NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KA 1614

STATE OF LOUISIANA

VERSUS

RONALD ENSMINGER

Judgment Rendered: APR 2 6 2013

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On Appeal from the
18th Judicial District Court,
In and for the Parish of West Baton Rouge,
State of Louisiana
Trial Court No. 074334

Honorable J. Robin Free, Judge Presiding

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* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

The defendant, Ronald Ensminger, 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, a violation of La. R.S. 14:31. He was sentenced to twenty-five years imprisonment at hard labor. The defendant's motion to reconsider sentence was denied; he now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

On September 9, 2007, the defendant and his girlfriend, Karen Ferrier, were invited by the defendant's boss to a cookout at the Cajun Country Campground in Port Allen, Louisiana. The defendant was staying in a travel trailer provided to him by his employer at the campground. At the cookout gathering, the defendant and Karen swam and drank alcohol and returned to the defendant's trailer later that same evening. The defendant went outside to call his daughter in Florida, and during the phone call, he spoke to his ex-wife. According to the defendant, who testified at trial, Karen became angry about him talking to his ex-wife. She began screaming for the defendant to get off the phone, which belonged to her. Because Karen was still angry when he ended his call, the defendant stayed outside for about thirty minutes.

When the defendant went inside the trailer, Karen demanded that he give her the cell phone, and when he did, she threw it on the floor. The defendant grabbed Karen's cell phone off the table and, likewise, threw it on the floor and told Karen that neither one of them would be talking to anybody. Then, according to the defendant, Karen grabbed her .22 rifle.[1] When the defendant asked her what she was going to do with the rifle, Karen said she was going to kill him with it and

[1] Karen owned a Glenfield .22 semi-automatic rifle.

raised the barrel. The defendant grabbed the barrel, and a struggle ensued over control of the rifle. Karen kicked at the defendant and grabbed his groin. The defendant stuck his thumb in Karen's neck and choked her until she released the rifle. Karen sat down on the bed, and the defendant dropped the rifle on the bed. The defendant sat on a stool near Karen. Following a brief interlude of both recovering from the fray, the defendant told Karen she would have to take her bag and leave. When Karen said she would not leave, the defendant told her he was going to get his boss to make her leave. Karen screamed "no" and grabbed her rifle again. Once more, they struggled for control of the rifle.

What happened next is not entirely clear because what the defendant told the police following the shooting differed from his trial testimony. At trial, the defendant stated that during the struggle, Karen kneed him in the groin and he passed out, while she fell to the ground as well. When the defendant regained consciousness, Karen, while still holding the rifle, was screaming at him to get up. The defendant grabbed at the butt of the rifle and Karen held on to the barrel. As they struggled over the weapon, it discharged. The defendant walked to his boss and told him that he shot Karen. The defendant testified that he did not mean to shoot Karen and that it was an accident.

Shortly following the shooting, the defendant was arrested and spoke to several police officers. During his interview at the police station, the defendant stated that when Karen grabbed the rifle the second time, she loaded it and pointed it at him. The defendant took the rifle from Karen, told her to open her mouth, stuck the barrel of the rifle in her mouth, and pulled the trigger. The defendant related the same account to other police officers at the scene shortly following his arrest.

Karen died a short time later from her wounds. Dr. Alfredo Suarez, the pathologist who performed the autopsy on Karen, testified at trial that Karen was

shot in the mouth at very close range. Dr. Suarez stated the gun was outside of her mouth when it was fired. He stated the gun could have been a few inches up to twelve inches away from Karen when it was fired. The trajectory of the bullet was front to back and straight. The bullet perforated Karen's upper lip, and as it traveled through her mouth, it dug a tunnel-like defect, lacerating her tongue, fracturing her upper jaw, and severing her spinal cord at the C4 level. The spinal cord injury was lethal. The bullet was recovered from the back of Karen's neck. The autopsy report, which was introduced into evidence, listed the manner of death as homicide.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the evidence was insufficient to support his conviction for manslaughter. Specifically, the defendant contends the State did not prove beyond a reasonable doubt that he did not kill Karen in self-defense.

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 also 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.

While the defendant was charged with second degree murder, he was found guilty of manslaughter, which is a proper responsive verdict for a charge of second degree murder. La. Code Crim. P. art. 814(A)(3). Louisiana Revised Statute 14:31(A)(1) defines manslaughter, in pertinent part, as follows:

> A homicide which would be either . . . first degree murder or . . . second degree murder, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed[.]

