NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 2098

STATE OF LOUISIANA

VERSUS

CHARLES GASPARD

Judgment Rendered: DEC 2 8 2012

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Appealed from the
Twenty-Third Judicial District Court
In and for the Parish of Assumption
State of Louisiana
Suit Number 08-199

Honorable Jane Triche-Milazzo, Presiding

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

GUIDRY, J.

Defendant, Charles Gaspard, was charged by grand jury indictment with one count of second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty and not guilty by reason of insanity. After a jury trial, defendant was found guilty as charged. The trial court subsequently denied defendant's motion for new trial, and he was sentenced to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant now appeals, alleging two assignments of error. For the following reasons, we conditionally affirm defendant's conviction and sentence and remand this case to the trial court with instructions.

FACTS

On the morning of September 2, 2008, in Pierre Part, defendant and his mother, Beatrice Gaspard, approached their neighbor, Sonya Marie Aucoin, who was cleaning debris out of her yard in the wake of Hurricane Gustav. Aucoin noticed that the right side of Ms. Gaspard's face was black, and that her right eye was swollen. Defendant told Aucoin that he had hit his mother in anger after she had awoken him, and he asked Aucoin if she could bring them to the hospital. Aucoin agreed, and she took defendant and his mother to Thibodaux Regional Hospital.

Upon Ms. Gaspard's admission to the hospital, Dr. Chris Authement noted that she had extensive bodily injuries, and that she had lapsed into a coma. Dr. Authement performed a CAT scan on Ms. Gaspard, and the results indicated a large area of bleeding in her brain. Based on this observation, Dr. Authement decided to transfer Ms. Gaspard to Ochsner Hospital in Jefferson Parish. At Ochsner, Ms. Gaspard was examined by neurosurgeon Dr. Roger Smith, who observed that her neurological condition would not benefit from surgery. Ms. Gaspard subsequently passed away on September 5, 2008.

ASSIGNMENT OF ERROR #1

In his first assignment of error, defendant argues that the evidence introduced at trial was insufficient to support his conviction for second degree murder. Specifically, defendant argues that the state failed to introduce adequate evidence to demonstrate that he had the specific intent to kill or inflict great bodily harm upon his mother.

A conviction based on insufficient evidence cannot stand, as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, this Court must consider whether, after 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. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La. C. Cr. P. art. 821(B); State v. Ordodi, 06-0207, p. 10 (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(B), 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. State v. Patorno, 01-2585, p. 5 (La. App. 1st Cir. 6/21/02), 822 So. 2d 141, 144.

Second degree murder is defined, in pertinent part, as the killing of a human being when the offender has the specific intent to kill or inflict great bodily harm. La. R.S. 14:30.1(A)(1). Specific criminal intent is the state of mind that exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent may be proved by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's

actions or facts depicting the circumstances. State v. Herron, 03-2304, p. 4 (La. App. 1st Cir. 5/14/04), 879 So. 2d 778, 782.

In the instant case, defendant admitted to at least three people – Ms. Aucoin, her daughter, and Captain Darren Crochet of the Assumption Parish Sheriff's Office – that he struck his mother in anger after she awoke him from his sleep. Thus, the only issue with respect to the sufficiency of the evidence introduced at defendant's trial is whether the state proved beyond a reasonable doubt that defendant specifically intended to kill or to inflict great bodily harm upon his mother. In his brief, defendant asserts that the jury acted unreasonably in rejecting the hypothesis that he lost his temper and overreacted by striking his mother repeatedly when "she refused to stop belittling him while in a manic state."

At trial, the state introduced a videotaped statement made by defendant to Captain Crochet. During this interview, defendant stated that his mother had begun a manic episode around the time Hurricane Gustav was making landfall, and that he had been up watching her for two straight days at the time of the incident. Defendant said that when he finally started to fall asleep, his mother entered the kitchen of their home and started talking loudly to herself in a way in which she was belittling defendant. According to defendant, he told his mother to shut up, and when she would not, he got out of bed and went into the kitchen. He again told his mother to shut up, and he said that she attempted to hit him. Defendant stated that in response, he began "swinging wildly," causing him to hit his mother twice in the side of the head. Defendant said that he also kicked his mother in the leg. According to defendant, he only hit his mother on this one occasion, and the only strikes inflicted were the two hits to her head and the kick to her leg. Defendant related his general story about getting upset with his mother and subsequently hitting her to both Ms. Aucoin and her daughter. Defendant did not tell Ms. Aucoin or her daughter that his mother attempted to hit him first.

