

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 1978

STATE OF LOUISIANA

VERSUS

ROBBIE DANIEL

Judgment Rendered: March 23, 2007

Appealed from the
Eighteenth Judicial District Court
in and for the Parish of Pointe Coupee, State of Louisiana
Trial Court Number 71,123-F

Honorable James J. Best, Judge Presiding

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BEFORE: CARTER, C. J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

Defendant, Robbie Daniel, was charged by grand jury indictment with one count of second degree murder, a violation of LSA-R.S. 14:30.1. Defendant pled not guilty and was tried before a jury. The jury returned a verdict of guilty as charged. The trial court sentenced defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. We affirm.

FACTS

On October 22, 2004, seventeen-year-old Michelle Sparks, who lived in Erwinville, was reported missing. Following Sparks's disappearance, several of her relatives called defendant's cell phone to see if he knew of her whereabouts, but defendant denied having any such knowledge. Sparks and defendant became acquainted when they worked together at the Po Folks Produce Stand on Highway 415 in Port Allen.

At the time of Sparks's disappearance, defendant shared a trailer with Troy Purpera, and Purpera's brother, Tommy Thompson. The trailer was located at 4066 Oakland Road, a few miles from Sparks's residence. Purpera and defendant had been involved in an intimate relationship for the previous four years.

According to Purpera, on October 22, 2004, he left for work at Black's Auto Salvage in Brusly at approximately 7:30 a.m. Purpera returned to his residence around 7:00 p.m. After he arrived home, Purpera noticed that defendant showered three times and clipped his fingernails over a garbage can before defendant went to sleep. Purpera found defendant's behavior to be suspicious.

In response to multiple calls from Sparks's family to defendant's cell phone on October 22 and 23, 2004, defendant informed Purpera that Sparks

was missing, and claimed that he had nothing to do with it. Because of continued contact by Sparks's relatives, defendant, accompanied by Purpera, went to the West Baton Rouge Parish Sheriff's Office on October 24, 2004, to voluntarily give a written statement.

In his October 24, 2004 written statement, defendant claimed that Sparks had phoned him two days earlier, but he missed the call. When he returned her call, Sparks told him that she was going with a guy named Jessie that she had "partyed" [sic] with the night before. Defendant's statement also indicated that Sparks's mother phoned him in the afternoon asking if he had seen her daughter. Defendant wrote that he told Sparks's mother that he had spoken to her over the phone, but had not seen her. According to defendant's statement, Sparks's family had called him "nonstop" on his friend's cell phone since her disappearance. Defendant further claimed he told Sparks's family he was willing to help in any way he could. After providing the statement, defendant and Purpera returned to their residence. Shortly thereafter, police units from both the West Baton Rouge and Pointe Coupee Parish Sheriff's Departments arrived at the residence to question defendant. No search of the premises was conducted at this time.

On November 4, 2004, defendant gave another statement to the police regarding his whereabouts on the date Sparks disappeared. Defendant claimed he left for his job in Watson at Action Automotive, and arrived there shortly after 9:00 a.m. Defendant stated that Sparks phoned him three times, but that he had been too busy to answer his phone. Defendant stated he called Sparks around noon. According to defendant, when he spoke with Sparks, she told him that she was hung over from the previous night and was leaving to go with someone named Jessie. Defendant told the police that he

had not actually seen Sparks after he quit working at Po Folks about two weeks prior to her disappearance. Defendant stated that he remained at work until 2:45 p.m., when he left for Brusly to pick up some parts from Purpera and deliver them to Leonard Guillory. Defendant stated he stopped at a fast-food restaurant in Central around 3:00 p.m. and arrived at Black's at about 3:35 p.m. Defendant stated he stayed at Black's for about thirty minutes, then left to make the delivery to Guillory, where he remained another thirty to forty-five minutes. Defendant told the police he got home around 5:15 p.m., and that Sparks's mother then began calling him and was very rude when questioning him concerning her daughter's whereabouts.

On November 5, 2004, the police went to Purpera's place of employment asking about his and defendant's whereabouts on October 22, 2004. Purpera reiterated that he had been at work from just before 8:00 a.m., until he returned home around 7:00 p.m. Purpera became concerned when the police showed him phone records disputing defendant's story that he had worked in Watson until mid-afternoon when he went to Brusly to pick up some parts to deliver for Purpera. According to the records obtained by the police, a call had been made from defendant's cell phone and transmitted from the Erwinville tower, thus placing defendant in the Erwinville area as opposed to Watson.