The existence of "sudden passion" and "heat of blood" are not elements of the offense but, rather, are factors in the nature of mitigating circumstances that may reduce the grade of homicide. **State v. Maddox**, 522 So.2d 579, 582 (La. App. 1st Cir. 1988). Manslaughter requires the presence of specific intent to kill or inflict great bodily harm. See **State v. Hilburn**, 512 So.2d 497, 504 (La. App. 1st Cir.), writ denied, 515 So.2d 444 (La. 1987).

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 the defendant. **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982). Deliberately pointing and firing a deadly weapon at close range are circumstances that support a finding of specific intent to kill. **State v. Broaden**, 99-2124 (La. 2/21/01), 780 So.2d 349, 362, cert. denied, 534 U.S. 884, 122 S.Ct. 192, 151 L.Ed.2d 135 (2001). See La. R.S. 14:30.1(A)(1); **State v. Ducre**, 596 So.2d 1372, 1382 (La. App. 1st Cir.), writ

denied, 600 So.2d 637 (La. 1992).

When self-defense is raised as an issue by the defendant, the State has the burden of proving, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. **State v. Ducre**, 596 So.2d at 1382-83. Thus, the issue in this case is whether a rational factfinder, viewing the evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that the defendant did not kill the victim in self-defense. **Id.**

Louisiana Revised Statute 14:20 provides, in pertinent part:

> A. A homicide is justifiable:
>
> (1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

Louisiana Revised Statute 14:21 provides:

> A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

The defendant argues in his brief that he shot Karen in self-defense. He maintains that Karen was the aggressor who sought to kill him. According to the defendant, Karen became angry with the defendant when he called his ex-wife. Gary Wigginton, the defendant's employer, testified at trial that he saw Karen in a truck with her .22 rifle lying on the seat of the truck. Gary testified he heard Karen say she was going to kill the defendant. It is not clear when this was allegedly said in relation to when the shooting occurred, but on cross-examination, Gary stated Karen made the remark about two hours before the shooting. In any event, when Karen and the defendant were together in the trailer, the defendant asserts in his brief that they began struggling over the rifle, that Karen kicked at him, and that she grabbed his testicles. The defendant apparently obtained control of the rifle

and pointed it at Karen's mouth. The defendant was a combat soldier in the Vietnam War and, according to him, pointing a gun at someone's mouth was a tactic he learned to gain submission. However, Karen continued to struggle and "the gun went off." Finally, the defendant claims in his brief that the shooting was also an accident. Thus, incompatible, mutually exclusive theories are propounded by the defendant - accidental shooting and self-defense: "[The defendant,] too, was a victim in this case, and he did not desire Karen's death. It was an accident, just as he described and told Deputy Bouquet. Yet he was also in fear for his life and acted in self-defense."

Despite defendant's assertions in his brief, the testimony of the police officers who spoke to the defendant following the shooting suggests that the defendant did not shoot Karen in self-defense, but rather after gaining control of the rifle, he turned it on Karen, and in anger, shot her at point-blank range. Sergeant Kenneth Pitre, of the West Baton Rouge Parish Sheriff's Office, testified at trial that as he approached the trailer, the defendant was standing in the doorway. When Sergeant Pitre asked what happened, the defendant said, "I shot her." The defendant was handcuffed, **Mirandized**, and placed in the back of a police unit.

Detective Charles Hotard, with the West Baton Rouge Parish Sheriff's Office, testified at trial that he spoke to the defendant in the back of the unit. The defendant told the detective that Karen pulled a rifle and pointed it at his head. The defendant then took the rifle from her, choked her down, shoved the rifle in her mouth and shot her. The defendant did not mention there was any struggle with the rifle, but stated that he just took it from her and shot her. The defendant told the detective that he was not claiming self-defense and that he knew he had messed up.

