outside to intervene as the arguing continued. She observed the defendant as he reached into the vehicle, retrieved a gun, and opened fire. She stated that she did not see anything happen before the defendant grabbed the gun, and she did not see Parker hit the defendant or see a weapon in Parker's hands. She stated that the defendant shot Parker about five times before doing the same to Alexander. She stated that there were nearly five seconds between the individual gunshots fired at the victims.

Phileen Carter also testified as a State witness. Carter testified that she and her sister picked the defendant up from work and returned home. She stated they were waiting for Parker to come over to her house for dinner. According to Carter, Williams left to pick up Parker, but returned without him. Carter stated that Parker called Williams to come get him. Carter drove Williams and the defendant to

Parker's residence. The defendant rode on the passenger side and Williams rode on the back passenger side. Carter stated that she did not see a gun when they left the house. She confirmed that she had a gun that she kept in a pouch, but stated that she left it at home on the night in question. When they pulled up, Parker was next door in front of Smith's house with a female and Williams got out of the vehicle and walked over to approach him. Carter stated that Parker was intoxicated and Williams had to help him walk across the yard. She denied that Parker pushed Williams. Carter testified that after Williams helped Parker sit down, Parker said, "I'm sorry this is about to go down," jumped out of the chair, and hit her vehicle. She stated that they did not attempt to leave and did not feel threatened at the time or think anything was going to happen.

Carter testified that Alexander, who she knew, approached her vehicle, came up to the driver's side, opened the driver's side door, and began cursing at her before rudely addressing the defendant. She asked Alexander to step away from the vehicle, but he remained by the door. She stated that Alexander never tried to hit or grab her and that she did not feel threatened by him. Parker and Alexander approached the passenger side of the vehicle and Smith tried to stop the argument. She recalled the defendant's door being open at this point. She stated that Parker hit the defendant. The defendant then pulled out his gun and started shooting. She stated that she did not see Parker, Alexander, or anyone else with a weapon and indicated that she did not see anyone do anything that justified the defendant pulling out the gun and shooting. She acknowledged that neither Parker nor Alexander attempted to get in the vehicle or to grab the gun. Carter testified that the defendant told her after the shooting, "Let's go," and she drove off and called 911. The defendant told Carter to report the incident as a drive-by shooting and she complied.

Dr. Edgar Shannon Cooper, a general pathologist and Coroner of East Baton

Rouge Parish, was accepted as an expert in pathology. Dr. Cooper reviewed Dr. Corrigan's autopsy reports and photographs of the victims and rendered an opinion as to the cause of death. Dr. Cooper testified that Parker's lethal gunshot wound was to the heart with an entry wound on the left side of the mid-back. The bullet passed through his lung, part of the aorta, into the heart and out through the left side of the upper abdomen or lower chest. Similarly, of his multiple gunshot wounds, Alexander's fatal wound was the one that entered his mid-back, went through his seventh vertebra, and severed his spinal cord before passing into his chest.

Ronald Fazio, the State's expert witness in firearm identification, testified that his laboratory analyzed four cartridge cases collected in this case and determined that they were fired from the same firearm. Although the weapon was not recovered or provided, in Fazio's opinion, the evidence was more consistent with the use of a semi-automatic pistol, as opposed to an automatic gun. He noted that in regard to multiple shots being fired from a semi-automatic weapon, the shooter would have had to pull the trigger and release it for each shot.

BRPD Detective John Norwood interviewed the defendant around 2:45 a.m., after he was located at his residence by Detective Belford Johnson of BRPD's homicide division. After being advised of his **Miranda** rights, the defendant agreed to make a statement. The defendant stated that he was at home when he received a phone call and the caller informed him that his "cous" had been shot. At that point, he went to his cousin's house on Shelley Court and left shortly after confirming that his cousin had been shot. Based on the evidence to the contrary, the defendant was kept in custody. BRPD Officer Pamela Brumer photographed the defendant at police headquarters and did not see any injuries on him.

As the sole defense witness, the defendant testified that when he, Carter, and Williams arrived at Parker's house, he saw Parker, Smith, and a female at Smith's

