NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 2120

STATE OF LOUISIANA

VERSUS

CURTIS ALLEN BRIDGES

Judgment Rendered: JUN 07 2013

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 515163

Honorable William J. Burris, Judge Presiding

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

McCLENDON, J.

The defendant, Curtis A. Bridges, was charged by bill of information (as amended) with aggravated battery (count one), cruelty to juveniles (count two), and possession of cocaine (count three). See LSA-R.S. 14:34, LSA-R.S. 14:93, and LSA-R.S. 40:967(C); see also La. R.S. 40:964, Schedule II(A)(4). The defendant pled not guilty on all three counts. After a trial by jury, he was found guilty on count one of the responsive offense of simple battery (a violation of LSA-R.S. 14:35), and guilty as charged on the two remaining counts. The trial court denied the defendant's motion for postverdict judgment of acquittal and motion for new trial. On count one, the trial court sentenced the defendant to six months imprisonment in parish jail. The State filed a habitual offender bill of information to enhance the sentence on count two.[1] After adjudicating the defendant a fourth felony offender, on count two the trial court imposed twenty-five years imprisonment at hard labor to be served without the benefit of probation or suspension of sentence. Finally, on count three the trial court imposed five years imprisonment at hard labor. The trial court ordered that the sentences be served concurrently. The defendant now appeals, challenging as to count two the trial court's ruling on the motion for new trial and motion for postverdict judgment of acquittal, and the sufficiency of the evidence. For the following reasons, we affirm the convictions, habitual offender adjudication, and sentences.

STATEMENT OF FACTS

At the time of the offense, the defendant was living in Slidell with his girlfriend (who indicated that she lost her eyesight in 2009 and was considered legally blind) and her twelve-year-old son D.G., the victim (herein identified by initials only pursuant to LSA-R.S. 46:1844(W)). During the early morning hours of Saturday, October 1, 2011, the defendant arrived at home and knocked on the

[1] The defendant's adjudication was based on the following predicate offenses: a September 9, 2003 conviction of purse snatching, a September 4, 1998 conviction of forgery, and a February 18, 1993 conviction of theft. The defendant stipulated to the allegations in the habitual offender bill of information.

window as the door was locked with a deadbolt. The defendant's girlfriend opened the door and they began arguing over money. Specifically, the defendant wanted her to return a $400.00 money order that he purchased after cashing his disability check. As the money order was originally purchased to use as a deposit on an apartment in New Orleans where they planned to move, unbeknownst to the defendant, his girlfriend asked a friend to hold the money order for them to ensure that it would be saved for the intended purpose. The defendant became hysterical when his girlfriend refused to give him the money order. While they were in their bedroom, the defendant began yelling and cursing and ultimately pushed her to the floor.

The victim heard the commotion and entered the bedroom and observed his mother on the floor. The defendant pushed him out of the room and closed the door. The victim reopened the door and entered the bedroom. At some point, the victim attempted to push the defendant away from his mother. According to the victim, after he pushed the defendant, the defendant got angry and chased him into the hallway. As the defendant and the victim struggled, the victim's mother instructed her sister, who was also present in the home, to call the police. As she complied, the defendant took the telephone. While they were in the hallway, the defendant repeatedly punched D.G., the victim, in the face. The defendant continued to confront the victim's mother over the money order and the victim went into the kitchen and grabbed a knife. The victim brandished the knife and told the defendant to back away from his mother. The defendant grabbed the victim's hand and the victim dropped or lost control of the knife. As a result of the defendant's attack, the victim sustained cuts to his ear and chest. The police ultimately arrived at the home and questioned the occupants.

ASSIGNMENTS OF ERROR

In a combined argument to address each assignment of error, the defendant contends that the State failed to prove that he acted without justification in his altercation with the victim. Thus, the defendant argues that the evidence in support of the cruelty-to-a-juvenile conviction is insufficient. The

defendant claims that the victim admitted to starting the instant physical altercation and to attempting to strike the defendant with a rock in the past. The defendant further contends that the victim's injuries were not serious enough to require medical treatment. The defendant argues that the evidence shows that he acted in response to the victim's actions. The defendant indicates that his actions should be characterized as either self-defense or discipline. On the above basis, the defendant concludes that the trial court erred in denying his motion for postverdict judgment of acquittal and motion for new trial.[2]

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). That standard of appellate review, adopted by the legislature in enacting LSA-C.Cr.P. art. 821, is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. **State v. Brown**, 03-0897 (La. 4/12/05), 907 So.2d 1, 18, cert. denied, 547 U.S. 1022, 126 S.Ct. 1569, 164 L.Ed.2d 305 (2006). The **Jackson** standard of review 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, in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 02-1492 (La.App. 1 Cir. 2/14/03), 845 So.2d 416, 420. 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 that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La.App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987).

