NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1240

STATE OF LOUISIANA

VERSUS

RANALL D. MAULDIN

Judgment Rendered: June 10, 2011.

* * * * *

On Appeal from the
22nd Judicial District Court,
In and for the Parish of Washington,
State of Louisiana
Trial Court No. 08 CR5 98044

The Honorable August Hand, Judge Presiding

* * * * *

Holli Herrle-Castillo
Marrero, LA

Attorney for Defendant/Appellant,
Ranall D. Mauldin

Walter Reed,
District Attorney,
Lewis V. Murray, III
Assistant District Attorney
Franklinton, LA
and
Kathryn Landry
Baton Rouge, LA

Attorney for the State of Louisiana

* * * * *

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

CARTER, C. J.

The defendant, Ranall D. Mauldin, was charged by grand jury indictment with first degree murder, a violation of La. Rev. Stat. Ann. § 14:30. The defendant pleaded not guilty. The defendant filed a motion to suppress inculpatory statements and, following a hearing on the matter, the motion was denied. Subsequently, a jury trial was held and the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

On February 9, 2008, between 6:00 a.m. and 6:30 a.m., Bogalusa resident Michael Cotton was driving to a restaurant when he observed a man turned in an overturned wheelchair in the ditch along Shriner Drive. Cotton called 911. The man, later identified as 75-year old Stanley Willett, had been shot twice in the head from close range. According to the pathologist who performed the autopsy, Willett died within minutes after being shot. Willett was a paraplegic and, thus, confined to a wheelchair.

The investigation by the Bogalusa Police Department quickly led to the defendant as a suspect in Willett's murder. The defendant had been living across the street from Willett at the home of the defendant's half-brother and sister-in-law. The defendant knew Willett. The police discovered that on February 9, the morning Willett was killed, the defendant and Willett went together to the Hancock Bank automated teller machine (ATM) in Bogalusa. At 5:17 a.m. that morning, Willett withdrew $80. Over the next two days, subsequent to Willett's death, the defendant withdrew over $1,400 from Willett's bank account using Willett's ATM

card. The defendant went to various places in Bogalusa to withdraw the money, such as Citizen's Savings Bank and Junior Food Mart.

When the defendant was apprehended by the police on February 11, he was brought to a detective's office at the police station where he gave a recorded statement. After being advised of his *Miranda* rights, the defendant initially denied that he shot Willett. The defendant stated he heard that a black man named Charles shot Willett. Later, however, as the questioning continued, the defendant admitted that he took Willett's ATM card and shot Willett twice. The defendant further stated that he withdrew money using Willett's ATM card to buy cocaine. The defendant shot Willett with Willett's own gun, a .38 revolver Willett carried with him in a pouch around his waist. The defendant stated that after shooting Willett he threw the gun into the woods behind the VFW Hall. The police took the defendant to those woods and had him point out the area where he discarded the gun. The following day, the police found Willett's gun where the defendant indicated it was located.

The defendant testified at trial that he lied about killing Willett. He stated that he told the police he killed Willett only because he was promised by a police officer who questioned him that he would be facing a manslaughter charge, instead of a first degree murder charge, and a sentence of ten to twenty years. The defendant testified that Barry, also known as Charles, a person from whom the defendant purchased cocaine, shot and killed the victim. The defendant indicated he had prior convictions for misdemeanor carnal knowledge of a juvenile and theft over $500. The defendant also testified that he had a cocaine addiction.

FIRST ASSIGNMENT OF ERROR

In his first assignment of error, the defendant argues the trial court erred in denying the motion to suppress his statement. Specifically, the defendant contends

that one of the police officers questioning him promised him he would face a manslaughter charge instead of a first degree murder charge if he confessed.