Deputy James Chustz, Jr., with the West Baton Rouge Parish Sheriff's Office, testified at trial that he also spoke to the defendant when he was in back of

the police unit. This conversation was recorded, and the DVD of the recording was introduced into evidence and played for the jury. During the recorded conversation, the defendant told Deputy Chustz that they both got drunk, Karen "went off the deep end and pissed me off[,]" and she stuck a rifle to his head. He tried to wrestle the rifle away from her. The defendant continued, "[a]nd then I got real pissed, you know, and stuck it in her mouth, and pulled the trigger." When Deputy Chustz stated, "[b]ut I thought you loved this woman, sir," the defendant replied that he did love her, but added that "I get so mad, you know. You can't believe the anger[.]"

The defendant was transported to the police station and questioned by Detective Bryan Doucet, of the West Baton Rouge Parish Sheriff's Office. The defendant's interview was videotaped, and the DVD of the interview was introduced into evidence and played for the jury. In the interview, they discussed whether Karen had survived, and Detective Doucet suggested that she may still be alive. Based on the defendant's reaction, the detective told him he sounded surprised that she was still alive. The defendant responded that when you put a rifle in someone's mouth and pull the trigger, they usually do not live. The defendant told the detective that Karen was mad, but he did not know why. The defendant had called his ex-wife to tell her happy birthday. This may have made Karen angry, but according to the defendant, she was angry before he called his ex-wife. The defendant explained that when Karen grabbed the rifle and pointed it at him, a struggle ensued, and she began kicking at his groin. The defendant got the rifle from Karen and put it down. Karen then grabbed the rifle again and loaded it. According to the defendant, the rifle was not loaded the first time he wrested it from Karen. The defendant then apparently again took the rifle from Karen, told her to open her mouth, stuck it in her mouth, and pulled the trigger. The defendant stated, "I got a bad temper," and "I came unglued." Detective Doucet added during

his testimony that throughout the entire interview, the defendant never said that the shooting was an accident.

The defendant testified at trial. His testimony suggested that the shooting was accidental, rather than self-defense as he argues in his brief. The defendant stated that after he and Karen attended a cookout with friends that included swimming and drinking, they went back to the defendant's trailer. The defendant went outside to call his daughter in Florida. His ex-wife answered the phone and he spoke to her for a bit, and he wished her a belated happy birthday. Karen went outside and became angry about him speaking to his ex-wife. She told the defendant to hang up the phone and to give the phone to her since it was hers; then she went back inside the trailer. The defendant hung up, walked to the end of the campground, and returned to his trailer about thirty minutes later. At that point, Karen asked for the phone and, when the defendant gave it to her, she threw it on the floor. The defendant then took Karen's phone off the table and threw it to the floor. According to the defendant, that is when Karen reached for her .22 rifle.

The defendant asked Karen what she was going to do with the rifle, and she said she was going to kill him with it. As she brought the rifle up, the defendant grabbed the barrel and they struggled over the rifle in the bedroom of the trailer. The defendant wrested the rifle from Karen's hand and brought it down behind her, pulling Karen toward him, and holding her tight to his body as she tried to head-butt and kick him. As Karen continued to struggle, she fell to her knees. At that point, she grabbed the defendant's testicles. The defendant responded by grabbing Karen's throat and sticking his thumb against her trachea. As Karen was being choked and could no longer breathe, she released her grip on the rifle. The defendant took the rifle and placed it on the bed. Karen sat on the bed, and the defendant sat on a stool next to her. They sat there until Karen could catch her breath.

The defendant then told Karen that he had had it and that she needed to take her bag and leave. Karen told the defendant that she was not going anywhere and that he could not make her. The defendant then told her that he would have to get his boss to get her to leave. Karen screamed, "No . . . I will kill you," and she grabbed her rifle again. The defendant grabbed the rifle, and Karen kneed him in the groin. The defendant passed out, and they both fell to the floor. When the defendant "came to," Karen was screaming at him to get up. The defendant could not see. Having been in combat, the defendant was looking for a weapon because he figured she was going to shoot him. Somehow, the defendant then had the weapon, and Karen apparently grabbed the barrel. The defendant repeatedly told her to let go of the rifle, but she refused to let go and told the defendant that when she got it, she would kill him. This is when the defendant told her to put the rifle in her mouth. The defendant explained that this is what they had done in Vietnam: they would stick rifles in the faces of enemies and tell them to put the barrels in their mouths, which would cause them to fall on their knees crying and release their weapons. Karen, however, continued to pull on the rifle and it fired.