[2] While all three offenses arose from the instant incident, the defendant is only contesting the cruelty to a juvenile conviction. Thus, herein the facts will be relayed only to the extent that they relate to the elements of the challenged offense.

As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. **State v. Richardson**, 459 So.2d 31, 38 (La.App. 1 Cir. 1984). Moreover, where 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. **Richardson**, 459 So.2d at 38. A reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. **State v. Smith**, 600 So.2d 1319, 1324 (La. 1992). In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. **State v. Thomas**, 05-2210 (La.App. 1 Cir. 6/9/06), 938 So.2d 168, 174-75, writ denied, 06-2403 (La. 4/27/07), 955 So.2d 683.

Cruelty to juveniles is defined in LSA-R.S. 14:93(A)(1) as the "intentional or criminally negligent mistreatment or neglect by anyone seventeen years of age or older of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child." "Mistreatment" as used in this statute is equated with "abuse." **State v. Comeaux**, 319 So.2d 897, 899 (La. 1975). The term "intentional" as used in LSA-R.S. 14:93 refers to general criminal intent to mistreat or neglect and does not require specific criminal intent to cause the child unjustifiable pain and suffering. **State v. Morrison**, 582 So.2d 295, 302 (La.App. 1 Cir. 1991). General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. LSA-R.S. 14:10(2).

An alternative to proving the defendant had general criminal intent to mistreat or neglect the child, thereby causing the child unjustifiable pain and suffering, is to prove that the defendant was criminally negligent in his mistreatment or neglect of the child. Criminally negligent mistreatment or

neglect of the juvenile exists when, although neither specific nor general intent is present, there is such disregard of the interest of the juvenile that the defendant's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful person under like circumstances. LSA-R.S. 14:12; **State v. Booker**, 02-1269 (La.App. 1 Cir. 2/14/03), 839 So.2d 455, 459, writ denied, 03-1145 (La. 10/31/03), 857 So.2d 476. Criminal negligence is essentially negative. Rather than requiring the accused to intend the consequences of his actions, criminal negligence is found from the accused's gross disregard for the consequences of his actions. **State v. Small**, 11-2796 (La. 10/16/12), 100 So.3d 797, 809. Thus, to carry its burden of proof, the State must show that defendant either intentionally mistreated or neglected the victim or was criminally negligent in his mistreatment or neglect of the victim.

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. LSA-R.S. 14:18. Justification can be claimed when the conduct is "reasonable discipline of minors by their parents, tutors or teachers." LSA-R.S. 14:18(4); **Comeaux**, 319 So.2d at 899. In a non-homicide situation, a claim of self-defense requires a dual inquiry: first, an objective inquiry into whether the force used was reasonable under the circumstances, and, second, a subjective inquiry into whether the force used was apparently necessary. **State v. Navarre**, 498 So.2d 249, 252-53 (La.App. 1 Cir. 1986).

Herein, the victim's mother testified that she and the defendant had been living together for about two months when the offenses occurred and dated for several months prior to that. She confirmed that the defendant previously acted as a mentor to her son, but indicated that their relationship began to suffer when things got serious between she and the defendant. After he moved in, the defendant would discipline the victim, including punishments for misbehavior. On the night before the offenses, she and the defendant had gone out and consumed a few beers and after they got back home, at approximately 1:30

a.m., the defendant briefly left the home again. When he returned, the altercation ensued in the bedroom. At some point, the victim and his mother attempted to leave, but the defendant prevented them from doing so. While they were in the living room, the defendant again pushed the victim's mother down to the floor, still cursing and demanding the return of his money order.

