NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0547

STATE OF LOUISIANA

VERSUS

ISIAH LEE

CONSOLIDATED WITH

NO. 2014 KA 0548

STATE OF LOUISIANA

VERSUS

ISIAH LEE

Judgment Rendered: DEC 23 2014

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On Appeal from the
18th Judicial District Court
In and for the Parish of Iberville
State of Louisiana
Trial Court No. 1514-08

Honorable William C. Dupont, Judge Presiding

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Richard J. Ward, Jr. District Attorney Elizabeth A. Engolio Assistant District Attorney Plaquemine, LA	Attorneys for Plaintiff-Appellee, State of Louisiana
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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

The defendant, Isiah Lee, was charged by grand jury indictment with one count of second degree murder of Shantley Pinkney, a violation of La. R.S. 14:30.1 (count I); and one count of attempted second degree murder of Stephen Robertson, Jr., violations of La. R.S. 14:27 and 14:30.1 (count II). At his arraignment, he pled not guilty to both counts. Later, a bill of information was filed, charging the defendant with one count of possession of a firearm or carrying a concealed weapon by a convicted felon, a violation of La. R.S. 14:95.1 (count III). The defendant pled not guilty to the new charge, and the two cases were consolidated. Following a jury trial, he was found guilty of the responsive offense of manslaughter, a violation of La. R.S. 14:31, on count I, guilty of the responsive offense of attempted manslaughter, violations of La. R.S. 14:27 and 14:31, on count II, and guilty as charged on count III. The trial court denied the defendant's motion for post-verdict judgment of acquittal and motion for new trial.

On count I, the defendant was sentenced to imprisonment at hard labor for forty years; on count II, he was sentenced to imprisonment at hard labor for ten years; and on count III, he was sentenced to imprisonment at hard labor for twenty years, without benefit of probation, parole, or suspension of sentence. The trial court ordered the sentence on count I to run concurrently with the sentence imposed on count III, and the sentence on count II to run consecutively to the sentences imposed on counts I and III. A motion to reconsider sentence was filed, with the defendant specifically identifying a sentencing error on count III. The trial court noted that the defendant was not sentenced in accordance with the sentencing range provided for when the crime was committed, and therefore, the trial court amended the defendant's sentence on count III to imprisonment at hard labor for fifteen years, without benefit of probation, parole, or suspension of

sentence. Additionally, a one-thousand dollar fine was imposed. The trial court maintained the consecutive and concurrent nature of all the sentences.

The defendant now appeals, assigning error to (1) the sufficiency of the evidence presented by the State demonstrating he did not act in self-defense; (2) comments made by the prosecutor to the jury during trial; and (3) the excessiveness of his sentences. For the following reasons, we affirm the defendant's convictions and sentences.

STATEMENT OF FACTS

April Christophe, a resident in the trailer park located off Homestead Drive in Plaquemine, Louisiana, testified at trial. On October 16, 2008, at approximately 4:00 p.m., while inside her home, she heard gunshots. Christophe did not see who fired the shots, but after thirty or forty seconds, she looked out of the window, and observed two men; Shantley Pinkney ("the victim"), was lying down on the ground, and Stephen Robertson was sitting up. Christophe did not see anyone near the two men. She exited her home, and heard the victim screaming for his grandmother. She also heard him say that "it was burning." Additionally, when she exited her home, she noticed Asalee Dorsey, the victim's grandmother, along with her grandchildren, coming down the lane from their house. The grandchildren had not made it to the victim yet, and Christophe did not see anyone run up to the victim and remove a weapon from him. Also, she testified she did not remove a weapon from the victim.

Asalee Dorsey testified at trial. When she learned that the victim was shot, she ran outside with her telephone and called 911. She stated that he did not have a weapon and that nobody came and took a gun from him.