After speaking with the police, Purpera drove home and began to search his property for "anything out of the ordinary." As he stood in the back yard near some dog pens, Purpera noticed a lump in the bayou, which was located about seventy-five feet from his trailer. According to Purpera, the ground sloping into the bayou appeared trampled. When he moved closer, Purpera noted that the lump looked like carpet with logs piled on top of it. Purpera then noticed what looked like a human ribcage and buttocks

facing up from the water. Retrieving a hoe, Purpera pulled some of the logs and carpet off, and a body floated up. Purpera realized that the carpet covering the body looked like carpet that had been underneath the shed on his property.

Purpera went back to his trailer, retrieved his keys, locked the trailer and phoned an attorney, Terry Irby, as he drove away. Purpera met Irby at a nearby area off Rebel Lane. As he began to describe how he had just discovered a body behind his trailer, Irby stopped him and advised that he was representing defendant in another case in St. Mary Parish. Irby then gave Purpera the number for another attorney, Hillar Moore. Purpera called Moore and met with him that same evening. Moore contacted the FBI regarding the body.

The date after the discovery of the body, Detective Ron Lejeune of the West Baton Rouge Parish Sheriff's Office went to defendant's mother's home in Opelousas, where defendant was staying, to execute a search warrant and collect a DNA sample from defendant. When Detective Lejeune informed defendant that the body had been discovered in the bayou behind the trailer where he lived, defendant began to stutter, his knees buckled and he nearly fell to the ground.

The following day, November 6, 2004, Purpera contacted defendant in Opelousas. When Purpera informed defendant that there was a body in the backyard, defendant responded that the only thing he could remember about the day Sparks disappeared was that he blacked out and when he came to, he was wearing different clothes and sweating. Defendant also told Purpera that he had taken some clothes to an alligator pit in Ville Platte the day after Sparks disappeared.

Purpera stated that he asked defendant whether he had been involved in a sexual relationship with Sparks, but defendant denied the relationship. During this conversation, defendant also told Purpera that he had dreamed he was the Grim Reaper and had beaten someone, perhaps with a shovel. Defendant then asked Purpera if the police had taken the shovel from their property. While speaking with defendant, Purpera expressed concern about being arrested because the body he found was on his property, but defendant told Purpera not to worry as he would clear Purpera's name if that happened.

After reporting the conversation to the police, Purpera avoided defendant's calls at the request of the police. Defendant remained at his mother's house in Opelousas. On November 18, 2004, Purpera contacted defendant at the request of the police, who were with Purpera during the call and were submitting questions to ask defendant.

In the meantime, the body discovered on Purpera's property was identified through dental records as Michelle Sparks. The cause of her death was determined to be blunt trauma to the head. Following the discovery of Sparks's body, defendant's truck was seized by the police. According to Detective Lejeune, when defendant turned his truck in to the police, the vehicle was "spotless" on the inside and outside.

On November 19, 2004, defendant was arrested for the murder of Michelle Sparks. Detective Lejeune testified that during the course of the investigation, the police had obtained cellular phone records that contradicted defendant's story of where he was during the day on October 22, 2004. Defendant had claimed he was working in Watson from around 9:00 a.m. until just before 3:00 p.m. However, the records obtained by the police indicated defendant was in the Erwinville area and made a call to

Sparks at 12:17 p.m. Defendant's claim that Sparks had phoned him three times while he was at work was also contradicted by the phone records.

Following his arrest, defendant asked to speak with Detective Lejeune. In an interview on November 21, 2005, defendant told the detective that Sparks had begun to flirt with him when they worked together at Po Folks. Defendant denied any relationship with Sparks, but stated they talked actively on the phone. Defendant claimed that during this time period Purpera became very angry with him because defendant was not giving him anything "sexually-wise." Defendant claimed it had been three weeks since he and Purpera had engaged in sexual relations. According to defendant, because of the tension in their relationship, Purpera told defendant that he needed to find another place to live. Defendant claimed he told Purpera that he would leave as soon as he could "get on his feet."