The victim testified that before he grabbed the knife, the defendant punched him in the face four times. After the first blow in the jaw with a balled-up fist, the victim jumped on the defendant's back, and the defendant slung him off and punched him again. The victim described the blows as painful. As to the point when the victim grabbed the knife, he specifically testified, "I hold the knife up in front of me, and I say back away. And that's when he grabbed my wrist and I dropped it. And that's when he grabbed it." The victim further stated that he tried to reach for the knife, but the defendant grabbed it first and held it in his hand as he again began punching the victim. During cross-examination, the victim denied ever lunging toward the defendant with the knife, but responded positively when asked whether he attempted to maintain possession of the knife and wrestled with the defendant over it. The victim also responded positively when asked if he sustained the knife injuries as they were wrestling and confirmed that the defendant did not attempt to stab him.

The victim's mother testified that she heard her son screaming as he continued to struggle with the defendant. She began pounding on the wall that separated her residence from her neighbor's residence in an attempt to get someone to call the police. Deputy Steven Lang of the St. Tammany Parish Sheriff's Office was dispatched to the scene at approximately 4:50 a.m. and testified that when he arrived, the defendant was "rowdy" and had slurred speech, bloodshot eyes, and the scent of alcohol. The defendant did not have any visible injuries and did not complain of any. The defendant admitted that there had been a dispute over money, but denied having any physical contact with the victim or his mother and did not make any statements about defending himself. Deputy Lang observed the victim's swollen, battered face. The victim

relayed the facts of the incident to the officer and photographs were taken of the victim, who had visibly apparent injuries to his face, ear, and chest. The victim and his mother declined the deputy's offer of medical attention. Deputy Lang memorialized the facts as relayed by the victim in a police report the following evening.

When asked on cross-examination if he and the defendant had any prior altercations, the victim responded negatively, but confirmed that during a prior argument outdoors he threw a medium-size rock at the defendant's stomach. The victim also confirmed that he and the defendant wrestled on that occasion and the victim sustained a scratch on his chest. The defendant punished the victim after that incident. On redirect examination, the victim confirmed that the scratch on his chest photographed at the time of this incident was a knife injury from the instant incident and not a result of his prior altercation with the defendant. The defendant did not testify or present any defense witnesses.

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. LSA-R.S. 14:21. Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case. See **State v. Freeman**, 427 So.2d 1161, 1163 (La. 1983).[3] In previous cases dealing with this issue, we have analyzed the evidence under both standards of review[4]; namely, whether the defendant proved self-defense by a preponderance of the evidence or whether the State proved beyond a reasonable doubt that the

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[3] In **Freeman**, 427 So.2d at 1163, the Louisiana Supreme Court indicated, in dicta, that the defendant in a non-homicide case may have the burden of proving self-defense by a preponderance of the evidence. Several cases decided thereafter have agreed with that view. See **State v. Harris**, 02-2099 (La.App. 4 Cir. 3/5/03), 842 So.2d 432, 436-37; **State v. McClure**, 34,880 (La.App. 2 Cir. 8/22/01), 793 So.2d 454, 457; **State v. Rainey**, 98-0436 (La.App. 5 Cir. 11/25/98), 722 So.2d 1097, 1103-05, writ denied, 98-3219 (La. 5/7/99), 741 So.2d 28; **State v. Perkins**, 527 So.2d 48, 50 (La.App. 3 Cir. 1988); **State v. Mason**, 499 So.2d 551, 554-55 (La.App. 2 Cir. 1986); **State v. Barnes**, 491 So.2d 42, 47 (La.App. 5 Cir. 1986).

[4] Other courts have also utilized this approach and analyzed the evidence under both standards. See **State v. Martin**, 520 So.2d 1079, 1080-81 (La.App. 3 Cir. 1987); **State v. Agnelly**, 515 So.2d 821, 823 (La.App. 5 Cir. 1987); **State v. Zeno**, 469 So.2d 337, 340 (La.App. 2 Cir.), writ denied, 474 So.2d 1303 (La. 1985).

defendant did not act in self-defense. See **State v. Brown**, 03-1076 (La.App. 1 Cir. 12/31/03), 868 So.2d 775, 782-84, writ denied, 04-0269 (La. 6/4/04), 876 So.2d 76; **State v. Willis**, 591 So.2d 365, 370-72 (La.App. 1 Cir. 1991), writ denied, 594 So.2d 1316 (La. 1992); **State v. Aldridge**, 450 So.2d 1057, 1059-60 (La.App. 1 Cir. 1984).