During the rest of his direct examination, the defendant testified that the shooting was accidental. He stated, "I didn't mean to shoot her." Later, he was asked, "Do you deny that you shot Karen in the upper lip that killed her?" The defendant replied, "I don't deny it, but it was an accident." When asked if he intended to kill her, the defendant stated, "No, sir." On cross-examination, the defendant testified that the shooting was an accident. The defendant explained that Karen was holding on to the barrel while he held on to the butt of the rifle. The defendant's finger was on the trigger, but the rifle fired because it got jerked.

The guilty verdict of manslaughter indicates that the jury accepted the testimony of the prosecution witnesses to the extent such testimony established the defendant did not kill Karen in self-defense. See **State v. Spears**, 504 So.2d 974,

977-78 (La. App. 1st Cir.), writ denied, 507 So.2d 225 (La. 1987). Further, in finding the defendant guilty, it is clear the jury rejected the defendant's claim of an accidental shooting. 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. 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). See **State v. Johnson**, 99-0385 (La. App. 1st Cir. 11/5/99), 745 So.2d 217, 223, writ denied, 2000-0829 (La. 11/13/00), 774 So.2d 971.

The jurors clearly did not believe the defendant's claim of self-defense. The jury may have determined the aggressor doctrine applied, since the defendant escalated the conflict by arming himself with the rifle after having taken it from Karen. See **State v. Loston**, 2003-0977 (La. App. 1st Cir. 2/23/04), 874 So.2d 197, 205, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167. With the gun now in his possession, the defendant chose to shoot Karen, who was unarmed, at point-blank range. The jury may have determined the defendant did not reasonably believe he was in imminent danger of losing his life or receiving great bodily harm when he shot Karen and did not act reasonably under the circumstances. See **Loston**, 874 So.2d at 205.

When the defendant had control of the gun, he could have simply walked away and called the police. Louisiana jurisprudence has been consistent in its treatment of the scenario where a victim/aggressor is disarmed. The appellate courts have found that during such encounters, where the defendant disarms the victim/aggressor and then kills him or uses the victim's/aggressor's own weapon against him to kill or injure him, the defendant becomes the aggressor and loses the right to claim self-defense. See **State v. Bates**, 95-1513 (La. App. 1st Cir. 11/8/96), 683 So.2d 1370, 1377-78; **State v. Pittman**, 93-0892 (La. App. 1st Cir. 4/8/94), 636 So.2d 299, 303-04; **State v. Smith**, 490 So.2d 365, 369-70 (La. App. 1st Cir.), writ denied, 494 So.2d 324 (La. 1986); **State v. Patton**, 479 So.2d 625 (La. App. 1st Cir. 1985). See also **State v. Mackens**, 35,350 (La. App. 2d Cir. 12/28/01), 803 So.2d 454, 460-62, writ denied, 2002-0413 (La. 1/24/03), 836 So.2d 37; **State v. Jenkins**, 98-1603 (La. App. 4th Cir. 12/29/99), 750 So.2d 366, 376-77, writ denied, 2000-0556 (La. 11/13/00), 773 So.2d 157; **State v. Stevenson**, 514 So.2d 651, 655 (La. App. 2d Cir. 1987), writ denied, 519 So.2d 141 (La. 1988). Thus, a rational trier of fact could have reasonably concluded that the killing was not necessary to save the defendant from the danger envisioned by La. R.S. 14:20(1) and/or that the defendant had abandoned the role of defender and taken on the role of an aggressor and, as such, was not entitled to claim self-defense. See La. R.S. 14:21; **Bates**, 683 So.2d at 1377.

Regarding the theory of an accidental shooting, the defendant's own testimony suggested that he shot Karen, not because he believed he was in imminent danger of losing his life and that the killing was necessary to save himself from that danger, but because while struggling for control of the rifle, it accidentally fired. However, the defendant's description of events to police officers immediately following the shooting and the medical testimony belie an accidental shooting. In his own words during his interview with Detective Doucet,

the defendant described how when he had the rifle, he told Karen to open her mouth, he placed the rifle barrel in her mouth, and he pulled the trigger. This information, coupled with the medical testimony that Karen was shot at extremely close range wherein the bullet entered her mouth, lacerated her tongue, perforated her pharynx, severed her spinal cord at the C4 level, and lodged in the back of her neck, would have allowed a juror to reasonably conclude that the defendant's testimony about the rifle accidentally discharging was not truthful.

