NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0632

STATE OF LOUISIANA

VERSUS

BERNARD FRANKLIN VERRETT

Judgment Rendered: DEC 27 2013

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On Appeal from the Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
No. 586,959

Honorable David W. Arceneaux, Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Bernard Franklin Verrett, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. He entered a plea of not guilty and, following a jury trial, was found guilty as charged. 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. Defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On July 16, 2010, defendant and his wife, Kristi Verrett, went to a wedding. Following the reception, they went to Cajun Country Lounge. At about 2:00 a.m. (July 17, a Saturday), they arrived at home at Morello Court in Houma. Their three children were still awake. Defendant began badgering Kristi and calling her names. According to two of their children, Nicholas and Nicole, who testified at trial, defendant's verbal abuse of Kristi was a common occurrence. At about 3:30 a.m., defendant and Kristi left the house to go get something to eat. While Kristi was driving their vehicle, a Toyota Corolla, she and defendant began arguing. Kristi stopped the vehicle on or near Savanne Road. Defendant retrieved a kitchen knife from the floorboard and repeatedly stabbed Kristi. He then took Kristi to a nearby swampy area and covered her body with grass. The defendant drove the Corolla to the other side of Terrebonne Parish and attempted to dispose of the vehicle by submerging it in water. The police subsequently found the Corolla underwater in a bayou at Grand Caillou.

The police began searching for defendant, but were unable to find him on Saturday. On Sunday, July 18, 2010, the police proceeded to Shrimpers Row near Butch Court after receiving information that defendant had been sighted there. As the police approached defendant, he ran and hid in a scrap yard. As more deputies arrived and commanded he come out, defendant complied. When the police attempted to seize defendant, he resisted and became recalcitrant. When one of the officers drew his Taser, defendant stopped resisting and was

arrested and **Mirandized**. During questioning, defendant admitted he stabbed Kristi, and he took the police to the location where he dumped her body.

Dr. Susan Garcia, a forensic pathologist, performed the autopsy on Kristi. She testified at trial that Kristi had eighteen sharp-force injuries, caused by a single-edge blade, to her chest, abdomen, back, neck, shoulder, and arm. Four of the more serious wounds were the two in her chest and the two in her abdomen. According to Dr. Garcia, the wounds to Kristi's liver and right lung were fatal.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that the evidence was insufficient to support the conviction for second degree murder. Specifically, defendant contends that the evidence was sufficient to support a conviction only of manslaughter.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; LSA-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, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also LSA-C.Cr.P. art. 821B; **State v. Ordodi**, 06-0207 (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, LSA-R.S. 15:438 provides that the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 01-2585 (La.App. 1 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. LSA-R.S. 14:30.1. Manslaughter is a proper responsive verdict for a charge of second degree

murder. LSA-C.Cr.P. art. 814A(3). Louisiana Revised Statutes 14:31A(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 fact finder 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. 1 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. 1 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. LSA-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. 1 Cir. 1986).

In his brief, defendant does not dispute that he killed Kristi. However, defendant argues the evidence was sufficient to only support a conviction for manslaughter because Kristi told the defendant she was cheating on him. Kristi also told defendant that he was trash and would always be trash. According to defendant, these statements of provocation "deprived [him] of self-control and cool reflection."

The only evidence supportive of defendant's claim of Kristi's cheating on him was defendant's self-serving vague reference to infidelity in his statement to Detective Lieutenant Terry Daigre, with the Terrebonne Parish Sheriff's Office. During this recorded interview, defendant stated that after they returned home from the wedding, but before they left again to get something to eat, he and Kristi were arguing about her "messing around." When Detective Lieutenant Daigre asked if Kristi had had an affair recently, defendant responded that he assumed she had. Kristi told defendant she was talking to someone else, but not having sex with him. Kristi did not identify this person. Defendant stated that just before he stabbed Kristi, she told him she did not want to be with him anymore. Nicholas Verrett, defendant's and Kristi's son, testified that defendant had, in the past, accused Kristi of having an affair with Tim Holland, Kristi's immediate supervisor at Wal-Mart, where Kristi worked. At trial, both defendant and the prosecutor stipulated that if Tim Holland testified, he would say that he never had an affair with Kristi. Michelle Parfait, defendant's sister, testified that after defendant killed Kristi (unbeknownst to Michelle), defendant went to Michelle's house and told her that he had gotten into a fight with Kristi and hit her, and did not know where she was. When asked what the fight was about, Michelle testified that defendant told her that Kristi was messing around with someone else, and that Kristi had told defendant he was trash and was always going to be trash.

After stabbing Kristi multiple times, defendant did not contact the police or inform anyone of what he had done. Instead, defendant dumped Kristi's body in the swamp, covered it up with grass, and lied to everyone he immediately encountered after the stabbing about what had happened to Kristi. He then attempted to get rid of his vehicle by driving it into the Houma Navigational Canal in Dulac. Lying has been recognized as indicative of an awareness of wrongdoing. **State v. Captville**, 448 So.2d 676, 680 n.4 (La. 1984). Further, 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). With a total of eighteen stab wounds, defendant's specific intent to kill or inflict great bodily harm can be inferred. See **State v. Lutcher**, 96-2378 (La.App. 1 Cir. 9/19/97), 700 So.2d 961, 972-73, writ denied, 97-2537 (La. 2/6/98), 709 So.2d 731. Both defendant's son and daughter testified about the repeated abuse, both verbal and physical, Kristi suffered from defendant. Accordingly, a fact finder could have reasonably concluded that defendant committed second degree murder.

A 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**, 06-0153 (La.App. 1 Cir. 9/15/06), 943 So.2d 1134, 1138, writ denied, 06-2621 (La. 8/15/07), 961 So.2d 1158. See also **Patterson v. New York**, 432 U.S. 197, 205-06, 97 S.Ct. 2319, 2324-25, 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 Kristi physically provoked defendant in any way. According to defendant's own words, while arguing with Kristi, he became "hot-headed" and "snapped" just before stabbing her. Defendant suggests, therefore, that his murder of Kristi should be reduced to manslaughter because her comments - either about the defendant being trash or about her seeing another man - caused him to "snap."

Questions of provocation and time for cooling are for the jury to determine under the standard of the average or ordinary person with ordinary self-control. 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**, 05-0011 (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. 2 Cir. 12/15/04), 889 So.2d 1257, 1263, writ denied, 05-0132 (La. 4/29/05), 901 So.2d 1063. See **State v. Charles**, 00-1611

(La.App. 3 Cir. 5/9/01), 787 So.2d 516, 519, writ denied, 01-1554 (La. 4/19/02), 813 So.2d 420 (an argument alone will not be sufficient provocation to reduce murder charge to manslaughter). See also **State v. Tran**, 98-2812 (La.App. 1 Cir. 11/5/99), 743 So.2d 1275, 1292, writ denied, 99-3380 (La. 5/26/00), 762 So.2d 1101; **State v. Hamilton**, 99-523 (La.App. 3 Cir. 11/3/99), 747 So.2d 164, 169; **State v. Thorne**, 93-859 (La.App. 5 Cir. 2/23/94), 633 So.2d 773, 777-78; **State v. Quinn**, 526 So.2d 322, 323-24 (La.App. 4 Cir. 1988), writ denied, 538 So.2d 586 (La. 1989).

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 fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La.App. 1 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.

After a thorough review of the record, we find that the evidence supports the jury's unanimous guilty 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 defendant was guilty of the second degree murder of Kristi Verrett. See **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.