Before a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. La. Rev. Stat. Ann. § 15:451. Confessions obtained by any direct or implied promises, however slight, or by the exertion of any improper influence, are involuntary and inadmissible as a matter of constitutional law. *State v. Brown*, 481 So. 2d 679, 684 (La. App. 1 Cir. 1985), *writ denied*, 486 So. 2d 747 (La. 1986). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his *Miranda* rights. The trial court must consider the totality of the circumstances in determining whether or not a confession is admissible. *State v. Hernandez*, 432 So. 2d 350, 352 (La. App. 1 Cir. 1983). The trial court's conclusion about the admissibility of a confession or statement, if supported by the evidence, will not be disturbed on appeal. *State v. Washington*, 540 So. 2d 502, 507 (La. App. 1 Cir. 1989).

Although the burden of proof is generally on the defendant to prove the grounds recited in a motion to suppress evidence, such is not the case with the motion to suppress a confession. In the latter situation, the burden of proof is with the State to prove the confession's admissibility. La. Code Crim. Proc. Ann. art. 703(D). The State must prove beyond a reasonable doubt that the confession was made freely and voluntarily. *State v. Seward*, 509 So. 2d 413, 417 (La. 1987). Therefore, if the defendant alleges police misconduct in eliciting a confession, it is incumbent upon the State to rebut these allegations specifically. *State v. Welch*, 448 So. 2d 705 (La. App. 1 Cir.), *writ denied*, 450 So. 2d 952 (La. 1984). In determining whether the ruling on defendant's motion to suppress was correct, we

are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. *State v. Chopin*, 372 So. 2d 1222, 1223 n.2 (La. 1979).

At the police station, Captain Joel Culpepper, Detective Tommie Sorrell, and Detective Troy Tervalon, all of the Bogalusa Police Department, were present for the defendant's questioning regarding the circumstances of Stanley Willett's death. Captain Culpepper operated the camera, while Detectives Sorrell and Tervalon did most of the questioning. After about 45 minutes of questioning, the interview was stopped while Captain Culpepper and Detective Sorrell took a restroom break. Before Captain Culpepper left the interview room, he turned off the camera. The camera stayed off for about eleven minutes. During these eleven minutes where nothing was recorded, Detective Tervalon remained in the interview room with the defendant. Prior to the eleven-minute break, the defendant denied shooting Willett. After the break, when the camera was turned back on, the defendant admitted that he shot Willett.

In his brief, the defendant concedes that he was advised of his *Miranda* rights and was not threatened or physically forced into making the inculpatory statements. The defendant argues, however, that during the eleven-minute break from recording, Detective Tervalon promised the defendant that if he confessed, the detective would see to it that he would be charged with manslaughter instead of first degree murder and, therefore, the defendant would be facing a ten to twenty-year sentence instead of the death penalty.

At the hearing on the motion to suppress the confession, the defendant testified that during the break, Detective Tervalon promised him that if he came clean, he would "get" the defendant manslaughter. According to the defendant, Detective Tervalon told him that if he was charged with first degree murder, the

State would seek the death penalty, but that if he admitted to manslaughter, he would get a ten to twenty-year sentence. The defendant further testified that he asked for a lawyer during that time, but Detective Tervalon told him that it would not help him to get a lawyer at that time. The defendant further stated that no one physically abused him, but that he confessed to killing Willett because "they promised me that they'd get me manslaughter if I did it." At trial, the defendant testified essentially the same. He stated that during the break, Detective Tervalon promised him manslaughter and ten to twenty years instead of the death penalty if he confessed. Detective Tervalon also said the defendant could help himself by confessing.

Detective Tervalon testified at the motion to suppress hearing that neither he nor anyone else promised the defendant anything. Detective Tervalon further stated that at no time did the defendant request an attorney. Detective Tervalon admitted that he told the defendant to "come clean" and that he could help himself out. When asked what he meant by that, Detective Tervalon stated, "By telling the truth, to tell the truth to set the record straight, meaning that he needed to tell the truth, the whole story as to what happened and not bits and pieces." Regarding the eleven-minute break where Detective Tervalon was alone with the defendant, the following colloquy at the hearing took place:

> Q. Was there a conversation between you and Mr. Maulden before you went back on the tape?
>
> A. Yes, sir.
>
> Q. Would you tell the Court what happened there?
>
> A. Just casual conversation. I think he asked for a drink. I gave him a drink.
>
> Q. Did you get him a drink?
>
> A. Yes, sir.

