NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KA 0085

STATE OF LOUISIANA

VERSUS

ROOSEVELT D. JONES

Judgment Rendered: NOV 05 2018

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Appealed from the
18th Judicial District Court
In and for the Parish of West Baton Rouge
State of Louisiana
Case No. 131,415

The Honorable Edward J. Gaidry, Judge Pro Tem

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

THERIOT, J.

The defendant, Roosevelt Jones, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty and, following a jury trial, was found guilty of the responsive offense of manslaughter. See La. R.S. 14:31. The defendant filed motions for postverdict judgment of acquittal, new trial, and in arrest of judgment, which were denied. He was sentenced to thirty-five years imprisonment at hard labor. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating fourteen assignments of error. We affirm the conviction and sentence.

FACTS

On April 24, 2013, at about 8:45 p.m., Leon Banks drove a white BMW into the Walmart parking lot in Port Allen, Louisiana.[1] Banks, accompanied by Corey Harris and Alfred Watts, went to Walmart to transact a drug deal. Within a few minutes, a dark colored Honda CR-V pulled up on the passenger-side of Banks's BMW. Banks exited his BMW and got into the driver-side back seat of the CR-V. Harris and Watts could not identify who else was in the CR-V.

Moments later, a gun was fired from inside the CR-V. Banks was struck by a bullet as he exited the CR-V and fell to the ground. Banks then pulled out a handgun and began firing at the CR-V, which sped away. Harris and Watts helped Banks up and placed him in the back seat of the BMW. Watts also picked up a bag of marijuana and Banks's gun and put them in the BMW before driving out of the parking lot. When Watts reached a stop sign, Harris exited the BMW and left. Watts then drove to the Mississippi River Bridge and threw the gun and drugs into the river. Watts was stopped a short time later by police, but by this time, Banks had died.

[1] Some of the witnesses who testified identified the Walmart at issue as being in Brusly, which is just south of Port Allen. Captain Ronald Lejeune testified that the Walmart is between Port Allen and Brusly.

The bullet that struck Banks entered the right side of his abdomen (about 14 centimeters from his navel), travelled laterally, and exited the left side of his body. The exit wound was at a higher angle than the entrance wound, meaning the bullet went back and upward. The bullet struck the iliac arteries on his left side (including part of the leg aorta), which caused Banks to bleed to death. According to Dr. Alfredo Suarez, a pathologist, Banks was likely shot while he was falling out of the vehicle. Dr. Suarez further indicated that because no tattooing (caused by a weapon fired inches from the body) was found on Banks's body, he was shot from a distance.

The CR-V involved in the shooting was owned by the defendant's mother and often used by the defendant. Further, the defendant was shot in the back of his left shoulder on the same night that Banks was shot. After being shot, the defendant went to a house near Oaklon Street in Baton Rouge and forced his way inside. The people in the house assisted the defendant and called the police. The defendant was subsequently transported to Our Lady of the Lake Hospital ("OLOL") in Baton Rouge. The bullet was never removed from the defendant's body. After the shooting, the defendant provided three different versions of events, which are described in more detail below.

The police found ten spent 9mm cartridges, all fired from the same weapon, in the Walmart parking lot. The CR-V had a bullet hole in the driver-side, back door, which was caused by a gunshot inside of the vehicle. The CR-V also had two bullet holes from gunshots outside of the vehicle; one bullet traveled through the driver-side edge of the rear bumper, and another bullet traveled through the rear bumper. Cell phone records and cell phone tower records placed the defendant's cell phone within two miles of a cell tower that was 1.4 miles from the Port Allen Walmart at the time of the shooting. Detective Kenneth Young, who interviewed the defendant, testified at trial the defendant claimed to have had his

cell phone and the CR-V the entire night and that he never indicated that he had let someone borrow his phone or his car. Additionally, marijuana was found in both the BMW and CR-V.

The CR-V, which had been left by the defendant on Oaklon Street after he was shot, was subsequently towed away. The next day, Samson Okafor, the defendant's brother, paid for the release of the CR-V and took it to his apartment in Baton Rouge. A few days later, the police found the CR-V at Okafor's apartment, partially covered by a car cover.

ASSIGNMENTS OF ERROR NOS. 1 and 10

In these assignments of error, the defendant argues that the evidence was insufficient to support the conviction and the trial court erred in denying the motion for postverdict judgment of acquittal. Specifically, the defendant contends that there was no forensic evidence to prove he killed Banks, and that his identity as the perpetrator was not established by the State.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** 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, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585 (La. App.

1st Cir. 6/21/02), 822 So.2d 141, 144. Furthermore, when the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the State is required to negate any reasonable probability of misidentification. Positive identification by only one witness is sufficient to support a conviction. It is the factfinder who weighs the respective credibilities of the witnesses, and this court will generally not second-guess those determinations. See **State v. Hughes**, 2005-0992 (La. 11/29/06), 943 So.2d 1047, 1051; **State v. Davis**, 2001-3033 (La. App. 1st Cir. 6/21/02), 822 So.2d 161, 163-64.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1). Guilty of manslaughter is a proper responsive verdict for a charge of second degree murder. **State v. Brumfield**, 329 So.2d 181, 189 (La. 1976). Specific 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). Such state of mind can be formed in an instant. **State v. Cousan**, 94-2503 (La. 11/25/96), 684 So.2d 382, 390. Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of defendant. **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982). The existence of specific intent is an ultimate legal conclusion to be resolved by the trier of fact. **State v. McCue**, 484 So.2d 889, 892 (La. App. 1st Cir. 1986). Deliberately pointing and firing a deadly weapon at close range indicates specific intent to kill. **State v. Robinson**, 2002-1869 (La. 4/14/04), 874 So.2d 66, 74, cert. denied, 543 U.S. 1023, 125 S.Ct. 658, 160 L.Ed.2d 499 (2004); **State v. Ducre**, 596 So.2d 1372, 1382 (La. App. 1st Cir. 1992), writ denied, 600 So.2d 637 (La. 1992).

The parties to crimes are classified as principals and accessories after the fact. La. R.S. 14:23. Principals are all persons concerned in the commission of a

crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime. La. R.S. 14:24. Only those persons who knowingly participate in the planning or execution of a crime are principals. An individual may be convicted as a principal only for those crimes for which he personally has the requisite mental state. **State v. Pierre**, 93-0893 (La. 2/3/94), 631 So.2d 427, 428 (per curiam). The State may prove a defendant guilty by showing that he served as a principal to the crime by aiding and abetting another. **State v. Huey**, 2013-1227 (La. App. 1st Cir. 2/18/14), 142 So.3d 27, 30, writ denied, 2014-0535 (La. 10/3/14), 149 So.3d 795, cert. denied, __ U.S. __, 135 S.Ct. 1507, 191 L.Ed.2d 443 (2015). Further, when two or more persons embark on a concerted course of action, each person becomes responsible for not only his own acts but also for the acts of the other. See **State v. Smith**, 2007-2028 (La. 10/20/09), 23 So.3d 291, 296 (per curiam).

In his brief, the defendant avers that a fair assessment of the evidence adduced at trial failed to place him at the Walmart crime scene in Port Allen. The defendant notes that no witness had ever seen him before, and none of these witnesses knew who was in the CR-V; also, there were no video camera photos or scientific evidence that placed him at the scene. Further, according to the defendant, there was no positive identification of the CR-V, the vehicle driven by the defendant and owned by his mother. The defendant also notes that no weapon was recovered from either him or Banks. While Banks's palm print was found on the CR-V passenger-side mirror, the defendant suggests that crime lab analysis did not reveal any latent prints, blood, or any of Banks's DNA on the driver-side back door, where Banks had allegedly entered the vehicle.

While the State used records of cell phone towers to place him in the Port Allen vicinity at the time of the crime, the defendant points out that he testified he

was without his phone for a period. Moreover, according to the defendant, it was clear that cell phone tower data is "not an exact science and [is] relatively unreliable." The defendant notes the evidence suggested that a phone call was made to Banks from the defendant's phone at 8:43 p.m. and that shots were fired at 8:47 p.m. According to this timeline, the defendant avers that it was not rational for a factfinder to conclude that in just four minutes, he traveled from Thomas Delpit Boulevard (in Baton Rouge) to the Walmart in Port Allen, allowed Banks to get in the CR-V, have a discussion, and then get out and get shot, all in this short time span.

The defendant maintains that he was shot on Oaklon Street in Baton Rouge. This was corroborated, according to the defendant, by the testimony of Eulalie Scott, who lived on Oaklon Street, next door to where the shooting occurred. The defendant suggests that if he had been shot in the CR-V in Port Allen, there would have been some evidence of his blood in the vehicle, but there was none. Thus, according to the defendant, in failing to prove that he personally shot Banks or that, as a principal, he aided and abetted in the shooting of Banks, the State did not establish through circumstantial evidence that he was guilty of second degree murder or manslaughter.