Similarly, in the instant case, we need not decide the issue of who has the burden of proving or disproving self-defense because under either standard, the evidence sufficiently established the defendant did not act in self-defense. We note that the victim was still twelve years old at the time of the trial. Before being subjected to cross-examination, the victim clearly indicated that the defendant had full control over the knife when the victim sustained knife injuries. The victim specifically indicated that the defendant grabbed his hand, causing him to drop the knife, and that the defendant recovered the knife and held it in his hand while punching the victim. This was completely consistent with the version of the facts that the victim relayed to the police right after the incident. The jurors evidently rejected the defendant's argument that his actions were justified. We find that the jurors, who had an opportunity to see and hear the witnesses, could have reasonably concluded that defendant was the aggressor of the altercation and, thus, not entitled to a self-defense claim. Viewing all the evidence in a light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that the defendant's actions were not reasonable under the circumstances. Thus, when all the evidence is viewed in the light most favorable to the State, any rational trier of fact could have concluded beyond a reasonable doubt that defendant's conduct was not in self-defense. Moreover, the defendant cannot avail himself of the justification of reasonable discipline. There is no evidence that defendant was the victim's father, tutor or teacher. Rather, the record only establishes that defendant was D.G.'s mother's live-in boyfriend. Further, any rational trier of fact could have concluded that the defendant's actions did not constitute reasonable discipline.

Thus, the remaining issue is whether defendant had the intent to mistreat D.G. or was criminally negligent in his mistreatment of D.G., causing unjustifiable pain or suffering. In **State v. Chacon**, 03-0446 (La.App. 5 Cir. 10/28/03), 860 So.2d 151, the defendant was convicted of cruelty to a juvenile. It was undisputed that the defendant struck the victim in the left arm. Photographs taken two days after the incident showed a large bruise in the shape of a fist on the victim's arm. The defendant argued that he did not have the intent to mistreat the victim, he was not angry when he hit the victim, he only hit the victim twice, the victim did not cry, and the victim was not thrown off balance by the impact of the punches. The Fifth Circuit Court of Appeal stated that the fact that the victim did not cry or was not thrown off balance from the force of the blows was not determinative of whether the victim experienced unjustifiable pain and suffering. The court went on to note that "[a] bruise of the severity and magnitude exhibited by the photographs clearly demonstrates that unjustifiable pain and suffering were inflicted upon" the victim. **Chacon**, 860 So.2d at 154. The court then held that the defendant either intentionally mistreated or was criminally negligent in his mistreatment of the victim when he chose to punch the eight-year-old with such force that it left a fist-shaped bruise.

In **State v. Swan**, 544 So.2d 1204 (La.App. 1 Cir. 1989), the trial court convicted the defendant of cruelty to juveniles, and this court upheld the conviction on appeal. On appeal, defense counsel alleged that there was insufficient evidence to support the conviction insofar as counsel examined photographs of the victims with a magnifying glass and detected only "a tiny mark on the forehead on one of the boys." **Swan**, 544 So.2d at 1207. However, the trial court accepted the victims' testimony that the defendant had pursued them in his car, fired shots at them, stopped them, beaten both of them, and forced them to return to his house. **Id.**

A victim need not seek medical treatment for the court to find he endured unjustifiable pain and suffering. **State v. Sedlock**, 04-564 (La. App. 3d Cir. 9/29/04), 882 So.2d 1278, 1284, writ denied, 04-2710 (La. 2/25/05), 894 So.2d

1131. Herein, even before the victim grabbed the knife and sustained further injuries, the defendant, age 44 at the time of the offenses, intentionally and repeatedly punched the victim with a closed fist. The force of the blows left visible swelling and bruising on D.G.'s face. D.G. testified that the blows were painful. Based on the trial testimony and severity and magnitude of the injuries exhibited by the photographs, the evidence clearly demonstrates that unjustifiable pain and suffering were intentionally inflicted upon D.G. Thus, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 662.

Furthermore, an appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the trier of fact. See **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*). Based on a thorough review of the evidence, considered in the light most favorable to the prosecution, we are convinced that any rational trier of fact could have concluded the State presented sufficient evidence to prove each element of the offense of cruelty to a juvenile beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence. Thus, the assignments of error lack merit.

CONCLUSION

For the foregoing reasons, we affirm the defendant's convictions, habitual offender adjudication, and sentences.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.