Defendant claimed that prior to October 22, 2004, Sparks called him numerous times at Purpera's residence and although Purpera would ask who was calling, defendant never told him. According to defendant, Purpera acted as if he knew defendant was lying and seemed upset.¹

Defendant claimed that on the day Sparks was reported missing, he and Purpera had gotten into a verbal disagreement. According to defendant, Purpera was angry with defendant over his inability to make more money and wanted defendant out of his trailer. Defendant attributed Purpera's anger to the fact that there was no active sexual relationship between them at this point.

Defendant told Detective Lejeune that he was thinking about seeing Sparks and described her as "sweet." Defendant stated, "And I'm the same

¹At trial, Purpera testified that he and defendant had an open and free relationship. Although Purpera admitted he still loved defendant, he denied having anything to do with Sparks's murder.

type kind of person, you know. I mean, I wouldn't hurt a fly." Defendant explained that part of the reason he was no longer having sex with Purpera was because of Sparks. Defendant stated that he was thinking about trying to get off drugs and to get his life straight. Defendant acknowledged that Purpera supported him financially and that he could understand Purpera's anger arising from his suspicion that defendant was seeing someone else.

Defendant stated that the morning of October 22, 2004, after he and Purpera argued, that he "got f---ed up all that day, and everything. The events that started occurring after that just is -is [sic] very strange to me. How [Purpera] told me to say certain things that I couldn't remember, you know."

Defendant told Detective Lejeune that one of the things Purpera told him to say was that he saw him at Black's, even though defendant now claimed to have no recollection of seeing Purpera at Black's. Defendant stated that he did not like the way Purpera began acting after Sparks was reported as missing, and claimed that Purpera made defendant go to his mother's house. Defendant further commented that he did not know how Purpera did not see the body earlier if he went to the same location every day to feed their dogs.

During this interview, defendant admitted for the first time that he had been with Sparks on the day of her disappearance. According to defendant, he and Sparks had met at the LA Express convenience store, and they smoked a marijuana cigarette together. However, defendant denied that their meeting was prearranged. After they smoked the marijuana, Sparks left and went home because she thought she saw her mother's vehicle and feared she was in trouble. Defendant claimed to have taken several pills, including

Zannabars and Xanax, in addition to consuming two “eight-balls” of cocaine that morning.

At trial, the State called Tommy Thompson, Purpera’s brother, who had lived with Purpera and defendant. Thompson testified that he told the police that he worked with defendant in Watson and that defendant left work that day around 11:20 a.m. and never returned. According to Thompson, defendant appeared normal and there was no indication he was under any chemical influence. Thompson stated that defendant appeared a little upset that morning, which Thompson attributed to the fact that he made defendant do three oil changes that morning.

Dr. Alfredo Suarez, who was accepted by the trial court as an expert pathologist, performed the autopsy on Sparks. According to Dr. Suarez, Sparks’s body was decomposed and partially skeletized, meaning the bones were exposed, when it was recovered. The autopsy revealed that Sparks had been vigorously beaten with a heavy object with most of the damage to her head. A six inch by five inch section of Spark’s skull was missing. Sparks also sustained fractures to her second and fourth right ribs. Dr. Suarez agreed that a shovel, much like one seized from Purpera’s property, could have caused the damage.

Charles Watson, a forensic scientist at the Louisiana State Police Crime Lab, was accepted by the trial court as an expert in Crime Scene Investigation. Watson investigated the crime scene in the present case. According to Watson, black residue was detected on the skull of the victim. Watson testified that he collected some scrapings from the shovel that had been seized, and that he sent samples of both scrapings to the FBI Crime Lab in Quantico, Virginia.

Maureen Bradley, a chemist at the FBI Crime Lab in Quantico, was accepted by the trial court as an expert in the field of forensic paint analysis. Bradley testified that she examined the samples of the black marks taken from Sparks's skull and the scrapings taken from the shovel. Although these materials were deemed "consistent," she could not definitively state that the paint on the victim's head came from the shovel.

Adam Becnel, a forensic scientist at the Louisiana State Police Crime Lab, was accepted by the trial court as an expert in crime scene investigation and forensic evidence. Becnel was responsible for searching and processing any evidence found inside the trailer shared by defendant and Purpera. Becnel noted that the trailer was extremely cluttered and in disarray, which made his search and evaluation of the trailer as the potential crime scene difficult. However, nothing collected from the trailer indicated that Sparks had been killed inside the trailer.