Dr. Cynthia Gardner of the Orleans Parish Coroner's Office was accepted as an expert in the fields of anatomical, clinical, and forensic pathology on behalf of the State. Dr. Gardner had previously performed the autopsy of Ms. Gaspard. Dr. Gardner testified that she had discovered fifteen distinct impact sites on Ms. Gaspard's body that she believed to be the result of blunt-force trauma. Of these fifteen impact sites, four were injuries to Ms. Gaspard's head, and eleven were injuries to Ms. Gaspard's torso and extremities. Dr. Gardner observed that four of the blunt-force trauma impact sites on Ms. Gaspard's head resulted in injuries to the deep tissues of the scalp. According to Dr. Gardner, at least one of these scalp injuries caused the bleeding which eventually killed Ms. Gaspard. Dr. Gardner was of the opinion that all of Ms. Gaspard's injuries occurred around the same time.

Based on the testimony and evidence introduced at trial, the jury obviously concluded that defendant attacked his mother with the specific intent either to kill or to inflict great bodily harm. This Court has previously found that a specific intent to kill or inflict great bodily harm can be inferred from the fact that a defendant repeatedly hit a victim in the face and struck him with a beer bottle. See State v. Pittman, 93-0892 (La. App. 1st Cir. 4/8/94), 636 So. 2d 299, 302. When viewed in the light most favorable to the prosecution, the evidence in the instant case established that defendant hit his mother up to fifteen times, including four times in her head. That evidence alone was sufficient to allow the jury to infer that defendant acted with specific intent to kill or to inflict great bodily harm upon his mother when he beat her. We further note that, based on this evidence, the jury might have concluded that defendant materially misrepresented the truth in his statement to Captain Crochet. 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 following an

offense. "Lying" has been recognized as indicative of an awareness of wrongdoing. State v. Captville, 448 So. 2d 676, 680 n.4 (La. 1984).

The jury clearly rejected defendant's hypothesis that he simply lost his temper and overreacted by striking his mother only a few times. In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See Ordodi, 06-0207 at p. 14, 946 So. 2d at 662. 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). A reviewing court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam). Viewing the evidence in the light most favorable to the prosecution, we find that the state introduced evidence sufficient to support the jury's inference that defendant had the specific intent to kill or to inflict great bodily harm when he attacked his mother.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR #2

In his second assignment of error, defendant asserts that the trial judge erred in failing to conduct a competency hearing during his trial. Specifically, defendant argues that the trial court failed to consider adequately defense counsel's concern that defendant was unable to assist in his defense at trial because of his fixations on alleged "conspiracy theories."

A defendant does not have an absolute right to the appointment of a sanity commission simply upon request. A trial judge is only required to order a mental

examination of a defendant when there are reasonable grounds to doubt the defendant's mental capacity to proceed. La. C. Cr. P. art. 643. It is well established that "reasonable grounds" exist where one should reasonably doubt the defendant's capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense. To determine a defendant's capacity, we are first guided by La. C. Cr. P. arts. 642, 643, and 647. State ex rel. Seals v. State, 00-2738, p. 5 (La. 10/25/02), 831 So. 2d 828, 832.

As a general matter, La. C. Cr. P. art. 642 allows "[t]he defendant's mental incapacity to proceed [to] be raised at any time by the defense, the district attorney, or the court." The article additionally requires that "[w]hen the question of the defendant's mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution . . . until the defendant is found to have the mental capacity to proceed." La. C. Cr. P. art. 642. Next, La. C. Cr. P. art. 643, provides, in pertinent part, "The court shall order a mental examination of the defendant when it has reasonable ground to doubt the defendant's mental capacity to proceed." Last, if a defendant's mental incapacity has been properly raised, the proceedings can only continue after the court holds a contradictory hearing and decides the issue of the defendant's mental capacity to proceed. See La. C. Cr. P. art. 647. State ex rel. Seals, 00-2738 at pp. 5-6, 831 So. 2d at 832-33.

Questions regarding a defendant's capacity must be deemed by the court to be *bona fide* and in good faith before a court will consider if there are "reasonable grounds" to doubt capacity. Where there is a *bona fide* question raised regarding a defendant's capacity, the failure to observe procedures to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. At this point, the failure to resolve the issue of a defendant's capacity to proceed may result in nullification of the conviction and sentence under State v. Nomey, 613 So. 2d 157, 161-62 (La. 1993), or a *nunc pro*

tunc hearing to determine competency retrospectively under State v. Snyder, 98-1078 (La. 4/4/99), 750 So. 2d 832. State ex rel. Seals, 00-2738 at p. 6, 831 So. 2d at 833. (Emphasis in original.)