Q. Okay.

A. I gave him a drink. He asked me some just regular questions. I told him I felt like he should tell the truth, that I think I stated the same things in the recording, that people would understand that he had a drug problem. If he made a mistake he just needed to tell the truth and, you know, get it on record as to what had truly occurred.

Q. And at that time he was not on the record?

A. At that time he wasn't, but I had made that previous statement prior to.

Q. It was not during that 12 minutes that you said, hey, if you tell the truth or if you admit to this, we'll get you manslaughter?

A. No. We can't make that decision.

Q. Did anyone on your behalf say that?

A. No, sir.

Q. Or did anyone in your presence say anything of that nature?

A. No.

At trial, Detective Tervalon testified on direct examination about the unrecorded eleven-minute break when he was alone with the defendant:

Q. Now during the break while Captain Culpepper and Sergeant Sorrell are using the restroom, what occurs while you remain in the room with the defendant?

A. Mr. Mauldin and I are speaking. He asks for a cold drink. . . . I gave him one, a Coke. We had conversation. I told him, you know, he needed to tell the truth, you know, set his conscious clear and people could understand if he was strung out on drugs and had committed this murder, people could understand that, that he needed to tell the truth. We sat back there for several minutes. I want to say Culpepper may have come in and left and eventually everyone came back in the room and we started the interview again.

Q. During that opportunity when you have an occasion to engage in a little bit more casual conversation with the defendant, did you feel like you were making a connection with him?

A. I did.

Q. Did you see a response from him towards you that was more favorable than the response he was showing toward Detective Sorrell?

A. Yes, sir.

Detective Tervalon further testified that the defendant never requested an attorney. Captain Culpepper and Detective Sorrell also testified at trial that the defendant never requested an attorney.

The record before us establishes that the defendant's confession was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises, and that the defendant was advised of his *Miranda* rights prior to making a confession while in police custody. The defendant's claim that Detective Tervalon promised him a conviction of manslaughter and a reduced sentence is unsupported by the testimonial evidence. The State rebutted the defendant's allegations specifically, and the trial court, in choosing to believe Detective Tervalon's testimony over the defendant's testimony, found that no promises were made. Detective Tervalon's comments to the defendant that he needed to come clean, or tell the truth, or that he could help himself by confessing were not promises or inducements designed to extract a confession. *Compare State v. Petterway*, 403 So. 2d 1157, 1160 (La. 1981); *State v. Dison*, 396 So. 2d 1254, 1257-58 (La. 1981). A confession is not rendered inadmissible because officers "exhort or adjure" an accused to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or which implies a promise of reward. *State v. Robertson*, 97-0177 (La. 3/4/98); 712 So. 2d 8, 31, *cert. denied*, 525 U.S. 882 (1998). *See also State v. Lavalais*, 95-0320 (La. 11/25/96); 685 So. 2d 1048, 1053-54, *cert. denied*, 522 U.S. 825 (1997). We also note that the defendant admitted to killing Willett at the motion to suppress hearing. On direct examination, the following colloquy between defense counsel and the defendant took place:

Q. And, as a matter of fact, you were strung out on cocaine at the time this incident happened, right?

A. Yes, sir, sure was.

Q. Is this the first person you ever killed?

A. Yes.

Q. Under normal circumstances are you a violent person?

A. No.

Q. Have you ever been convicted of a violent crime before?

A. No.

(Emphasis added).

At trial, the defendant maintained that he did not shoot and kill Willett. Instead, according to the defendant, a person named Barry, whom the police never found or identified as an actual person, shot and killed Willett. During his confession, before admitting that he shot Willett, the defendant said that a black person named Charles shot Willett. At trial, the defendant testified that Barry and Charles were the same person.

On cross-examination at trial, when the defendant was asked about admitting at the motion to suppress hearing that he killed Willett, the following colloquy took place:

Q. Your response is, "Yes, sir, sure was." Then Mr. Alford's next question is: "That's the first person you ever killed?" What is your response?