It is true that no eyewitness identified the defendant as the shooter or identified him as being in the CR-V at the time of the shooting, but the circumstantial evidence overwhelmingly placed the defendant at the scene of the crime. Brett Morales was with his family in their vehicle in the Port Allen Walmart parking lot, directly across from the defendant's vehicle and Banks's white BMW. Morales identified the CR-V as a dark Honda SUV and noted that the SUV and BMW were side-by-side, facing the same direction. According to Morales, he heard two gunshots at approximately 8:47 p.m. and then heard eight to ten more gunshots. When Morales turned toward the SUV and BMW, he saw a

man holding his waistband and being held up by two other people. Morales did not see who was in the SUV or who fired the shots inside the SUV.

Harris, who was with Banks at Walmart, testified at trial that shortly after Banks received a call on his cell phone, he drove to Walmart. Harris did not see Banks with a gun when Banks exited his BMW and got into the driver-side back seat of the black Honda SUV. According to Harris, a moment after Banks entered the SUV, Harris heard two or three gunshots. Harris indicated that Banks had already opened the door to exit the vehicle and had one leg out of the SUV when he was shot. After being shot, Banks fell to the ground and shot several shots back at the SUV. Harris and Watts helped Banks up and placed him in the backseat of the BMW. Watts then picked up the bag of drugs and the gun Banks had used and put them in the BMW, before driving away from Walmart. When he and Harris got out of the parking lot and stopped at a stop sign, Harris exited the BMW and left.

Watts, Banks's first cousin, testified at trial that the vehicle that pulled up next to them in the Walmart parking lot was a dark colored SUV. Watts initially told the police that the other vehicle was a black Grand Am Jeep. According to Watts, Banks got in the driver-side backseat of the SUV. Shortly thereafter, Banks got out of the SUV with a gun and a bag of marijuana and then fell to the ground. Watts indicated he did not remember if Banks fired back at the SUV, but testified that Banks had been shot and was bleeding badly. After Banks was put in the BMW, Watts intended to drive him to the hospital. After Harris exited the vehicle, Watts stopped at the top of the Mississippi River Bridge, got out of the vehicle, and threw the gun and the marijuana over the railing into the river. Watts never made it to the hospital, because he was stopped by the police at a bus terminal in Baton Rouge.

By his own admission, the defendant had been driving around in his mother's 2013 brown Honda CR-V in both the Port Allen and Baton Rouge areas on the night of the shooting. Later that night, after the shooting, the CR-V was found abandoned on Oaklon Street. The CR-V was later towed and eventually retrieved by the defendant's brother, Okafor.

Eulalie Scott, who lived on Oaklon Street, testified for the defendant. On the night of the incident, she heard people talking outside of her house, then heard three gunshots. She could not remember what time it was, but did not think it was as late as 11:00 p.m. or midnight. According to her testimony, after the gunshots, she looked through her blinds and saw an SUV-type vehicle backed up in the yard next to her house. There was another SUV blocking the vehicle in the yard. She then heard someone running in her yard. The SUV-type vehicle that was backed into the yard had its doors open on both sides and its hood was up. The second SUV, which was on the street blocking the first SUV, then drove off.

The police seized the CR-V shortly after the shooting. The CR-V had several bullet holes in it. One bullet, which ballistics established had been fired from inside the CR-V from the front seat, exited the driver-side back door, which is where Banks had been sitting. According to a trial expert, this bullet was not the one that struck Banks. There were also two bullet-entrance holes near the back left bumper of the CR-V. These bullets had been fired from a lower angle, as if the shooter were on the ground. One bullet was found lodged in the backseat arm rest. All of the spent 9mm cartridges found on the ground, where Banks had fired his weapon, had been fired from the same handgun. Forensics also established that Banks's right palm print was found on the front-passenger door frame near the CR-V's windshield, consistent with Banks leaning on the passenger side of the vehicle.

All cell phones from both vehicles were seized and the phone records for each phone were subpoenaed. Information regarding the various cell phone towers

that were used on the night of the shooting were also obtained by the police. Forensics showed that on the night of the shooting, at 8:43 p.m., Watts's phone had called the defendant's phone. Banks was actually using his own phone during this call, but Banks and Watts had previously exchanged sim cards, meaning Banks's sim card was in Watts's phone and vice versa.

Detective Young testified at trial that he tracked the location of the defendant's phone through various cell phone tower locations used by his phone on the night of the shooting. According to Detective Young, the various pings off the towers indicated the direction the defendant was traveling. At 8:14 p.m., the defendant's phone used the cell phone tower in Baton Rouge, off of West Garfield; at 8:17 p.m., his phone used the tower in Baton Rouge, off of North Street; at 8:36 p.m., his phone used the tower in Baton Rouge on Government Street, which suggested he was heading toward Port Allen. At 8:43 p.m., the defendant's phone received the call from Watts's phone, which used the tower off of Thomas Delpit Road, indicating the defendant was about to cross the Mississippi River into West Baton Rouge Parish. At 8:46 p.m. and 8:47 p.m., the defendant's phone received two calls; these calls used the tower by Spillway Sportsman, near the Walmart in Port Allen. Walmart is approximately one mile from this cell phone tower. Ten minutes later, at 8:56 p.m., the defendant's phone used the cell phone tower on South 17th Street, indicating he was back in Baton Rouge. At this point, the defendant then made nine calls to his brother, Okafor.

The defendant was shot in the upper left back on the same night that Banks was shot and killed. Two days later, on April 26, 2013, Colonel Richie Johnson interviewed the defendant at OLOL in Baton Rouge. During this interview, the defendant provided the following story. On the day of the shooting, he was driving around West Baton Rouge by himself in his CR-V. He left West Baton Rouge around 6:00 p.m. or 7:00 p.m. and drove to East Baton Rouge Parish. He allegedly

drove to Oaklon Street, parked his car, and exited the vehicle because he had heard a noise. An unknown individual then approached him and shot him in the back of the arm. When the defendant was shot, he dropped a few grams of marijuana that he had intended to sell, ran to the nearest house, and forced his way in. He informed the people in the house that he had just been shot, and they called the police. The paramedics arrived and brought him to OLOL. Colonel Johnson testified that he had never received any follow-up from the East Baton Rouge Parish authorities regarding the alleged shooting in their parish; specifically, the authorities had told him they were not investigating the shooting because the defendant had refused to cooperate with them.

The defendant changed his story when he was interviewed by Detective Young on May 1, 2013. In this interview, the defendant alleged that on the day of the shooting, he left the Plaquemine area at about 7:00 p.m. or 7:30 p.m. and drove to Baton Rouge. He went to his brother's apartment on Jefferson Highway between 9:00 p.m. and 9:30 p.m. and left around 11:00 p.m. He then drove around Baton Rouge until he ended up on Oaklon Street at about 11:30 p.m. He decided to turn his vehicle around, so he pulled into a yard. As he did this, a black SUV drove up and blocked him in. Three men exited the SUV. One of them stood by his driver-side door, and another one of them got into his CR-V in the front seat. The man in his car told the defendant to give him his car keys or he was going to shoot him. This man then produced a gun, which he and the defendant struggled over. One shot fired inside the CR-V, but the defendant was not hit. The defendant exited his CR-V, at which point the other man also exited, walked around the CR-V, and shot the defendant in the back of the arm. The defendant ran until he reached the house where he was assisted. The defendant's CR-V was never taken by these men.

At trial, the defendant testified to a third narrative of what transpired the night of the shooting. According to the defendant, he drove to Baton Rouge around 7:00 p.m. or 7:30 p.m., where he met a friend, Shannen Hudson, on Spain Street.[2] Hudson (who was killed in 2015) was a local Baton Rouge rapper who was sometimes photographed by the defendant at his shows. When the defendant met Hudson on Spain Street, Hudson was with another man whom the defendant did not know. Hudson asked the defendant if he could clean out his rental car and the defendant agreed. Hudson then asked the defendant for the keys to his CR-V because he needed to make a "quick run." The defendant gave him the keys and Hudson and the unknown man left in the CR-V. The defendant left his cell phone in the CR-V. Hudson left at about 8:20 p.m. or 8:30 p.m. and returned a little after 9:00 p.m. The defendant then drove his CR-V to Okafor's apartment, where he remained until around 11:00 p.m. At this time, the defendant had missed calls from Hudson. When the defendant called Hudson back, Hudson told the defendant he needed to get a bag he had left in the CR-V and told the defendant to meet him on Oaklon Street. The defendant reached Oaklon Street at about 11:45 p.m. and backed into a driveway. Shortly thereafter, Hudson, in a black SUV, pulled in front of the CR-V and exited the black SUV with two other unknown men. One of the unknown men stood by the driver's door and the other unknown man entered the CR-V. The man in the car said he needed the defendant's car. When the defendant refused, the guy pulled out a gun, a struggle ensued, and the gun went off. The defendant got out and tried to run. The guy in the CR-V got out, went around the front of the vehicle, and shot the defendant in the back of his arm. The defendant ran, jumped two fences, and went to the first house he saw with a porch light on. The people in the house helped the defendant and called the police.