In certain instances, a *nunc pro tunc* hearing on the issue of competency is appropriate "if a meaningful inquiry into the defendant's competency" may still be had. In such cases, the trial court is again vested with the discretion of making this decision as it "is in the best position" to do so. This determination must be decided on a case-by-case basis, under the guidance of Nomey, Snyder, and their progeny. The state bears the burden in the *nunc pro tunc* hearing to provide sufficient evidence for the court to make a rational decision. State ex rel. Seals, 00-2738 at pp. 6-7, 831 So.2d at 833.

In the instant case, defense counsel filed a motion for a sanity commission in December 2008. On March 2, 2009, the trial court found that there was a reasonable basis for the request for a sanity commission. On July 2, 2009, the trial judge signed an order appointing Dr. Charles Vosburg, Dr. Thomas Fain, and Dr. Dennis Kelly to defendant's sanity commission. On October 7, 2009, the trial court allowed defendant to withdraw the motion for a sanity commission in light of Dr. Fain's report, which unequivocally stated that defendant was competent to stand trial. A minute entry from January 4, 2010 indicates that the trial court had received the outstanding reports from Dr. Kelly and Dr. Vosburg, and each of those reports, along with the one from Dr. Fain, indicated that defendant was competent to stand trial.

On the morning of the third day of trial, defense counsel asked the trial court to reconsider defendant's competency to proceed in light of her opinion "that his delusions have increased and that he cannot assist counsel . . . ." Defense counsel stated that she believed defendant's concentration on "conspiracy theories have increased, at least over [her] representation with him and since the trial started."

After hearing arguments by both parties, the trial court denied defense counsel's motion for a more detailed competency proceeding. The trial judge noted that Dr. Vosburg had reevaluated defendant on July 28, 2010[1] to assess defendant's sanity at the time of the offense and that he made no observations with respect to defendant's competency to stand trial. The trial judge stated that she believed Dr. Vosburg would have noted at that time any substantial change in defendant's status or his ability to communicate or participate at trial. Therefore, the trial court concluded that defense counsel had made no showing of a substantial change in defendant's competency.

The issue of defendant's mental incapacity was properly raised in this matter by the December 2008 motion for a sanity commission. Although the trial court allowed defendant to withdraw the request for a sanity hearing after Dr. Fain's report was submitted, a defendant cannot simply withdraw the request for a sanity hearing once invoked, and the trial court must make an independent assessment of a defendant's capacity to proceed to trial. See State v. Carr, 629 So. 2d 378 (La. 1993) (per curiam) (wherein the Louisiana Supreme Court granted the defendant's writ application, in part, to remand the case to the district attorney for the purpose of "entering a formal ruling as to the defendant's competency."); see also State v. Carr, 618 So. 2d 1098, 1103 (La. App. 1st Cir. 1993) (wherein this Court had previously rejected the defendant's contention that the district court had erred in failing to redetermine the defendant's competency because the record showed that the defendant had withdrawn the request for a sanity hearing). The record contains the joint report of Dr. Vosburg and Dr. Kelly regarding defendant's competency to stand trial, but it does not contain a ruling by the trial court on defendant's mental capacity to proceed in connection with the sanity commission. Thus, the trial court erred in allowing the matter to proceed to trial without holding a contradictory

[1] Approximately one week before trial.

hearing and deciding the issue of defendant's mental capacity to proceed. See La. C. Cr. P. art. 647; State ex rel. Seals, 00-2738 at pp. 6-7, 831 So.2d 831-32.

We note that defendant's second assignment of error does not raise the issue of the trial court's failure to address defendant's mental capacity to proceed before trial. However, this error is one discoverable by a mere inspection of the pleadings and proceedings under La. C. Cr. P. art. 920(2).

Therefore, we conditionally affirm the defendant's conviction and sentence, and remand to the trial court for the purpose of determining whether a *nunc pro tunc* competency hearing may be possible. If the trial court believes that it is still possible to determine defendant's competency at the time of the trial on the charge, the trial court is directed to hold an evidentiary hearing and make a competency ruling. If defendant was competent, no new trial is required. If defendant is found to have been incompetent at the time of trial, or if the inquiry into competency is found to be impossible, he is entitled to a new trial. Defendant's right to appeal an adverse ruling is reserved. See Snyder, 750 So. 2d at 855-56 & 863; State v. Mathews, 00-2115, p. 17 (La. App. 1st Cir. 9/28/01), 809 So. 2d 1002, 1016, writs denied, 01-2873 (La. 9/13/02), 824 So. 2d 1191 and 01-2907 (La. 10/14/02), 827 So. 2d 412. Because we remand for a hearing concerning defendant's competency to stand trial, we pretermit further discussion of defendant's second assignment of error.

CONVICTION AND SENTENCE CONDITIONALLY AFFIRMED; REMANDED WITH INSTRUCTIONS.