Joanie Wilson, a DNA forensic analyst for the Louisiana State Police Crime Lab, was accepted by the trial court as an expert in DNA analysis. Wilson examined a pair of jeans belonging to defendant that were muddy from the knees down. Blood was found on these jeans that met defendant's DNA profile. There was also a t-shirt seized from defendant that had blood on it consistent with that of defendant. No other items that were tested had any DNA consistent with defendant or Sparks.

The State also called Paul Black as a witness. Black managed Black's Auto Parts, Purpera's place of employment. According to Black, Purpera was at work all day on October 22, 2004. To support Black's testimony, the State introduced business receipts showing Purpera had been waiting on customers throughout the day. Black also testified that defendant had been there on that date sometime between 10:00 a.m. and 2:00 p.m.

P.M. Reed, a field engineer for Cingular Wireless, was also called as a witness by the State. Reed testified regarding calls that were made involving defendant's cell phone on October 22, 2004, the date of Sparks's disappearance. Beginning at 8:20 a.m., a fifteen-minute call to Sparks's residence was placed on the phone identified as being used by defendant. At the time of the call, defendant's phone was transmitting on a tower in the Erwinville area. At 9:18 a.m., another call was made from Sparks's residence to defendant's phone. This call lasted twelve minutes and the transmitter used was in east Port Allen, near the Mississippi River Bridge. At 11:01 a.m., a call originating at Sparks's residence was made to defendant's phone, with his phone transmitting on a tower near Watson. At 12:17 p.m., a call originating from defendant's cell phone was made to Sparks's residence, and transmitted using the Erwinville tower.

The cellular phone records also indicated that calls were made from defendant's cell phone to Purpera's cell phone at 1:17 p.m. and 1:36 p.m., using the Erwinville tower. For the remainder of the day, defendant's cell phone was involved in calls that were transmitted on the Erwinville tower, none of which involved any number associated with Sparks.

The State also called Jessie Taylor, a friend of Sparks, who testified that he spoke on the phone with Sparks on Friday, October, 22, 2004 at around 10:00 a.m., and that she had plans to meet her parents that evening. Taylor was working that day and never saw Sparks after their phone call.

James Balis was also called as a witness by the State. Balis lives at 12634 Pecan Street in Erwinville, across the street from where Sparks lived with her mother. On Friday, October 22, 2004, at around 2:00 p.m., Balis observed a light-colored vehicle with tinted windows driving very slowly on his street. The vehicle made more than one pass on the street and eventually

stopped at the Sparks's residence. Balis was working in his garden at the time. A man got out of the vehicle and appeared to be knocking on the door to Sparks's home. Getting no response, the man walked over to speak with Balis and asked if he knew the couple living at the house because he was trying to adopt their dog.

The defendant did not testify, nor were any defense witnesses called.

After deliberating, the jury found defendant guilty of second degree murder.

SUFFICIENCY OF THE EVIDENCE

Defendant argues that the evidence presented at trial was insufficient to support his conviction for second degree murder. Specifically, defendant argues that although there was evidence that he was not in Watson all day as he originally stated, it was simply not rational for the jury to find this evidence sufficient to establish his identity beyond a reasonable doubt as the person who killed Michelle Sparks. Defendant argues the only relevant witness as to identity, Purpera, "was also a suspect and continuously changed his story and added facts to get himself off the hook."

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the state proved the essential elements of the crime beyond a reasonable doubt. LSA-C.Cr.P. art. 821; Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). The Jackson standard of review, incorporated in LSA-C.Cr.P. P. art. 821(B) is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable

hypothesis of innocence. See State v. Montecino, 2004-0892, pp. 5-6 (La. App. 1st Cir. 2/11/05), 906 So. 2d 450, 453, writ denied, 2005-0717 (La. 6/3/05), 903 So. 2d 456.