[2] Hudson is referred to as "Young Ready," his nickname, throughout the defendant's testimony.

All of the alleged lack of evidence pointed out by the defendant was raised at trial and argued by Defense Counsel. Despite this, the jury clearly agreed that the evidence established the defendant's presence in the CR-V when Banks was shot. The jury was fully informed of the inconsistencies of the eyewitness testimony and the lack of identification of the defendant. The jury also heard the evolving, ever-changing versions of what allegedly occurred from the defendant and determined that he lacked any credibility. The trier of fact makes credibility determinations and may, within the bounds of rationality, accept or reject the testimony of any witness; thus, a reviewing court may impinge on the fact finder's discretion "only to the extent necessary to guarantee the fundamental protection of due process of law." **Mussall**, 523 So.2d at 1310; **State v. Weary**, 2003-3067 (La. 4/24/06), 931 So.2d 297, 311-12, cert. denied, 549 U.S. 1062, 127 S.Ct. 682, 166 L.Ed.2d 531 (2006).

Accordingly, the evidence regarding the potential inconsistencies in the testimony of witnesses who placed the defendant in a certain place at a certain time was based on credibility determinations. Based on sufficient evidence, the jury found the defendant guilty, which was a direct refutation of the believability of some of the witnesses, particularly of the defendant. While it was never established what precisely occurred inside of the CR-V when Banks was shot, it appears that the defendant was either alone or with someone. When Banks got in the CR-V, either the defendant or an accomplice pulled a gun and shot at Banks, but missed. This shot went through the backseat door on the driver's side where Banks was sitting. As Banks opened the door and scrambled out of the CR-V, he was fired upon again, this time being hit. Banks was likely falling out of the vehicle when he was shot. The position of his body during the fall, likely parallel to the ground, would account for the upward angle of the bullet that passed through the right side of his body and out of the left side of this body.

As Banks lay on the ground, he produced a handgun and fired repeatedly at the CR-V as it sped away. The driver-side rear door was still open as Banks fired into the CR-V, and one of his shots hit the defendant in the upper left side of his back. The defendant could have been hit in this fashion either as the driver or the passenger. Thus, as the shooter, or as a principal to the commission of the shooting, the defendant was guilty of manslaughter (or second degree murder). See **Smith**, 23 So.3d at 296 ("when two or more persons embark on a concerted course of action, each person becomes responsible for not only his own acts but also for the acts of the other, including 'deviations from the common plan which are the foreseeable consequences of carrying out the plan'").

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985). In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. **State v. Higgins**, 2003-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005).

When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a

reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir. 1987), writ denied, 514 So.2d 126 (La. 1987). The jury heard all of the testimony and viewed the evidence presented to it at trial and found the defendant guilty of manslaughter. In finding the defendant guilty, the jury clearly rejected the defense's theory of misidentification. See **Moten**, 510 So.2d at 61. Although there were inconsistencies in the testimony, there was sufficient evidence for the jury to have found the necessary elements of manslaughter proved beyond a reasonable doubt. See **Weary**, 931 So.2d at 312.

The defendant avers in brief that the State had to prove the killing was committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control or cool reflection. See La. R.S. 14:31(A)(1). This is incorrect. These are not elements of the crime of manslaughter; they are mitigatory factors in the nature of a defense which exhibit a degree of culpability less than that present when the homicide is committed without them. **State v. Lombard**, 486 So.2d 106, 110 (La. 1986). More importantly, the defendant has the burden of establishing these factors. A defendant who establishes by a preponderance of the evidence that he acted in a "sudden passion" or "heat of blood" is entitled to a manslaughter verdict. **Lobmard**, 486 So.2d at 111. These factors were not proved by the defendant; in fact they were not offered or argued in any way because the defense theory of the case was that the defendant was never present at the scene of the shooting.

The defendant did not object to the guilty verdict of manslaughter. If the defendant does not enter an objection, then the reviewing court may affirm the conviction if the evidence would have supported a conviction of the greater offense, whether or not the evidence supports the conviction of the legislatively responsive offense returned by the jury. **State ex rel. Elaire v. Blackburn**, 424 So.2d 246, 251 (La. 1982). It appears the jury in this case rendered a compromise

verdict. Louisiana's system of responsive verdicts presupposes a jury's authority to compromise its verdict even in the face of overwhelming evidence of the charged crime. **State v. Johnson**, 2001-0006 (La. 5/31/02), 823 So.2d 917, 923 (per curiam). The factfinder has the right to "compromise" between the charged offense and a verdict of not guilty. A "compromise" verdict is allowed for whatever reason the factfinder deems to be fair, so long as the evidence is sufficient to sustain a conviction for the charged offense. **State v. Collins**, 2009-2102 (La. App. 1st Cir. 6/28/10), 43 So.3d 244, 251, writ denied, 2010-1893 (La. 2/4/11), 57 So.3d 311, cert. denied, 565 U.S. 818, 132 S.Ct. 99, 181 L.Ed.2d 27 (2011).

After a thorough review of the record, we find the evidence negates any reasonable probability of misidentification and supports the jury's guilty verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of the manslaughter of Leon Banks. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

These assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues the trial court erred in refusing the request of a juror to admonish the jury as requested in her note; further, the defendant argues the trial court erred in not disclosing the contents of the note.

Shortly after the guilty verdict was returned and the jury dismissed, the trial court informed counsel that he had received a note from one of the jurors. The trial court read the note aloud, which stated:

> It angers me to know that people among me do not care for [Defense Counsel's] in speaking negatively and love prosecution excitement. According to conversations I heard, they are making decisions on the attorney and not on evidence. Please advise them to be fair according to the law.

The defendant contends in brief that when Defense Counsel requested that the trial court disclose the contents of the note, the trial court initially denied the request, stating, "I'll tell you about it when I get ready to." There were three other notes given to the trial court, so it is not clear which note he was referring to when he spoke to Defense Counsel.[3] In any event, despite the defendant's contention in brief, the trial court did reveal the contents of the note to all counsel. According to the trial court, he had just explained in the jury charges that the jurors were to apply the law.

The trial court continued:

> So, I didn't feel any necessity to reiterate the charges that was just read to them. Obviously, this was written before the charge was given. And as it turns out, [the juror who wrote the note at issue] also voted with the jury on the response of verdict of guilty of manslaughter.

We find nothing improper in the deliberative process of the jury or in the manner in which the trial court handled this issue. The defendant in brief has made no showing of prejudicial conduct that made it impossible for him to receive a fair trial. See La. Code Crim. P. art. 775. Moreover, Defense Counsel made no objection or motion for mistrial when the trial court read the contents of the note at issue. Absent any objection, the defendant is deemed to have waived any such error, and is now precluded from raising the issue on appeal. See La. Code Crim. P. art. 841(A). The trial court noted the lack of any contemporaneous objection when he again addressed the note issue at the post-trial hearing on the defendant's motion for new trial, stating, "As far as [Defense Counsel's] inability to file for or

[3] One note asked for pen and paper; one note requested that a juror's children be picked up; and one note asked to see certain evidence.

raise an issue of a mistrial. She could have clearly raised it any time, even after I disclosed the comments on that note that was handed to me by the juror."

Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

In his third assignment of error, the defendant argues that the jury verdict form did not comply with the law. Under La. Code Crim. P. art. 814(A)(3), the responsive verdicts to second degree murder are guilty, guilty of manslaughter, guilty of negligent homicide, and not guilty. At trial, after Defense Counsel completed her closing argument, but prior to the State's rebuttal closing argument, Defense Counsel informed the trial court she placed on the record her "objections to the jury instructions that we have." She did not address any particular jury charge, but insisted that "these are standard requests, constitutional requests, that the defendant requested." Defense Counsel continued, "What I asked you to include would make it a more impartial instruction that benefits both the State and the defendant." Defense Counsel then proffered the trial court's jury instructions with her suggested changes.

In this proffered item, it appears Defense Counsel highlighted in gray her proposed changes. The list of possible verdicts, highlighted in pink, are guilty of principal to second degree murder, guilty of principal to manslaughter, and not guilty. "Guilty of Negligent Homicide" (along with the other verdicts) is handwritten in blue ink next to this list. It is not clear at what point someone wrote this language on this proffer. On the last page of the jury instructions is the list of possible charges. In gray highlight at the bottom of the page, it states:

The responsive verdicts pursuant to La. Code Crim. P. art. 814 are:

GUILTY
GUILTY OF MANSLAUGHTER
GUILTY OF NEGLIGENT HOMICIDE
NOT GUILTY

According to the defendant's brief, the exclusion of the responsive verdict was prejudicial to him. It was a "wholly correct and pertinent charge," the defendant avers, and it is possible, he continues, that the jury would have returned an even lower responsive verdict if the option had been presented.

