

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KA 2023

STATE OF LOUISIANA

VERSUS

WILLIAM LEE WALLACE

Amst.
JEK
by Amst.
TMT

Judgment Rendered: December 27, 2013

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 01-11-0577**

The Honorable Richard D. Anderson, Judge Presiding

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State of Louisiana**

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**Counsel for Defendant/Appellant
William Lee Wallace**

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

The defendant, William Lee Wallace, 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 as charged. The defendant filed a motion for post-verdict judgment of acquittal, which was denied. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant timely filed an appeal. We affirm the conviction and sentence.

FACTS

On December 24, 2010, at about 1:00 a.m., Marcus Bryant, with his wife, Ebony Bryant, drove to U.S. Hwy. 61 in Zachary to assist his brother-in-law, Robert Jenkins, who had a broken down vehicle. Upon arriving at the scene, Marcus observed Robert pouring gas into a Suburban, and a green Ford F-150 pickup truck parked behind the Suburban. When Marcus got out of his car, the defendant, who owned the green truck and whom Marcus knew, approached Marcus and told him that Robert had the defendant's gun. Robert confirmed to Marcus that he did have the defendant's gun and that he was going to give it back to him. When the defendant repeated to Marcus that Robert had his gun, Marcus told the defendant to "hold on" and that he was going to get his gun back.

Once Robert was finished pouring the gas, he told Marcus that the Suburban's battery needed a jump. Marcus moved his car so it faced the Suburban, and hooked up jumper cables between the vehicles. Marcus then told Robert to start up the Suburban. When Robert turned, the defendant ran up and stabbed Robert in the back with a knife that had a ten-inch blade. Robert turned around and asked what was going on, and the defendant stabbed Robert in the chest. Robert ran and the defendant chased him. At

some point, the defendant stopped chasing Robert, walked back to his truck, and drove away toward Sweetbriar, the trailer park where he lived.

Marcus called 911 and drove Robert to Lane Memorial Hospital. Robert subsequently died from his injuries. After speaking to Marcus at the hospital and based on what he told the 911 operator, the police went to Sweetbriar and found the defendant's green truck in the trailer park, but could not find the defendant.

The police taped off a crime scene by the defendant's truck and scoured the trailer park in search of the defendant. At some point, the defendant approached Deputy David Amrhein, identified himself, and told the deputy he was a possible suspect in their investigation. Deputy Amrhein drew his weapon and had the defendant lie on the ground. When Detective Nick Locicero returned to the crime scene, he saw the defendant prone and heard him say repeatedly that Robert should have given him back his gun and that he tried to kill Robert. Detective Locicero asked the defendant where the knife was that he used to stab Robert. The defendant walked the detective to a tree nearby, behind which the knife had been secreted.

Detective Locicero interviewed the defendant later that same day at the police station. The defendant stated in his interview that after running out of gas, Robert rode with the defendant in his truck to the gas station. The defendant realized Robert took his gun when they were riding together to the gas station. The defendant kept asking for his gun back, but Robert ignored the entreaties and would not return the gun.

Back on U.S. Hwy. 61, the defendant told Marcus about Robert not returning his gun while Robert was pouring gas into the Suburban. The defendant stated that he had finally had enough, so he retrieved a knife from his truck and stabbed Robert twice while he was working on the vehicle.

When Robert ran, the defendant chased him but could not catch him. The defendant then got in his truck and drove to the trailer park.

The defendant did not testify at trial.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the conviction for second degree murder. Specifically, the defendant contends the trial court erred in denying his motion for post-verdict judgment of acquittal because the evidence was only sufficient to support a conviction of the responsive offense of manslaughter.

DISCUSSION

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 La. Code Crim. P. art 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 that 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.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1). Guilty of manslaughter is a proper responsive verdict for a charge of second degree murder. La. Code Crim. P. art. 814(A)(3). La. Revised Statutes 14:31(A)(1) defines manslaughter as 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 factfinder 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).