house next door. He and Carter waited in the car as Williams approached Parker. The defendant further testified that Alexander came stumbling towards the vehicle and described him as being very drunk. Alexander initially addressed Carter and demanded that she open the car door before realizing that the defendant was in the vehicle. When Alexander noticed the defendant in the vehicle, he began cursing at him and threatened to punch him. At that time, Parker was still talking to Williams and explaining his whereabouts during her earlier visits. According to the defendant, Alexander made a comment about a gun while his right hand was by his waist. The defendant further testified that he saw Alexander grab at a black object located at his waist. He stated that he did not know if it was a gun or not, but that he had previously seen Alexander with a gun on other occasions. As Alexander was coming around the vehicle, Williams tried to back out, but could not because Alexander was behind the vehicle. Parker approached and opened the car door and the defendant told him to try to calm down Alexander. Parker started cursing at the defendant, stating that no one was going to "F – with my cousin" (referring to Alexander). Parker started beating on the hood of the car and went towards the defendant and swung at him one or two times. The defendant threw his hands up to stop the blow, got back in his car, closed the door, and tried to lock it. However, Parker reopened the car door before the defendant could lock it. Alexander began encouraging Parker to hit the defendant, and Parker hit the defendant on the top of the head as the defendant tried to "talk some sense into him." Both Alexander and Parker were in the car doorway when Alexander also began hitting the defendant as Parker struck him multiple times. At that point, the defendant looked down and saw a gun by his foot in the car. The defendant grabbed the gun and pointed it at Parker and told him to move away. According to the defendant, Parker stated, "Pull it! If you're going to pull it, pull it!" They were still hitting him when the defendant fired the gun. The defendant testified that he was five feet and three

inches tall while Parker was over six feet tall. He stated that he pulled the gun out because it was "two on one," they were out of control and hitting him, and he was afraid for his life. The defendant added that Alexander grabbed the gun and tried to take it out of the defendant's hand and they "semi-wrestled" over the gun just before the defendant fired the first two shots. At that point, the victims did not move away and the defendant regained full control over the gun and started shooting. The defendant said he had no other choice because they would not stop. He stated he could not back out of the driveway because he was not driving and could not run because they had him blocked in. The defendant testified that he did not see Smith in the yard at the time of the shooting. He stated that Parker and Alexander tried to run after he opened fire, but they collapsed on the ground. The defendant stated that when Carter backed up, the vehicle hit Alexander's leg, and the defendant got out of the car at that point. After looking at the victims' injuries, the defendant got back in the car, and Carter turned the vehicle around and drove off. The defendant maintained that he fired all of the shots while he was in the car and denied having ever stood up and firing any shots.

While the witnesses gave slightly varied accounts of the specific facts leading to the shooting, much of the testimony indicated that there was little contact between the defendant and the victims before the shooting. Carter was in the vehicle with the defendant and testified that she did not feel threatened before the shooting. The testimony indicated that the defendant was either still in the vehicle or had stepped out into the doorway just prior to firing multiple shots into the victims. In his own self-serving testimony, the defendant indicated a higher level of physical contact occurred between him and the victims before the shooting than indicated by the other witnesses. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. 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. The trier of fact's determination of the weight to be given is not subject to appellate review. Thus, an appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **Williams**, 804 So.2d at 939.

The guilty verdicts in this case indicate that the jury rejected the defendant's claims that he shot the victims in self-defense or that the defendant's actions constituted manslaughter and attempted manslaughter. Much of the evidence presented during the trial indicated that the defendant was the aggressor in the incident and had pulled the gun at a point when he was safely in the vehicle. Accordingly, the jury could have reasonably concluded that the victims did not pose an imminent threat to the defendant. Other than the defendant's testimony, there was no evidence that either of the victims were armed. Carter indicated that the defendant told her to drive away from the scene after he shot the victims and report the incident as a drive-by shooting. Furthermore, the defendant initially denied having shot the victims. The defendant's omissions and actions after the shooting (in fleeing from the scene and lying to the police about the shooting) are inconsistent with a theory of self-defense. See **State v. Emanuel-Dunn**, 2003-0550 (La. App. 1st Cir. 11/7/03), 868 So.2d 75, 80, writ denied, 2004-0339 (La. 6/25/04), 876 So.2d 829; **State v. Wallace**, 612 So.2d 183, 191 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993). Flight following an offense reasonably raises the inference of a guilty mind and lying has been recognized as indicative of an awareness of wrongdoing. **Captville**, 448 at 680 n.4.

A rational juror could have found the State established beyond a reasonable doubt that the defendant did not act in self-defense. Thus, we find no error in the jury's rejection of the defendant's claim of self-defense. Further, a rational juror could have found insufficient evidence of provocation such that a reasonable

person would have used deadly force. The defendant failed to establish by a preponderance of the evidence that he acted in "sudden passion" or "heat of blood." See **State v. Maddox**, 522 So.2d 579, 582 (La. App. 1st Cir. 1988). Accordingly, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 662. Furthermore, an appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*). After careful review, we are convinced that any rational trier of fact, viewing the evidence presented at trial in the light most favorable to the State, could have found the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder and attempted second degree murder. Accordingly, the trial court correctly denied the defendant's motion for postverdict judgmental of acquittal.

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.