It is not clear that the defendant preserved this issue for review. Defense Counsel never brought the particular issue of responsive verdicts to the trial court's attention. Defense Counsel did inform the trial court that it was proffering its suggestions of what she thought the jury instructions should be; but, by this court's count, there were at least ten separate and distinct jury charges that Defense Counsel took issue with. Defense Counsel did not at any time address one of these jury charge issues with the trial court. This lack of a contemporaneous objection by the defendant prevented the trial court from immediately remedying the situation, had corrective action been required. See La. Code Crim. P. art. 841(A); **State v. Spencer**, 93-571 (La. App. 5th Cir. 1/25/94), 631 So.2d 1363, 1369, writ denied, 94-0488 (La. 2/3/95), 649 So.2d 400.

Nevertheless, we shall review the defendant's argument. Louisiana Code of Criminal Procedure article 814(C) provides that upon motion of the State or the defendant, or on its own motion, the court shall exclude a responsive verdict listed in Paragraph A if, after all the evidence has been submitted, the evidence, viewed in a light most favorable to the State, is not sufficient reasonably to permit a finding of guilty of the responsive offense. Louisiana Revised Statutes 14:32(A)(1) provides that negligent homicide is the killing of a human being by criminal negligence. 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. La. R.S. 14:12.

At the hearing on post-trial motions, the trial court addressed the issue of why it did not include negligent homicide as a responsive verdict:

> With regards to the responsive verdic[t], clearly the court has a right to make that call. My proposed charges given to the attorneys can always be modified by the court based upon the evidence. I feel that the charges given, based upon the evidence presented, was clearly the appropriate charge and the appropriate verdict form to use under these facts.

We do not find the trial court erred by not including negligent homicide as a responsive verdict. Nothing in the facts of this case suggests that Banks's death was caused by criminal negligence. To the contrary, the facts strongly indicate that Banks was killed during a drug deal that had gone bad, *i.e.*, a planned drug transaction that devolved into an attempted armed robbery. In any case, a gunshot was fired at Banks while he was in the CR-V, and then a second shot was fired at him as he was falling from the CR-V; the first shot missed and the second shot struck Banks and killed him. These facts clearly indicated a criminal intent to shoot Banks. See **State v. Seals**, 2009-1089 (La. App. 5th Cir. 12/29/11), 83 So.3d 285, 345, writ denied, 2012-0293 (La. 10/26/12), 99 So.3d 53, cert. denied, 569 U.S. 1031, 133 S.Ct. 2796, 186 L.Ed.2d 863 (2013).

Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 4

In his fourth assignment of error, the defendant argues the trial court erred in allowing the State to consistently argue statements during closing argument that were outside the scope of the evidence.

According to the defendant, the State's closing argument was highly prejudicial to him because the prosecutor was allowed to argue statements not in evidence. The defendant provides in brief a footnote with record page references of the alleged "onslaught of statements" not in evidence. We address each instance where a timely raised objection preserved the issue for review. The issue as to the

propriety of remarks made in closing argument is not preserved for review where Defense Counsel makes no objection to the statement either during argument or after the argument. See La. Code Crim. P. art. 841(A); **State v. Burge**, 515 So.2d 494, 504-05 (La. App. 1st Cir. 1987), writ denied, 532 So.2d 112 (La. 1988).

In the first instance, one of the prosecutors mentioned the defendant's brother, Okafor, and then considered whether the defendant went to his brother's house and "spent two and a half hours playing with his baby." Defense Counsel objected because there was no evidence about the defendant playing with Okafor's child. The objection was overruled.

In the next instance, the State indicated that the evidence showed that the defendant drove to West Baton Rouge, lined up a drug deal with Banks, and shot Banks in the Walmart parking lot. Defense Counsel objected that this had not been testified to by anyone. The trial court overruled the objection, noting that it was closing argument.

In the next instance, the State indicated that Colonel Johnson spoke to the defendant at the hospital. The State noted that when Defense Counsel asked Colonel Johnson his opinion about what the defendant told him, Colonel Johnson had said the defendant was lying. Defense Counsel objected that those statements were not in evidence. The objection was overruled.

Closing arguments in criminal cases should be restricted to the evidence admitted, to the lack of evidence, to conclusions of fact that may be drawn therefrom, and to the law applicable to the case. Further, the State's rebuttal shall be confined to answering the argument of the defendant. La. Code Crim. P. art. 774. Prosecutors are allowed wide latitude in choosing closing argument tactics. See **State v. Draughn**, 2005-1825 (La. 1/17/07), 950 So.2d 583, 614, cert. denied, 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007). The trial court has broad discretion in controlling the scope of closing arguments, and this court will not

reverse a conviction on the basis of improper closing argument unless thoroughly convinced that the remarks influenced the jury and contributed to the verdict. **State v. Vansant**, 2014-1705 (La. App. 1st Cir. 4/24/15), 170 So.3d 1059, 1063. See **State v. Prestridge**, 399 So.2d 564, 580 (La. 1981).

We find nothing improper about these objected to remarks by the State in its closing argument. The State's suggestion that the defendant was playing with Okafor's child at Okafor's house was based on earlier testimony from Detective Young. Detective Young, who was required during his testimony to read the transcript of his second interview with the defendant at the behest of Defense Counsel, indicated via the transcript that the defendant stated, "[U]sually when I got [to Okafor's home], I just – I just play with the baby and, you know, hang out there."

Next, the State's remark that the defendant drove to West Baton Rouge, lined up a drug deal with Banks, and shot Banks in the Walmart parking lot, was clearly valid closing argument. This was the State's theory of the case, based on the entirety of the evidence adduced at trial.

Finally, the State's comment that Colonel Johnson thought the defendant was lying at the hospital was based on Colonel Johnson's own testimony. Colonel Johnson (who at trial read the transcript of the interview with the defendant at the hospital) was asked by Defense Counsel on cross-examination if he thought the defendant actually knew what had happened to the CR-V he was driving. When asked whether he believed the defendant's testimony about the vehicle, Colonel Johnson responded, "I believed he told me something that wasn't true."

The trial court in the instant matter instructed the jury, "Statements and arguments made by the attorneys are not evidence." The trial court continued: "In the closing arguments the attorneys were permitted to present for your consideration their contentions regarding what the evidence has shown or not

shown and what conclusions they think may be drawn from the evidence. The opening statements and the closing arguments are not to be considered as evidence." Much credit should be accorded to the good sense and fairmindedness of jurors who have seen the evidence and heard the argument, and have been instructed by the trial court that arguments of counsel are not evidence. **Vansant**, 170 So.3d at 1065. See **State v. Mitchell**, 94-2078 (La. 5/21/96), 674 So.2d 250, 258, cert. denied, 519 U.S. 1043, 117 S.Ct. 614, 136 L.Ed.2d 538 (1996).

The prosecutor's challenged remarks in closing argument were not improper and, as such, the trial court properly overruled Defense Counsel's objections to these remarks. Moreover, even if improper in any way, the prosecutor's remarks clearly did not contribute to the verdict nor make it impossible for the defendant to obtain a fair trial. See La. Code Crim. P. art. 775; **Vansant**, 170 So.3d at 1064. It is true that, despite the lack of an objection, extremely prejudicial and inflammatory remarks require reversal. See **State v. Hayes**, 364 So.2d 923, 926-27 (La. 1978); **Burge**, 515 So.2d at 505. Our review of those portions of the prosecutor's closing argument not objected to (but raised for the first time on appeal), however, convinces us that the prosecution's remarks were not so prejudicial or inflammatory as to require reversal. See **State v. Francis**, 95-194 (La. App. 5th Cir. 11/28/95), 665 So.2d 596, 603.

Based on the foregoing, this assignment of error is without merit.

ASSIGNMENTS OF ERROR NOS. 5 and 6

In these related assignments of error, the defendant argues the prosecutor in closing argument improperly implied that the defendant had a responsibility or burden to prove his innocence; and further improperly implied that his exercise of his right to counsel during the investigation indicated his guilt.

According to the defendant, the State "diluted its burden" of proving the elements of the crime by suggesting to the jury that the defendant had a

responsibility to prove his innocence during the trial. The defendant then provides in brief a footnote with six record page references of the alleged violations by the prosecutor. Also, according to the defendant, the prosecutor in closing argument implied that because he exercised his right to counsel during the investigation, he must have been guilty or had something to hide; the defendant then provides in brief a footnote with two record page references of this alleged constitutional violation.