Cordell Perry testified that on October 16, 2008, he was living with his grandmother, Asalee Dorsey, in the trailer park at issue and was thirteen at the time. On the day of the murder, Perry returned from school, and spoke with his

cousin, the victim, before the victim then went outside to clean up. Perry observed the victim, Robertson, and Shannon Holmes together outside. Holmes heard the defendant tell the victim to "stay right there I'm coming back, one of ya'll 'bout to die." Perry observed the defendant was driving a green Buick. Perry observed the victim raise his shirt, as if to show the defendant that he did not have a weapon, and about four or five seconds later, "[the defendant] just started shooting." Perry testified that the victim did not have a gun, but he did have a rake in his hands. According to Perry, the defendant was sitting inside the car when he shot, but once the shooting was over, the defendant exited the car and "tipped over like to make sure he hit everything." Perry testified that the defendant then re-entered his vehicle and left the trailer park. Perry then ran outside towards the victim, but did not remove a gun from him.

Carlton Perry, who at the time of the murder was fifteen years old and living with his grandmother, Asalee Dorsey, testified at trial. He stated that at the time of the shooting, he was standing at his front door because he heard "some altercation was about to occur outside"; specifically, he heard the victim and the defendant "exchanging words." Perry stated that "Icky" (the defendant) fired shots. Perry testified that the victim raised his shirt to show that he did not have a firearm, and "out of the blue that's when the shots started." The defendant was inside his vehicle, and the victim was raking. Perry testified that the defendant "leaned back a little toward the passenger's side of the vehicle" and then shot. Afterwards, the defendant exited the vehicle, and Perry went to inform his grandmother of what had occurred. He testified that the only three individuals outside at the time of the shooting were the victim, the defendant, and Robertson. Additionally, he testified that approximately five seconds passed from the time the victim raised his shirt to when the defendant started shooting. Once the shooting was finished, Perry went outside to check on the victim, but he did not take a gun off the victim or

Robertson. Further, he did not observe anyone take a gun off the victim. Lastly, Perry testified that the defendant re-entered his vehicle and left the scene.

Shannon Holmes, the victim's cousin, testified at trial. He indicated that the victim was cleaning the ditch, and that "Icky" "rolled up." "[The defendant] went down the street first and then he came back up..." Holmes said the defendant was driving a green Buick. Holmes testified that when the defendant arrived, the defendant and the victim had words, but the defendant then left and drove to the back of the trailer park. Before he left, he told the victim that he had "something for 'em." When the defendant left, the victim remained outside by the ditch, and instructed Holmes to return to his house. Holmes told his cousin Cordell and his grandmother what happened, and then Holmes looked outside the house to see the defendant driving towards the front of the trailer park. Holmes testified that the defendant stopped and that he and the victim "got into it again," which is when the victim raised his shirt. At that point, the defendant started shooting from the car. Holmes testified that the defendant fired close to ten shots. Afterwards, the defendant exited the vehicle, looked at the two individuals, then re-entered his car and left. At that point, Holmes ran outside and fell to the ground with the two men because he was concerned. The victim was screaming, "why would he do this, I ain't never did him nothing." Holmes testified that neither the victim nor Robertson had a gun on them, nor did he remove a weapon from either of them.

Some of the responding police officers testified at trial. Deputy James Lewis of the Iberville Parish Sheriff's Office indicated that he received a radio transmission regarding a shooting on Homestead Drive at approximately 4:20 p.m. Upon his arrival, he observed two men who appeared to have been shot. The victim was face down, while Robertson was sitting up. Deputy Lewis spoke to the victim, who informed him that he was shot by "Icky," who was later identified as the defendant. Deputy Lewis did not observe any weapons on the victim or on

Robertson. Because Deputy Lewis was one of the first responding officers, he began to clear and preserve the scene until further help arrived. He did observe blood stains around a trash pile, and located four semi-automatic rifle casings.

Deputy James Snelson of the Iberville Parish Sheriff's Office testified that upon his arrival to the scene, he also observed two black males, the victim and Robertson, on the ground. The victim, who was covered in blood and lying on his back, told Deputy Snelson that "Icky" shot him. Deputy Snelson did not see a weapon on or near the victim or Robertson.