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's hypothesis of innocence was based on the theory of an accidental shooting. In finding the defendant guilty of manslaughter, it is clear the jury did not believe the defendant's testimony regarding an accidental discharge, but found the mitigating circumstances of sudden passion and/or heat of blood. See **Maddox**, 522 So.2d at 582. The possibility of a compromise verdict notwithstanding, the guilty verdict of manslaughter suggests the jury concluded either that the confrontation was sufficient provocation to deprive an average person of his self-control and cool reflection, or that an average person's blood would not have cooled before the defendant shot Karen. Cf. **Ducre**, 596 So.2d at 1384.

The jurors apparently concluded that the defendant's version of the events immediately preceding the fatal shot was a fabrication designed to deflect blame from him. The conclusion by the jurors that the defendant did not testify truthfully could reasonably support an inference that the "truth" – if told by him as the only survivor – would have been unfavorable to his accidental discharge theory. In rejecting a claim of self-defense, the jury obviously concluded that the force used

by the defendant against Karen was unreasonable and unjustifiable. As such, the hypotheses of innocence presented by the defendant and the defense fall. See **Captville**, 448 So.2d at 680. See also **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

Finally, we briefly address for the sake of clarification the defendant's claim that he shot Karen both in self-defense and accidentally. Since the defendant testified that he did not have the intention to shoot or kill Karen, then he could not have killed her in self-defense since justifiable homicide requires the specific intent to kill or to inflict great bodily harm. In other words, if the defendant killed Karen in self-defense, all of the elements of second degree murder (or manslaughter) would have been present, including specific intent, except that the homicide would be excused because the defendant, in defending himself, would have been justified. See La. R.S. 14:20(A)(1). Also, if the defendant had killed Karen in self-defense, then the shooting could not have been accidental or even a killing by criminal negligence, which requires neither specific nor general intent. See La. R.S. 14:12 & 14:32(A)(1). In any event, the jury's verdict is a clear refutation of either theory or defense.

After a thorough review of the record, we find the evidence 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 did not kill his victim in self-defense or accidentally and, as such, was guilty of manslaughter See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 422 (per curiam). This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues the trial court erred in imposing an excessive sentence.

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, 767 (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. See **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 trial judge 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. See **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).

In the instant matter, the defendant, facing a maximum sentence of forty years at hard labor, was sentenced to twenty-five years at hard labor. See La. R.S. 14:31(B). The defendant argues in his brief that the trial court failed to consider mitigating factors and did not consider that he had no criminal history of violent crimes, since his only previous felony conviction was for possession with intent to distribute marijuana. These assertions are inaccurate. The trial court ordered a presentence investigation report, which has been made a part of the appellate record, specifically to learn of the defendant's criminal history and his military record (a potentially mitigating factor). Following the reading of the verdict at trial, the trial court stated: "In this case, I am going to order a pre-sentence investigation because I heard some things I want to check out, regarding his criminal history, I want to check out some things on that. I want to hear about his military services (sic)."

The defendant further argues in his brief that his sentence is excessive because he did not intend for Karen to die and that she "had been the aggressor the entire time." The defendant adds that it was reasonable for him to believe he was in grave danger after Karen pointed the rifle at his head. The defendant insists the trial court "evidently put the onus on [him] to withdraw from his own home and retreat from the situation while Karen had the gun and there was no opportunity for escape"; and further, the trial court "placed no blame on Karen for causing the situation." These issues raised by the defendant relate to the sufficiency of the evidence, and not to whether or not a sentence is excessive. Having addressed sufficiency in the first assignment of error, we decline to revisit these issues.

Finally, the defendant asserts the trial court gave no reasons for the

imposition of the sentence after hearing a victim impact statement and the defendant's "heartfelt remorse" about what had occurred. While the trial court did not refer to La. Code Crim. P. art. 894.1 by name, it is clear the court considered aggravating and mitigating circumstances. Moreover, even had there not been full compliance with Article 894.1, remand would be unnecessary because the record before us clearly establishes an adequate factual basis for the sentence imposed on the defendant for the taking of a human life.

Considering the trial court's review of the circumstances, the nature of the crime, and the fact the defendant was sentenced to well below the maximum number of years allowable under the law, we find no abuse of discretion by the trial court. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.