We address each instance where a timely raised objection preserved the issue for review. Regarding the two instances where the prosecutor allegedly mentioned the defendant's exercising his right to counsel, Defense Counsel made no contemporaneous objection to these remarks. Further, the prosecutor was actually referring to the defendant's brother "lawyering up." As noted, the issue as to the propriety of remarks made in closing argument is not preserved for review where Defense Counsel makes no objection to the statement either during argument or after the argument. See La. Code Crim. P. art. 841(A); **Burge**, 515 So.2d at 504-05.

Regarding the six instances where the State allegedly shifted the burden of proof to the defendant, Defense Counsel lodged an objection to only one of these. Therein, the following exchange occurred during the State's rebuttal closing argument:

> **Prosecutor:** And, no, I'm not going to call his doctors. That's his job. Let his doctors come tell them how much he bled or how much he didn't bleed. Did it hit a main artery? That's his job. I'm here to convict him to principal to second degree murder. And we have put forth that evidence. And if I deceived you all in any way, I apologize.
> **Defense Counsel:** Your Honor, I'm going to object because he's missed ---
> **Prosecutor:** Oh, no, judge. She started this.
> **Defense Counsel:** They don't have -- we don't have a right to bring -- we don't have an obligation to bring anyone.
> **The Court:** You don't have a burden of calling anyone. Yes, I know that.
> **Prosecutor:** I'm sorry, judge. What? They have a right ---

Defense Counsel: We don't have an obligation to ---
The Court: They have the right.
Prosecutor: They have the right.
The Court: But they don't have the burden.
Defense Counsel: We don't have the obligation. That's right.

The trial court, in the middle of the above exchange, twice noted that the defendant did not have the burden. Moreover, Defense Counsel, in her closing argument, raised the issue of the doctor, the bullet in the defendant's arm, and the alleged lack of blood. She first stated: "And he could have asked that doctor, 'Well, did [the defendant] tell you not to take the bullet out?' No, [the prosecutor] didn't want to ask that. Because [the prosecutor] wasn't going to get the answer that he wanted to deceive you with." Defense Counsel also argued that there should have been blood on the CR-V, stating:

> A 19-year old, who will walk around, drive around in his car, get with his brother and no blood is in that car? Who's going to believe -- I can't believe -- I don't care what doctor comes up here. I can't believe that when we're cut, when we're shot, that we don't bleed. Now, it may not have been profusely, but he bled. And at the time that he was in his car, he would have bled. The time that he was in his car, some blood should have gotten on that car.

In **State v. Uloho**, 2004-55 (La. App. 5th Cir. 5/26/04), 875 So.2d 918, 927-28, writs denied, 2004-1640 (La. 11/19/04), 888 So.2d 192, 2008-2370 (La. 1/30/09), 999 So.2d 753, when Defense Counsel in closing argument found it "astonishing" that no police officer who was on the scene was called to testify to corroborate a deputy's testimony, the prosecutor in rebuttal stated that the defendant had the same subpoena power as the State had. In affirming the trial court's overruling of the defendant's objections, the Fifth Circuit found that the defense invited the jury in closing arguments to disbelieve the witnesses it called to testify because the State did not call other witnesses to corroborate their testimony. **Uloho**, 875 So.2d at 928. See also **Vansant**, 170 So.3d at 1064; **State v. Williams**, 2014-40 (La. App. 5th Cir. 9/24/14), 151 So.3d 79, 82-85, writ denied, 2014-2250 (La. 6/19/15), 172 So.3d 649.

Similarly, the State, in rebuttal, was responding to the arguments of Defense Counsel. Dr. Suarez noted that the defendant's medical records indicated there was no evidence of bleeding. Specifically, the relevant exchange between the prosecutor and Dr. Suarez on redirect examination went as follows:

> **Q.** Is that typical or does that happen, that sometimes people don't bleed if you don't have an exit wound?
> **A.** Well, it varies. It depends on where the bullet -- where the bullet exit[s] and whether it hurt some vascular structures, veins or arteries and to bleed. If it the bullet doesn't, then they wouldn't bleed that much.
> **Q.** And you read these medical reports, didn't you?
> **A.** Yes, sir.
> **Q.** And what did these medical reports say the emergency room [personnel saw] when he went there that night, they didn't see what?
> **A.** No evidence of bleeding.
> **Q.** No evidence of what?
> **A.** Bleeding.
> **Q.** And that's in his records that night that he --
> **A.** Yes.

Thus, the defense had impugned the veracity of Dr. Suarez's testimony in her closing argument with comments such as: "I don't care what doctor comes up here. I can't believe that when we're cut, when we're shot, that we don't bleed." The State, in rebuttal, was responding that Dr. Suarez's testimony was unrebutted, and the defense could have called its own expert to rebut the State's doctor. In any case, the State never suggested the defendant had the burden of proving his innocence. See **State v. Manning**, 2003-1982 (La. 10/19/04), 885 So.2d 1044, 1108, cert. denied, 544 U.S. 967, 125 S.Ct. 1745, 161 L.Ed.2d 612 (2005) (finding the State's examination of the blood spatter expert merely pointed out that defendant had access to the physical evidence if he wanted to challenge the State's findings and did not suggest he possessed the burden of proving his innocence; further, the State's comments concerning defendant's failure to cross-examine its expert blood spatter witness appears proper rebuttal to the defense argument which questioned the validity of the witness's testimony). See **State v. Bridgewater**, 2000-1529 (La. 1/15/02), 823 So.2d 877, 899, cert. denied, 537 U.S. 1227, 123

S.Ct. 1266, 154 L.Ed.2d 1089 (2003); **State v. Smith**, 433 So.2d 688, 694-95 (La. 1983). See also **State v. Nixon**, 2017-1582 (La. App. 1st Cir. 4/13/18), 250 So.3d 273, 288-89; **State v. Otero**, 2008-188 (La. App. 5th Cir. 12/16/08), 3 So.3d 34, 38.

Moreover, the trial court in the instant matter instructed the jury following closing arguments that the defendant was presumed innocent and that the burden of proof was on the State. Specifically, the trial court stated:

> The defendant is presumed to be innocent until each element of the crime necessary to constitute his guilt is proven beyond a reasonable doubt. The defendant is not required to prove that he is innocent. Thus, the defendant begins the trial with a clean slate. The burden is upon the State to prove the defendant guilty beyond a reasonable doubt. In considering the evidence, you must give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence. If you are not convinced of the guilt of the defendant beyond a reasonable doubt, you should find him not guilty.

As noted, much credit should be accorded to the good sense and fairmindedness of jurors who have seen the evidence and heard the argument, and have been instructed by the trial court that arguments of counsel are not evidence. **Vansant**, 170 So.3d at 1064-65.

We find nothing improper in these comments by the prosecutor. Moreover, even if improper, the prosecutor's remarks in rebuttal did not contribute to the verdict nor make it impossible for the defendant to obtain a fair trial. See La. Code Crim. P. art. 775; **Vansant**, 170 So.3d at 1064. As noted, despite the lack of an objection, extremely prejudicial and inflammatory remarks require reversal. See **Burge**, 515 So.2d at 505. Our review of those portions of the prosecutor's closing argument not objected to (but raised for the first time on appeal), however, convinces us that his remarks were not so prejudicial or inflammatory as to require reversal. See **Francis**, 665 So.2d at 603.

Based on the foregoing, these assignments of error are without merit.

ASSIGNMENTS OF ERROR NOS. 7 and 12

In his seventh and twelfth assignments of error, the defendant argues, respectively, that his sentence is excessive; and that the trial court erred in denying his motion to vacate an illegal sentence.[4]

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of cruel or excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 766-67 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. Code of Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. Code Crim. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. Code Crim. P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The

[4] The defendant's written motion, "MOTION TO RECONSIDER SENTENCE AND MOTION TO VACATE AN ILLEGAL SENTENCE," argued that a thirty-five year sentence was excessive.

trial court should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981). On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. **State v. Thomas**, 98-1144 (La. 10/9/98), 719 So.2d 49, 50 (per curiam).

While the trial court noted the defendant's lack of remorse, the defendant avers in brief that he showed no remorse because he was innocent. The defendant further argues his sentence is excessive because he has no criminal history and because there was no evidence that he sold drugs or was involved in any violent activity. The defendant's misplaced sufficiency of the evidence argument notwithstanding, it is clear the trial court considered La. Code Crim. P. art. 894.1 in arriving at the imposed sentence. In its reasons for sentence, the trial court noted that it had received letters from the defendant's family, as well as the defendant's high school diploma and discharge papers from the defendant's military service. The trial court further noted that the defendant had no prior criminal history, that the defendant had been employed off and on since graduating high school, and that the defendant had a child. However, the trial court further stated that the defendant had given three different versions of what took place the night of Banks's death and that the defendant had shown no remorse. For these reasons, the trial court decided not to impose the maximum sentence of forty years, but instead imposed a thirty-five year sentence.