Louisiana Revised Statutes 14:30.1(A) defines second degree murder in pertinent part as: “(1) When the offender has a specific intent to kill or to inflict great bodily harm;”

Specific intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow from his act or failure to act. LSA-R.S. 14:10(1). Specific intent may be proven by direct evidence, such as statements by a defendant; or by inference from circumstantial evidence, such as defendant’s actions or facts depicting the circumstances. State v. Montecino, 2004-0892 at p. 6, 906 So. 2d at 453. Specific intent is an ultimate legal conclusion to be resolved by the trier of fact. State v. LeBoeuf, 2006-0153, pp. 4-5 (La. App. 1st Cir. 9/15/06), 943 So. 2d 1134, 1138.

This court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder’s determination of guilt. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. State v. Montecino, 2004-0892 at p. 6, 906 So. 2d at 453.

In the present case, defendant’s conviction is based solely on circumstantial evidence. Viewing the evidence in the light most favorable to the prosecution, the record reflects the State established the following:

Defendant was acquainted with Sparks from working with her at a produce stand and they frequently spoke to each other on the phone. Defendant lied to the police regarding his whereabouts on the date Sparks disappeared. Specifically, defendant claimed to be in Watson all day, until

2:45 p.m., whereas Tommy Thompson testified that defendant left his job in Watson at 11:20 a.m. on October 22, 2004. Cellular phone records indicated that a call was placed from defendant's cell phone to Sparks's residence at 12:17 p.m. and transmitted on the Erwinville tower, placing defendant within proximity to Erwinville at this time.

Moreover, following his arrest, defendant eventually admitted that he had been with Sparks at a convenience store in Erwinville and that they had smoked marijuana together. In this same statement, defendant admitted that he had feelings for Sparks, despite Sparks's knowledge that he was a homosexual. Defendant claimed he was thinking of leaving Purpera, his live-in lover. As reflected in his November 21, 2004 statement, defendant then initiated an attempt to incriminate Purpera and even went so far as to ask Detective Lejeune how strong Purpera's alibi was for that day. Evidence was also introduced to the jury that defendant had assured Purpera that he would not allow Purpera to be prosecuted.

On the date of Sparks's disappearance, before Purpera was aware of anything amiss, he arrived home and saw defendant take three showers over the course of the evening and clip his fingernails over a trash can. Defendant later told Purpera that on the date of Sparks's disappearance, he "blacked out" and that when he came to, he was wearing different clothing and sweating. Defendant admitted to Purpera that he disposed of some clothing in an alligator pit near Ville Platte the next day while on his way to his mother's home in Opelousas. Defendant discussed having "a dream" following Sparks's disappearance in which he was the Grim Reaper and stated that in this dream, he might have hit someone with a shovel.

Sparks was reported missing on October 22, 2004, but her body was not discovered until November 5, 2004. Her badly decomposed body was

found under some carpet, which was the same carpet usually kept under the shed on the property where defendant lived. In addition to the body being wrapped in carpet, logs had been piled onto it in an apparent effort to weigh the body down. When defendant was informed that the body had been discovered in the bayou, he appeared visibly shaken.

In support of his assignment challenging the sufficiency of the evidence and his claim of innocence, defendant argues that Purpera should be equally suspect, as he kept changing his story. However, the State negated this hypothesis of innocence by introducing records from Purpera's employer indicating Purpera was at work from just before 8:00 a.m. until 5:30 p.m. on October 22, 2004 and did not leave. Moreover, Purpera disputed that he was a "jealous lover" as insinuated by defendant in his November 21, 2004 statement. According to Purpera, he and defendant had been involved in an open relationship, which defendant did not dispute during the November 18, 2004 phone call overheard by the police.

The State also introduced evidence that Jessie Taylor, a friend of the victim, had phoned her on the morning of her disappearance, but worked the rest of the day and did not come into contact with her. Moreover, the State negated the theory that Sparks was abducted from her home by a suspicious person, when it introduced testimony from Balis, who stated he spoke with an individual who had arrived at the home, but the man was there in connection with adopting the Sparks's dog. Detective Lejeune deemed it highly unlikely that Sparks had been murdered and her body placed in some other body of water and fortuitously floated behind defendant's home.

Although no DNA identified with Sparks was found on defendant's clothing, truck, or residence, Detective Lejeune noted that the trailer was in disarray. When defendant's truck was seized on November 6, 2004, the

vehicle was “spotless.” Moreover, defendant admitted to Purpera that he had disposed of some of his clothing in an alligator pit the day following Sparks’s disappearance.