A. I said, "Yes," but I should have answered a little different.

* * * * *

Q. Okay. So here we have you under oath, back on December 4th, 2008, once again saying that you killed Stanley Willett as a result of a question asked by your attorney, not by some police officer who you claim of trying to influence you?

A. Like I said, that should have been answered differently. I took the question the wrong way, really.

On redirect examination, defense counsel sought to explain the defendant's admission at the motion to suppress hearing to killing Willett:

Q. Mr. Mauldin, I think on Monday you and I went over the transcript of your testimony at the motion to suppress?

A. Yes, sir.

Q. At that time, we both agreed that there was something wrong with that statement on page 39?[1]

A. Yes, sir, we sure did.

Q. That it should have been in there, Is this the first person you ever seen killed? And, of course, there's nothing we can do about that, is there?

A. Right, there's nothing, no.

We find no abuse of discretion in the trial court's denial of the motion to suppress. Accordingly, this assignment of error is without merit.

SECOND ASSIGNMENT OF ERROR

In his second assignment of error, the defendant argues that the evidence was insufficient to support the conviction. Specifically, the defendant contends that he is not guilty of first degree murder because the State did not prove beyond a reasonable doubt that he was the person who shot Willett.

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, 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 (1979). The *Jackson*

[1] The defendant's admission to killing Willett is actually on page 42 of the original transcript of the motion to suppress hearing.

standard of review, incorporated in La. Code Crim. Proc. Ann. art. 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. *State v. Patorno*, 01-2585 (La. App. 1 Cir. 6/21/02); 822 So. 2d 141, 144. 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. 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. *State v. Hughes*, 05-0992 (La. 11/29/06); 943 So. 2d 1047, 1051.

First degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of one of a list of enumerated felonies. La. Rev. Stat. Ann. § 14:30A(1). First degree murder is also the killing of a human being when the offender has a specific intent to kill or inflict great bodily harm upon a victim who is sixty-five years of age or older. La. Rev. Stat. Ann. § 14:30A(5).

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. Rev. Stat. Ann. § 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. 1 Cir. 1986). Deliberately pointing and firing a deadly weapon at close range are circumstances that will support a finding of specific intent to kill. *See State v. Robinson*, 02-1869 (La. 4/14/04); 874 So. 2d 66, 74, *cert. denied*, 543 U.S. 1023 (2004).

The defendant asserts in his brief that, his confession notwithstanding, the only other evidence to prove he killed Willett was circumstantial. According to the defendant, there was the reasonable hypothesis that his former cocaine dealer, whom he knew as Barry, committed the murder. The defendant further maintains that there was no physical evidence linking him to Willett's murder, and that he was able to lead the police to the area where the gun was located only because he had observed Barry throw the gun in that area of the woods.

The testimony and evidence introduced at trial established that the defendant was with Willett on February 9, 2008, at 5:17 a.m. when Willett withdrew $80 from the ATM machine at Hancock Bank. Twenty five minutes later, the defendant used Willet's ATM card to withdraw $200 at the Citizen's Savings Bank. Almost five hours later at 10:27 a.m., the defendant made another $200 withdrawal using Willett's ATM card at the Junior Food Mart. Willett had already been shot and killed by this time. Michael Cotton testified at trial that, while driving, he discovered Willett's body in a ditch between 6:00 a.m. and 6:30 a.m. on February 9. Over the next two days, the defendant used Willett's ATM card seven more times at various locations, withdrawing over $1,400. According to the defendant, he used that money to purchase cocaine, which he consumed.

During the defendant's questioning by Detectives Sorrell and Tervalon, the defendant admitted that he shot Willett twice. When asked how many times the gun was discharged, the defendant said he thought it was three times. The

defendant explained that he took Willett's gun and it accidentally discharged, firing a shot into the air. The next two shots were then fired at Willett. The defendant told the detectives he threw the gun into some woods behind the VFW Hall. Police officers took the defendant on the same day he was questioned to the VFW Hall. The defendant pointed out the general area where he threw the gun. The officers searched only briefly for the gun because it began turning dark, limiting their visibility. Unable to find the gun, officers returned the following morning with a canine trained to smell gunpowder. Within two minutes, the canine located the gun. The gun, a revolver, had in its cylinder three live rounds and three spent casings. The bullet that lodged in Willett's head when he was shot was recovered during Willett's autopsy. The trial testimony of Deputy Lloyd Morse, an expert in firearms examination, confirmed that the bullet in Willett's head was fired from the same gun the defendant had thrown into the woods.