Given the trial court's ample consideration of the facts of the case and the factors set forth in La. Code Crim. P. art. 894.1, and given the nature of the instant crime wherein Banks was killed during a drug deal, we find no abuse of discretion

by the trial court. Accordingly, the sentence imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

These assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 8

In his eighth assignment of error, the defendant argues that the trial court's negative and offensive disposition and treatment of the lead Defense Counsel throughout trial was prejudicial to the defendant and his defense.

The defendant only lists this assignment of error, but provides no argument for it. An assignment of error not briefed is considered abandoned. See Uniform Rules - Courts of Appeal, Rule 2-12.4(B)(4); **State v. Dewey**, 408 So.2d 1255, 1256 n.1 (La. 1982).

Motion for leave to amend the original brief, however, was granted by this court. In his amended brief, the defendant argues that the trial court engaged "in a condescending, somewhat hostile tone, with remarks that were disparaging and deprecating of [D]efense [C]ounsel." According to the defendant, the trial court's "treatment of and temperament" toward Defense Counsel was unfair and prejudicial to his defense and "constituted egregious legal errors."

The defendant sets out in his supplemental brief several of the alleged instances of mistreatment of Defense Counsel.[5] We address each of the assertions.

The defendant avers the trial court "threatened an attachment" for untimeliness. On the second day of trial, the trial court began proceedings at 9:00 a.m. The defendant and his attorney were not present before the judge. The clerk noted that the defendant was there and that "they were talking." The following exchange then took place:

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[5] The defendant raises the same issues in his Reply Brief.

The Court: We're getting ready to have an attachment issue if they don't show up. Nine o'clock, [Defense Counsel].
Defense Counsel: My clock says 8:58.
The Court: You better coordinate your clock with this clock.

We find nothing inappropriate with this exchange.

Next, the defendant notes that the trial court warned Defense Counsel that he would subject her to a contempt hearing during her closing argument. Further, the defendant avers, the court "even went as far as to comment during the defense closing argument in agreement with the [S]tate attorney."

In closing argument, the defense noted that the State subpoenaed Natasha Okafor (Samson Okafor's wife who was never called to testify) and that she was "right here" in the courtroom. The State lodged an objection, which was sustained. Defense Counsel then informed the trial court that if he wanted Natasha "in here", he could have brought her "in here." The State responded, "That's a direct disregard for your order, your ruling." The following exchange then took place:

The Court: Move on, [Defense Counsel], please.
Defense Counsel: Okay. I can't tell them about Natasha, and he could have brought her in?
The Court: Please move on.
Defense Counsel: Samson – [the Prosecutor] want[s] to make you believe -- you know, he was able to say whatever he wanted up here. But I get sanctioned. But --
The Court: [Defense Counsel], if you say anything else like that again, you will have a contempt hearing, okay?
Defense Counsel: Okay, Your Honor.

We find nothing inappropriate with how this issue was handled by the trial court. The prosecutor's objection was sustained and the trial court twice asked Defense Counsel to move on. Rather than moving on, Defense Counsel became recalcitrant and argumentative, her behavior tending to interrupt or interfere with the business of the court. See La. Code Crim. P. art. 21(5).

The other issue during closing argument involved the following exchange:

Defense Counsel: He said that Samson Okafor got the car. . . . I think -- let's see. We had that. We had the slip from Roadrunner. We

don't know -- he – [the Prosecutor] testified that he picked it up a few hours later.
Prosecutor: Your Honor. I didn't testify.
The Court: I agree.

It is not at all clear what the defendant's complaint is here. Clearly a trial court is not permitted to comment on the evidence. But herein, Defense Counsel mistakenly stated that the prosecutor testified. The prosecutor pointed out the error and the trial court agreed. This was tantamount to the State objecting and the trial court sustaining that objection.

Next, the defendant asserts the "court established a pattern of speaking to Defense Counsel in a hostile and derogatory tone in the presence of the jury."

On cross-examination, the defense was attempting to impeach Harris over what Harris had told Watts before Harris got out of the BMW and left. Defense Counsel read aloud an excerpt from Harris's interview with Detective Ray Bryant: "You were telling him -- You told them, 'I -- Alfred Watts said to me, now, you won't go to the hospital with me?' You said, 'No, I'm not. Man, I'm just in the wrong place at the wrong time.' And you got out of the car because Alfred was waving a gun and you didn't want to get shot."

What Harris told the detective was, in fact, very similar to what he testified to at trial. Defense Counsel then sought to play a portion of the interview. The following exchange then took place:

Prosecutor: Your Honor, at this time let me just object if she's planning on ---
Defense Counsel: Object because I want to impeach him?
The Court: Wait, wait.
Prosecutor: Judge, it's not impeachment. I don't know what she's looking to play. If she wants to direct me to a time and what she's going to play. Maybe I can look at it and agree to it.

Immediately following this, is the complained of exchange between Defense Counsel and the trial court:

The Court: Do you all have it transcribed?
Prosecutor: I do.

The Court: Well, show him the transcription before you show it to the jury.
Defense Counsel: Your Honor, I have -- this is discovery that the State had provided for me. And they provided an audio. I considered that the best evidence. And the transcript, I'm not trying to -- I think he has been impeached. He's made his statement. Now, I have an opportunity to show him what he actually said.
The Court: You can't tell me [whether] somebody has been impeached or not. That's for the jury to decide. It's not your decision. I'm saying, show the written document to the witness as to what you're talking about.
Defense Counsel: Okay. Okay, Your Honor. Give me a little time to find it.

Shortly thereafter, Harris was allowed to read his statement he had made to Detective Bryant. Defense Counsel asked Harris what he had just read, and he replied. Defense Counsel then stated, "Okay. Well, let me read back to you and you tell me if this is what's in this statement. Okay?" Immediately following this is the complained of exchange with the trial court:

Prosecutor: Objection, Judge. Improper foundation to read this statement unless she's trying to get --
Defense Counsel: What's improper?
The Court: You don't direct anything to him. I'm the person that makes the ruling. I'm going to allow the question.
Defense Counsel: Thank you, Your Honor.
The Court: Okay.

We have no way to gauge the trial court's alleged "derogatory tone" from a dry record, but there is simply nothing inappropriate in what he stated. A court has the duty to require that criminal proceedings shall be conducted with dignity and in an orderly and expeditious manner and to control the proceedings so that justice is done. La. Code Crim. P. art. 17.

Next, the defendant notes that outside of the presence of the jury, the trial court referred to the use "of an evidentiary right" by Defense Counsel as "stupid" and accused her of dragging the trial out, and noted that the "day of reckoning is coming whether we drag it out or not."

During trial, Defense Counsel argued against the prosecutor's playing the defendant's statement to Detective Young to the jury. The defendant's mother,

Defense Counsel, and Detective Bryant were also at the interview, so Defense Counsel argued that anything they might have said in the interview was hearsay. The trial court sustained the Defense Counsel's objection, and Detective Young was required to read aloud to the jury his interview with the defendant. In sustaining the objection, the trial court stated: "I mean, [Defense Counsel] is just playing hard ball, that's all. It's her right to do so. Maybe the majority of it doesn't have other comments. I don't know." The trial court specifically indicated that Detective Young would not be allowed to read to the jury what Detective Bryant may have asked the defendant during the interview. Shortly thereafter, Defense Counsel stated, "Your Honor, do you understand that Detective Bryant is right outside the door?" The trial court replied: "Well, yes. But it's still []-- it's stupid, but that's your right to do what you're doing. [] You're just dragging the trial out because -- [] -- you know. The day of reckoning is coming whether we drag it out or not."

While the use of the word "stupid" was less than exemplary, it appears the trial judge might have been exhibiting some level of frustration with the approach being used to prolong the admission of non-hearsay evidence, i.e., Detective Young's recorded interview with the defendant being offered by the State as a statement against a party. See La. Code Evid. art. 801(D)(2)(a); **State v. Lindsey**, 2005-0465 (La. App. 1st Cir. 6/8/07), 964 So.2d 1032, 1033-34; **State v. Hill**, 610 So.2d 1080, 1085 (La. App. 3rd Cir. 1992). That is, instead of the defense or the State, prior to trial, redacting those parts of the defendant's interview that the defense did not want the jury to hear and simply playing the edited version to the jury, Detective Young was required to read the entire transcript of the interview, thereby extending the length of the trial. Prior to Detective Young's testifying, Colonel Johnson also had to read aloud to the jury his transcribed interview with the defendant at the hospital. In any event, this exchange was out of the presence

of the jury, which had been excused, and the defendant was not prejudiced in any way.