Specific intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Such state of mind can be formed in an instant. *State v. Cousan*, 94-2503 (La. 11/25/96), 684 So.2d 382, 390. Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of defendant. *State v. Graham*, 420 So.2d 1126, 1127 (La. 1982). The existence of specific intent is an ultimate legal conclusion to be resolved by the trier of fact. *State v. McCue*, 484 So.2d 889, 892 (La. App. 1st Cir. 1986).

In his brief, the defendant does not dispute that he killed Robert. The defendant argues that the evidence was sufficient to support a conviction of manslaughter. Specifically, the defendant suggests that when Robert “stole” his gun and would not give it back, such provocation caused the defendant to lose his self-control and commit the homicide in sudden passion.

The defendant must establish by a preponderance of the evidence the mitigating factors of sudden passion or heat of blood to reduce a homicide to manslaughter. See *State ex rel. Lawrence v. Smith*, 571 So.2d 133, 136 (La. 1990); *State v. LeBoeuf*, 2006-0153 (La. App. 1st Cir. 9/15/06), 943 So.2d 1134, 1138, writ denied, 2006-2621 (La. 8/15/07), 961 So.2d 1158. See also *Patterson v. New York*, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977). Thus, the evidence at trial had to establish that the provocation was such that it would have deprived an average person of his self-control and cool reflection.

There was no testimony or physical evidence that Robert provoked the defendant in any way. According to Marcus’s testimony, the defendant was upset that Robert had the defendant’s gun and would not give it back. Moments later, the defendant approached Robert, who was turned away from the defendant, and, without any provocation, stabbed Robert in the back. When Robert turned around, the defendant stabbed him in the chest.

The only witnesses for the defense who testified were those who either knew the defendant or were related to him. These witnesses, providing general reputation evidence only, stated that the defendant was a good person, or friendly, or that he was not violent. Thus, the defense offered no evidence of any potential mitigating factors of sudden passion or heat of blood during the night of the stabbing. When a case involves circumstantial evidence and the trier of fact 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. See *State v. Moten*, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

If a man unreasonably permits his impulse and passion to obscure his judgment, he will be fully responsible for the consequences of his act. *State v. Leger*, 2005-0011 (La. 7/10/06), 936 So.2d 108, 171, cert. denied, 549 U.S. 1221, 127 S.Ct. 1279, 167 L.Ed.2d 100 (2007). Mere words or gestures, no matter how insulting, will not reduce a homicide from murder to manslaughter. *State v. Mitchell*, 39,202 (La. App. 2nd Cir. 12/15/04), 889 So.2d 1257, 1263, writ denied, 2005-0132 (La. 4/29/05), 901 So.2d 1063. See *State v. Charles*, 2000-1611 (La. App. 3rd Cir. 5/9/01), 787 So.2d 516, 519, writ denied, 2001-1554 (La. 4/19/02), 813 So.2d 420 (an argument alone will not be sufficient provocation to reduce a murder charge to manslaughter). See also *State v. Tran*, 98-2812 (La. App. 1st Cir. 11/5/99), 743 So.2d 1275, 1292, writ denied, 99-3380 (La. 5/26/00), 762 So.2d 1101.

Given that the defendant stabbed Robert to death because Robert would not return his gun, a rational factfinder could have found that such provocation, as it were, would not have deprived an average person of his self-control and cool reflection. Moreover, the defendant's actions following the stabbing were consistent with a finding of specific intent to kill as he rendered no aid and fled from the scene. See *State v. Lucher*, 96-2378 (La. App. 1st Cir. 9/19/97), 700 So.2d 961, 973, writ denied, 97-2537 (La. 2/6/98), 709 So.2d 731. Flight and attempt to avoid apprehension indicate consciousness of guilt, and therefore, are circumstances from which a juror may infer guilt. See *State v. Fuller*, 418 So.2d 591, 593 (La. 1982).

Accordingly, a factfinder could have reasonably concluded the defendant committed second degree murder. The assignment of error is without merit.

CONCLUSION

After a thorough review of the record, we find that the evidence supports the jury's unanimous guilty verdict. Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of the second degree murder of Robert Jenkins. See *State v. Calloway*, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

CONVICTION AND SENTENCE AFFIRMED.