A pair of defendant’s jeans were seized, which were muddy up to the knees and stained with defendant’s blood, indicating that at some point, defendant had been in muddy water up to his knees. Police also seized a shovel near the dog pens behind the trailer in which defendant lived. The shovel had duckweed on it, and the bayou in which Sparks’s body was discovered also had duckweed in it. Although the FBI could not establish a definite connection, scrapings of paint from the shovel were deemed to be consistent with paint scraped from Sparks’s skull. Finally, the State presented the audiotape of the conversation between Purpera and defendant wherein defendant assured Purpera that if he were prosecuted in connection with Sparks’s murder, defendant would not allow that to happen.

In circumstantial evidence cases, this court does not determine whether another possible hypothesis suggested by defendant could afford an exculpatory explanation of events. Rather, the issue before this court is whether, evaluating the evidence in the light most favorable to the prosecution, the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. State v. Davis, 92-1623, p. 11 (La. 5/23/94), 637 So. 2d 1012, 1020, cert. denied, 513 U.S. 975, 115 S. Ct. 450, 130 L. Ed. 2d. 359 (1994).

In reviewing this case, we note that defendant, not Purpera, was the suspect who continually changed his story during the investigation. Lying or purposeful misrepresentation has been recognized as indicative of an awareness of wrongdoing. See State v. Alpaugh, 568 So. 2d 1379, 1384 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 65 (La. 1991). The jury

obviously concluded that Sparks's body had been wrapped in carpet and placed in the bayou under logs in an effort to avoid discovery. As the jury apparently recognized, following his arrest, defendant continually lied about his activities and whereabouts, and changed his own story in an attempt to present a more self-serving version of the events following his arrest. Moreover, the jury apparently found Purpera's testimony credible and believed Purpera had nothing to do with Sparks's disappearance and death. Finally, the jury could have viewed defendant's comments that he dreamed he was the Grim Reaper and had struck someone with something, possibly a shovel, as constituting more than a mere dream, given that the alleged dream occurred on the date Sparks disappeared and included details later proven by the evidence. The evidence further establishes that Sparks's body was found seventy-five feet from defendant's residence, and that she was killed by blunt trauma. Considering all of the evidence herein, the jury clearly had a basis to conclude that defendant's evolving story coupled with the other evidence, established that defendant was guilty as charged.

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.), writ denied, 514 So. 2d 126 (La. 1987). Viewing the evidence in the light most favorable to the prosecution, we find the State established defendant had the opportunity to kill Sparks and dispose of her body behind his trailer, and that he destroyed the physical evidence that would have directly connected him to the crime. In carrying its burden of proof, the State also negated any hypotheses of innocence urged by defendant, including any claim that Purpera had committed this crime; that Jessie

Taylor was involved in her murder; or that an unknown person had killed her and conveniently dumped and concealed her body behind defendant's residence.

Thus, we find the evidence sufficiently supports defendant's conviction of second degree murder.

This assignment of error is without merit.

INTRODUCTION OF PHOTOGRAPHS

In this assignment of error, defendant argues that the trial court erred in allowing multiple photographs of the victim into evidence. Defendant argues that the photographs were taken as long as two weeks after the victim was killed, and were gruesome, cumulative, highly prejudicial and of no probative value.

Defendant argues that the admission of three photographs during the testimony of Dr. Suarez was error because the cause of death was never in question. Defendant contends that the photographs, reflecting the victim's decomposed body with the soft tissue and brain eaten by crawfish, maggots, flies and other predators, were presented to the jury solely for shock value and to incite the jury for vengeance.

In the case of photographic evidence, any photograph that illustrates any fact, sheds any light upon any factor at issue in the case, or reliably represents the person, place or thing depicted is admissible, provided its probative value outweighs any prejudicial effect. State v. Casey, 99-0023, p. 18 (La. 1/26/00), 775 So. 2d 1022, 1037, cert. denied, 531 U.S. 840, 121 S. Ct. 104, 148 L. Ed. 2d 62 (2000). Photographs of the victim at the murder scene are generally admissible to prove corpus delicti, corroborate other evidence and to establish cause of death, identity, or the number, location and severity of wounds. A trial court's ruling on the admissibility of such

evidence will be disturbed only if the prejudicial effect of the evidence outweighs its probative value. The fact that the photographs are gruesome does not of itself render them inadmissible. State v. Davis, 92-1623 at p. 24, 637 So. 2d at 1026.