Finally, the defendant contends that during the post-trial motions hearing, Defense Counsel was prohibited from rebuttal. Further, according to the defendant, prior to ruling on the motions, "the judge began making comments regarding [D]efense [C]ounsel with personal overtones."

At the post-trial hearing, Defense Counsel was allowed to address and argue each of her motions (for new trial, postverdict judgment of acquittal, and in arrest of judgment). She provided thorough, extensive argument that spanned twenty-eight pages of transcript. After the State provided its rebuttal argument, concluding that all three motions should be denied, Defense Counsel stated, "Your Honor." The trial court stated, "I've heard enough." Before providing reasons for denial of the defendant's motions, the trial court stated:

> Let me first make the comment and observation that [Defense Counsel] seems to feel that the court has misjudged her and that I have a feeling one way or another about her. The truth is, I do not know [Defense Counsel]. I have no feeling one way or another about her as a person.[6]

We find nothing inappropriate here by the trial court. In fact, a trial court is vested with broad discretion in conducting trial (or post-trial) as he sees fit, and in a manner he determines will be conducive to justice. See **Jordan v. Intercontinental Bulktank Corp.**, 621 So.2d 1141, 1150-51 (La. App. 1st Cir. 1993), writs denied, 623 So.2d 1335, 1336 (La. 1993), cert. denied, 510 U.S. 1094, 114 S.Ct. 926, 127 L.Ed.2d 219 (1994).

Based on the all of the foregoing, we find that nothing in these exchanges, or in the conduct of the trial court, rose to the level of prejudicing the defendant or Defense Counsel. The defendant was not denied the right to a fair trial and, accordingly, this assignment of error is without merit.

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[6] The defense had filed a motion to recuse the trial judge about one month after the trial but prior to the post-trial motions hearing based on issues addressed in this appeal.

ASSIGNMENTS OF ERROR NOS. 9-13

In these related assignments of error, the defendant addresses several post-trial motions. According to the defendant, the trial court erred in denying, respectively, the motion for new trial; the motion for postverdict judgment of acquittal; the motion in arrest of judgment; the motion to vacate an illegal sentence; and the motion for mistrial.

The motion for postverdict judgment of acquittal was addressed with the sufficiency of evidence argument above, and the motion to vacate an illegal sentence was addressed with the motion to reconsider sentence argument above. Accordingly, we address herein the ninth, eleventh, and thirteenth assignments of error.

Under La. Code Crim. P. art. 851(B)(2), the court, on motion of the defendant, shall grant a mistrial whenever the court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error. In his written motion for new trial, as well as in his argument to the trial court at the post-trial hearing, the defendant argued that, pursuant to La. Code Crim. P. art. 851(B)(2), he was entitled to a new trial for the following reasons: the prosecutor was consistently allowed in closing argument to make remarks that exceeded the evidence admitted at trial; the prosecutor in closing argument shifted the burden of proof to the defendant; the verdict sheet should have contained the responsive verdict of negligent homicide; and the trial court withheld the contents of the juror note that contained a complaint of the conduct of fellow jurors.

The ruling on a motion for new trial is committed to the sound discretion of the trial court and will be disturbed on appeal only when there is a clear showing of an abuse of that discretion. **State v. Roy**, 496 So.2d 583, 594 (La. App. 1st Cir. 1986), writ denied, 501 So.2d 228 (La. 1987). La. Code Crim. P. art. 851(B)(2) requires a showing of prejudicial error. **State v. Duvall**, 97-2173 (La. App. 1st

Cir. 12/28/99), 747 So.2d 793, 797, writ denied, 2000-1362 (La. 2/16/01), 785 So.2d 838. All of the above arguments raised in the defendant's motion for new trial have already been addressed and found to be meritless in the second, third, fourth, and fifth assignments of error. Accordingly, the defendant has made no showing of prejudicial error and, as such, we find no abuse of discretion in the trial court's denial of the motion for new trial.

The defendant, in oral argument at the post-trial hearing, also asserted during his motion for new trial argument that the sufficiency argument he made on the motion for postverdict judgment of acquittal was the same argument for a new trial; the defendant also averred the verdict was contrary to the law and the evidence. See La. Code Crim. P. art. 851(B)(1).

The defendant argues in effect that the verdict was contrary to the law and evidence because the State did not prove every element of the crime beyond a reasonable doubt. That is, the issue raised here is one of sufficiency of evidence, not the weight of the evidence. See La. Code Crim. P. art. 851(B)(1). A trial court's determination regarding the weight of the evidence under Article 851(B)(1) is not reviewable on appeal, except for error of law. La. Code Crim. P. art. 858; **State v. Dyson**, 2016-1571 (La. App. 1st Cir. 6/2/17), 222 So.3d 220, 234. See **State v. Snyder**, 98-1078 (La. 4/14/99), 750 So.2d 832, 859 n.21; **State v. Skelton**, 340 So.2d 256, 259 (La. 1976) (reiterating that "[W]e have uniformly held that a bill of exceptions reserved to the refusal of the trial judge to grant a motion for a new trial based on Article 851(1), relative to sufficiency of the evidence presents nothing for our review."). Cf. **State v. Guillory**, 2010-1231 (La. 10/8/10), 45 So.3d 612, 614-15 (per curiam) (finding that a grant or denial of a motion for new trial pursuant to La. Code Crim. P. art. 851(5) presents a question of law that is subject to appellate review and is reviewed for abuse of discretion). See **State v. Collins**, 2010-1181 (La. App. 4th Cir. 3/23/11), 62 So.3d 268, 275. In

any event, we find no abuse of discretion or error in the trial court's denial of the defendant's motion for new trial under La. Code Crim. P. art. 851(B)(1). See **State v. King**, 2015-1283 (La. 9/18/17), 232 So.3d 1207, 1210-15.

The defendant further asserts that the trial court erred in denying his motion in arrest of judgment. In this written motion, the defendant argued that the verdict form was in violation of La. Code Crim. P. art. 814 because the form did not include the responsive verdict of negligent homicide. Thus, according to the defendant, he was entitled to an arrest of judgment because the verdict was not responsive to the indictment, or was otherwise so defective that it would not form the basis of a valid judgment. See La. Code Crim. P. art. 859(5).

We fully addressed this issue in the third assignment of error, finding the defendant's argument baseless. There was nothing improper in the trial court's not including negligent homicide as a responsive verdict. The verdict form was valid in all respects. Accordingly, the trial court correctly denied the defendant's motion in arrest of judgment.

Finally, the defendant asserts the trial court erred in denying his motion for mistrial. In his written motion for mistrial, filed over six months after the defendant was sentenced, the defendant argued he was entitled to a mistrial on the grounds that prejudicial conduct during the trial made it impossible for the defendant to obtain a fair trial. The trial court denied the motion as untimely.

An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. La. Code Crim. P. art. 841(A). The purpose of the contemporaneous objection rule is twofold: (1) to put the trial court on notice of any alleged irregularity so that he may immediately cure the problem and (2) to prevent a defendant from gambling for a favorable verdict and then resorting to appeal on errors that might easily have been corrected by timely objection and request for an admonition or mistrial. **State v. Thomas**, 427 So.2d 428, 433 (La.

1982). Requiring a contemporaneous motion for a mistrial prevents defense counsel from sitting on an error and gambling unsuccessfully on the verdict. **State v. Arvie**, 505 So.2d 44, 47 (La. 1987). Because the motion for a mistrial was not made until well after the conclusion of this case, the trial court was, in effect, denied the opportunity to admonish the jury and immediately cure any alleged prejudicial effect that the prosecutor's conduct may have had during the trial. Accordingly, we find that the defendant's motion for a mistrial was untimely and, therefore, on appeal we cannot consider the trial court's denial of this motion as error. See **State v. Ebarb**, 558 So.2d 765, 769-70 (La. App. 3rd Cir. 1990). See also **State v. Brown**, 96-1002 (La. App. 5th Cir. 4/9/97), 694 So.2d 435, 438, writ denied, 97-1310 (La. 10/31/97), 703 So.2d 19 (finding the motion for mistrial made the day after an alleged improper remark by the trial court was untimely).

Based on all of the foregoing, these assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 14

In his fourteenth assignment of error, the defendant argues the State violated **Brady** by not providing to him the initial interview of Harris; and the State violated **Brady** by not disclosing the deals between the State and Harris and Watts regarding their pending charges.