Christie Taylor, the defendant's sister-in-law, testified at trial that on the same day after the defendant was interviewed by the police, the defendant called her home (where the defendant had also been living) from the police station. Taylor testified that she asked the defendant if he killed Willett and the defendant admitted that he did, that he did not know why, and that he was sorry.

The defendant testified at trial that his confession that he had shot and killed Willett was not true. According to his testimony, he and Willett were on good terms. Willett agreed to lend the defendant $80. After withdrawing the money, the defendant kept Willett's ATM card because Willett told the defendant to put it in his (defendant's) pocket. As Willett and the defendant were heading toward the VFW Hall, they encountered Barry, also known as Charles, a person from whom the defendant used to buy a lot of cocaine. After briefly conversing, Barry asked Willett for some money. When Willett refused to give him money, Barry grabbed

Willett's gun, which was beside Willett's leg. In response to this, the defendant gave Barry the $80 Willett had given the defendant. As Willett and the defendant began to move away, Barry shot Willett in the head. Willett fell in a ditch and his wheelchair fell on top of him. Barry then stood over Willett, pointed the gun at him, and shot again. The defendant ran. As the defendant was running, Barry shot at him and missed. The defendant explained that this was where the third gunshot had come from. Barry followed the defendant. As Barry got near the VFW Hall, a car drove near him. According to the defendant, the approaching car scared Barry, which caused Barry to throw the gun into the woods behind the VFW Hall. The defendant then made various withdrawals with Willett's ATM card over the next couple of days and bought cocaine. The defendant further testified that he did not tell Taylor that he killed Willett. According to Detective Tervalon, the police did not receive any information during their investigation that suggested someone else other than the defendant killed Willett.

The jury heard all of the testimony and viewed all of the evidence presented to it at trial and found the defendant guilty as charged. When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. *State v. Captville*, 448 So. 2d 676, 680 (La. 1984). The defendant confessed to shooting Willett, yet attempted to retract his own admission of guilt at trial by testifying that someone else shot and killed Willett. It is clear from the finding of guilt that the jury concluded the testimony of several of the State's witnesses, including Captain Culpepper, Detective Sorrell, and Detective Tervalon, was more credible than the testimony of the defendant.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given 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. 1 Cir. 9/25/98); 721 So. 2d 929, 932. 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. 1 Cir. 1985).

We note, as well, that a finding of purposeful misrepresentation reasonably raises the inference of a "guilty mind," as in the case of flight following an offense or the case of material misrepresentation of facts by the defendant following an offense. Lying has been recognized as indicative of an awareness of wrongdoing. *Captville*, 448 So. 2d at 680 n.4. The facts in this case established acts of both flight and material misrepresentation by the defendant. After killing Willett, the defendant fled the scene. Instead of attempting to offer aid to Willett or call 911, the defendant used Willett's ATM card to withdraw over a thousand dollars of Willett's money, which he used to buy cocaine. Further, when the defendant gave his statement to the detectives, for about 45 minutes he denied that he shot Willett. However, as his story continually evolved, the defendant, according to Captain Culpepper and Detectives Tervalon and Sorrell, put himself closer and closer to the murder scene until, finally, he admitted shooting Willett. Thus, in finding the defendant guilty, the jury reasonably rejected the defendant's theory of misidentification.

After a thorough review of the record, we find the evidence clearly negates any reasonable probability of misidentification and supports the jury's unanimous 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, in shooting and killing Stanley Willett who was 75 years old, was guilty of first degree murder.

This assignment of error is also without merit.

CONVICTION AND SENTENCE AFFIRMED.