Although not specifically identified by defendant, the photographs at issue are apparently State Exhibits 52, 53 and 54. The photographs were used during Dr. Suarez's testimony to illustrate the cause of death and condition of Sparks's skull. Although defendant argues that the cause of death was not at issue, one of the elements comprising the State's burden of proof was whether defendant had the intent to kill. As discussed earlier, intent to kill can be illustrated by circumstantial evidence. In the present case, the severity of the wounds to Sparks's skull were clearly probative and relevant to the issue of whether her assailant possessed the requisite intent to kill. Accordingly, we find no error or abuse of discretion by the trial court in admitting these photographs.

This assignment of error is also without merit.

MOTION FOR MISTRIAL

In this assignment of error, defendant argues that the trial court erred in denying a motion for mistrial after the prosecutor made improper statements on several occasions during both his initial and rebuttal closing argument.

According to defendant, during the prosecutor's closing argument, the prosecutor, while displaying one of the pictures of Sparks's body, commented "That is absolutely horrible for the Grim Reaper over there, my man, to take this beautiful child and turn her into this; a bag of bones and mesh and maggots." Following an objection by defense counsel, the trial court cautioned the prosecutor to be mindful of LSA-C.Cr.P. art. 774.

Resuming his argument, the prosecutor then made the following statement, “- the State’s asking you, put him in Angola for the rest of his life for sucking the life out’ta this child. Emotional. It is what it is. Look at her eyes. Look at her! Look at her. Everybody in the Courtroom, look at her!” Defense counsel again objected, arguing that the prosecutor’s statements were running afoul of the bounds of Article 774. Commenting that the photograph was in evidence, the trial court nonetheless cautioned the prosecutor to be mindful of the article.

Sometime later during his closing argument, the prosecutor stated, “Please folks, believe you me, Robbie Daniel killed Michelle Sparks.” Defense counsel objected and moved for a mistrial on the basis that the prosecutor was giving his personal opinion. The trial court denied the motion for mistrial.

According to defendant, following closing argument by defense counsel, the prosecutor clapped and stated, “I don’t know if to give him a standing ovation, an Oscar, but he – they just don’t get it.” Defense counsel then moved for a mistrial on the basis that the prosecutor had exhibited unprofessional conduct and had engaged in “theatrical antics.” The trial court again denied defense counsel’s motion for mistrial.²

Finally, during his rebuttal argument, defense counsel again objected when the prosecutor stated “You’re guilty of sucking the life out of Retha Hill’s child. You’re guilty of –“ After the ensuing objection by defense counsel, the exchange degenerated into back and forth accusations between the lawyers regarding who was more unprofessional. The trial court ended

² In brief, defense counsel argues the prosecutor attempted to introduce a poster that was not in evidence. However, the transcript indicates the prosecutor merely used the poster as an outline to summarize testimony adduced during the trial.

the exchange by stating, “Gentlemen, emotions are running high,” and told the prosecutor “[P]lease wrap your argument up, sir.”

The general rule concerning the scope of closing arguments is that they are confined to “evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case.” LSA-C.Cr.P. art. 774. Louisiana jurisprudence on prosecutorial misconduct allows prosecutors wide latitude in choosing closing argument tactics. Further, the trial judge has broad discretion in controlling the scope of closing arguments. Even if the prosecutor exceeds those bounds, the court will not reverse a conviction unless “thoroughly convinced” that the argument influenced the jury and contributed to the verdict. State v. Casey, 99-0023 at p. 17, 775 So. 2d at 1036.

At the outset, we note that we have already found the evidence supporting defendant’s conviction to be sufficient. Thus, we are not “thoroughly convinced” that the prosecutor’s comments and actions unduly influenced the jury or contributed to an improper verdict. While we question the wisdom and propriety of a prosecutor in clapping and insinuating that defense counsel has just given a “performance,” we are unable to say such actions rendered the jury’s verdict improper. We caution that although such conduct edges perilously close to exceeding the bounds of latitude to be granted by a trial court, we find that the record supports the jury’s verdict herein.

Thus, this assignment of error is also without merit.

DECREE

For the above and foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.