It is well settled that the State has an affirmative duty to disclose exculpatory evidence favorable to the defendant. **Brady v. Maryland**, 373 U.S. 83, 86-88, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963). But in order to prove a **Brady** violation, the defendant must establish, inter alia, that the evidence in question was, in fact, exculpatory or impeaching. **State v. Garrick**, 2003-0137 (La. 4/14/04), 870 So.2d 990, 993 (per curiam). Disclosure of exculpatory evidence should be made in time to allow a defendant to make effective use of such information in the presentation of his case. **State v. Prudholm**, 446 So.2d 729, 738 (La. 1984). However, even where disclosure is made during trial, it will be

considered timely if the defendant is not prejudiced. **State v. Huls**, 95-0541 (La. App. 1st Cir. 5/29/96), 676 So.2d 160, 170, writ denied, 96-1734 (La. 1/6/97), 685 So.2d 126. In order to be entitled to a reversal for failure to timely provide exculpatory information, the defendant must show that he was prejudiced. Discovery violations do not provide grounds for reversal unless they have actually prejudiced the defendant. **Garrick**, 870 So.2d at 993.

Over three years prior to the start of trial, the defendant filed a request for **Brady** material. The State provided any and all pertinent material regarding this issue. No pretrial contradictory hearing was ever held to address any potential **Brady** issues. In the middle of trial, Defense Counsel re-urged her **Brady** motion and asked for the first interview of Corey Harris. Harris had interviewed twice with the police, and, according to Defense Counsel, the defense had never received a copy of the first interview. One of the prosecutors indicated to the trial court that the first interview was never recorded or videoed because there was something wrong with the recording equipment; as such, Harris was interviewed a second time. Defense Counsel did not at this time allege any **Brady** violation or lodge any objections regarding the non-existent recording of the first interview.

Moreover, Defense Counsel specifically informed the trial court that the basis for her **Brady** motion was *not* the Harris interview, but simply that she was re-urging the motion out of an abundance of caution.

The defendant has made no showing that the State withheld any impeaching or exculpatory evidence or that he was prejudiced. See **Garrick**, 870 So.2d at 993. In any event, there was no discovery violation by the State and, as such, the assertion by the defendant of a **Brady** violation, regarding the Harris interview, is baseless.

The defendant further asserts the State violated **Brady** by not disclosing the deals the State had with Harris and Watts regarding their pending charges. This assertion as well, regarding any **Brady** violation, is baseless.

The general rule under La. Code Evid. art. 609.1 is that the credibility of a witness may be impeached by introducing evidence that the witness has been convicted of a crime. Evidence of an arrest, an arrest warrant, indictment, prosecution or acquittal may not be used to impeach the general credibility of the witness. Despite this general rule, it is well settled that the possibility that the prosecution may have leverage over a witness due to that witness's pending criminal charges is recognized as a valid area of cross-examination. **State v. Brady**, 381 So.2d 819, 822 (La. 1980). The hope or knowledge of a witness that he will receive leniency from the State is highly relevant to establish the bias or interest of the witness. **State v. Brumfield**, 546 So.2d 1241, 1246 (La. App. 1st Cir. 1989), writ denied, 556 So.2d 54 (La. 1990) (citing **State v. Brady**, 381 So.2d at 822). Cross-examination about a witness's arrest is proper when it is not for the purpose of impeaching the witness's general credibility, but is to establish that the district attorney's office has leverage over the witness as a result of the pending charge, or at least that the witness might assume so. **State v. Brady**, 381 So.2d at 822. See **State v. Davis**, 2000-2685 (La. App. 1st Cir. 11/9/01), 818 So.2d 76, 81.[7]

La. Code Evid. art. 607 provides in pertinent part:

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[7] The former source statutes of La. R.S. 15:492 and 495, which were repealed by Acts 1988, No. 515, § 8, provided:

> § 492. **Bias, interest, or corruption of witness; questions concerning particular acts**
> When the purpose is to show that in the special case on trial the witness is biased, has an interest, or has been corrupted, it is competent to question him as to any particular fact showing or tending to show such bias, interest or corruption, and unless he distinctly admit such fact, any other witness may be examined to establish the same.

> § 495. **Impeachment by evidence of conviction; condition precedent to proof by others; prohibition against cross-examination as to indictment or arrest**
> Evidence of conviction of crime, but not of arrest, indictment or prosecution, is admissible for the purpose of impeaching the credibility of the witness, but before evidence of such former conviction can be adduced from any other source than the witness whose credibility is to be impeached, he must have been questioned on cross-examination as to such conviction, and have failed distinctly to admit the same; and no witness, whether he be defendant or not, can be asked on cross-examination whether or not he has even been indicted or arrested, and can only be questioned as to conviction, and as provided herein.

C. Attacking credibility intrinsically. Except as otherwise provided by legislation, a party, to attack the credibility of a witness, may examine him concerning any matter having a reasonable tendency to disprove the truthfulness or accuracy of his testimony.

D. Attacking credibility extrinsically. Except as otherwise provided by legislation:

(1) Extrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness.

La. Code Evid. art. 609.1 provides in pertinent part:

A. General criminal rule. In a criminal case, every witness by testifying subjects himself to examination relative to his criminal convictions, subject to limitations set forth below.

B. Convictions. Generally, only offenses for which the witness has been convicted are admissible upon the issue of his credibility, and no inquiry is permitted into matters for which there has only been an arrest, the issuance of an arrest warrant, an indictment, a prosecution, or an acquittal.

The Louisiana Supreme Court has held that cross-examination to show bias, interest, hope of reward, or corruption is allowed as a part of the constitutional right of confrontation. The courts have made a distinction between cross-examination related to prior criminal conduct for purposes of impeaching the general credibility of the witness, strictly regulated by former La. R.S. 15:495 (and now Code of Evidence article 609.1), and cross-examination for the purpose of showing bias, interest or corruption of the witness, guaranteed by the state and federal constitutions. **Davis**, 818 So.2d at 82-83.

The defense cross-examined both Harris and Watts at trial. Harris testified on cross-examination that he had a pending charge for misdemeanor possession of marijuana. The defense asked Harris if the State had offered him any deals regarding this charge. Harris replied, "No, ma'am." She then asked, "They didn't tell you they were going to try take care of you?" Harris replied, "No, ma'am." During the cross-examination of Watts, Defense Counsel asked him about his prior convictions. Watts indicated he had convictions for attempted second degree murder, possession with intent to distribute counterfeit cocaine, and distribution of

cocaine. Defense Counsel also asked if he had a "charge" for possession of marijuana and a "charge" for possession of cocaine, to which Watts replied in the affirmative to both queries. Defense Counsel then marked the certified minutes of the convictions and ended her examination of Watts. She did not ask Watts any questions about pending charges regarding the instant case, or any questions about alleged deals he may have had with the State.

Based on the foregoing, including the full and complete cross-examination of each of these witnesses, there is nothing in the record before us to suggest that Harris or Watts received any deals from the State in return for favorable testimony. Cf. **Davis**, 818 So.2d at 81-83 (reversing the trial court's ruling that Defense Counsel was not allowed to ask the State's witness about pending charges in a Mississippi county because we found the Delta Task Force in West Feliciana was a joint operation and had some coordination with Mississippi authorities, and more importantly because the witness, on cross-examination admitted that he had "cut a deal" to get out of prison "on that murder and burglary charge."[8]); cf. **State v. Harrison**, 484 So.2d 882, 883-84 (La. App. 1st Cir. 1986), writ denied, 488 So.2d 688 (La. 1986) (reversing the trial court's ruling that Defense Counsel was not allowed to inquire about the testifying witness's burglary and weapons charges that the district attorney had dismissed).

The defendant suggests in brief that the State had "reached a deal" with Harris, wherein he received a suspended sentence for his possession of marijuana charge. The defendant inserted footnote 89 in brief, in support of this alleged information: "Appellant Exhibit A - Certified Copy of Extract from the minutes of this Court - Corey Harris" The defendant further suggests that a month after he was sentenced, Watts received a reduced charge from the State, from obstruction

[8] Under the sufficiency of evidence portion of the **Davis** case, we indicated that the State's primary witness had cut a sentencing deal with Mississippi prosecutors and, further, that the witness worked for the Delta Task Force. **Davis**, 818 So.2d at 79.

of justice to criminal mischief, with a suspended sentence. The defendant inserted footnote 90 in brief, in support of this alleged information: "Appellant Exhibit B - certified extract from the court minutes - Alfred Watts" These exhibits are attached at the end of the defendant's brief.

These assertions by the defendant regarding any alleged deals between the State and Harris or Watts are without any factual support. There is nothing in the appellate record (minute entries, bills of information or otherwise) of the post-trial final charges or sentences of Harris or Watts. Further, a suspended sentence or reduced charge *after* the conclusion of the instant trial that one or both of these witnesses might have received is not evidence of any alleged deals made between them and the State for their testimony. The attached appellant exhibits, noted above, have nothing to do with Harris or Watts. "Exhibit A" is a copy of the minute entry of the defendant's unanimous jury guilty verdict of manslaughter. "Exhibit B" is a copy of the minute entry of a denial of the defendant's post-trial motion to recuse the trial court; denials of post-trial motions argued in the defendant's case; and the defendant's sentencing.

Based on the foregoing, this assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.