Dr. Alfredo Suarez, an expert in the field of forensic pathology, and who reviewed Shantley Pinkney's autopsy report, testified at trial. He testified that the fatal shot pierced the victim's diaphragm, went between his sixth and seventh ribs, destroyed half of the victim's liver, and exited through the back, past the eleventh rib, ultimately causing the victim to bleed to death. Dr. Suarez also noted that the victim was shot once on the right thigh, which shattered his femur, and another time between the knee and ankle, fracturing parts of the victim's knee and leg. One bullet was recovered from the victim's body at the time of the autopsy.

Ronald Thomas Fazio, a forensic scientist with Integrated Forensic Laboratories, was accepted as a firearms expert and testified at trial. Fazio received the four 5.45x39 rifle cartridges recovered from the scene and, after conducting an analysis, determined that they were all fired from the same firearm. Also, Fazio analyzed two recovered bullets and determined they too were fired from the same gun. Fazio testified that the AK-74 rifle, a Russian-made weapon, is the only rifle he is aware of that is capable of firing a 5.45x39 cartridge. He also indicated that U.S. versions of the rifle are semi-automatic, that is, the trigger, unless illegally modified, has to be pulled each and every time the weapon is fired. Based on his analysis of the recovered cartridges, and without the firearm, Fazio saw no evidence that the rifle used in the murder was converted to a fully-

automatic version. Fazio ultimately stated that the recovered cartridges and bullets were fired from an AK-74.

Betty Jo Vaughn, a probation and parole officer specialist, testified that on February 1, 2000, the defendant was convicted of possession with intent to distribute cocaine, and was incarcerated until June 28, 2004. Upon his release, the defendant was placed on parole until September 9, 2005. Vaughn also indicated that on November 30, 2004, while on parole, the defendant was convicted of possession of cocaine, and that he was sentenced to five years at hard labor with two and a half years suspended; from December 17, 2004 to March 17, 2006.

Carla Bouvay, the defendant's first cousin, testified at trial. On the day of the murder, she, Constance Veal, Crystal Johnson, Claysha Henderson, and the defendant were at the defendant's trailer. The defendant eventually left to go retrieve Veal's children from her mother's house. Bouvay testified that the defendant's trailer was located in the back of the park. After the defendant left, Bouvay heard two different guns fired; specifically testifying that one gun shot sounded louder than the other. Bouvay did not recall how many shots were fired. She stayed on the floor until she heard police sirens, then she got in her car and left.

Testimony from Crystal Johnson, the defendant's sister-in-law, was presented by the defense. On the day of the murder, at approximately 3:30 – 4:00 p.m., the defendant was taking her home from the Hop-N-Shop (a local convenience store), and as they entered the trailer park, the victim "stood in the driveway" and "would not let [the defendant] pass." Johnson was sitting on the front passenger seat, and testified the defendant had a rifle on his vehicle's backseat. She testified that after the two men "pass[ed] words," the victim pulled up his shirt, and "flashed" a gun at the defendant. Johnson's only description of the gun was that it was black, looked like a handgun, and was on the victim's side.

Additionally, as they approached the trailer park's entrance, Johnson noticed "a guy walking down the street... like approaching, coming into the trailer park." Johnson testified that after the exchange of words between the defendant and the victim, the defendant drove around the victim, proceeded to the back of the trailer park, and dropped Johnson off. Then, "not even much a good three minutes after that I heard, we heard gunshots." Johnson exited her trailer, "looked to the road and the only visible thing to [Johnson] that [she saw] when we did look to the road when [the defendant] was pulling out the driveway." Then, ten to fifteen minutes later, she left the trailer park. Constance Veal and Carla Bouvay were also in the trailer. As they left the park, police officers and medical personnel had not yet arrived, but they did see that the victim was shot and lying on the ground.

The defendant testified at trial. On October 16, 2008, he was living in a trailer off Homestead Drive with Constance Veal with her two, and his two, children. On the day of the murder, he picked up Crystal Johnson at the Hop-n-Shop and was taking her to his trailer. As he approached the trailer park, the defendant noticed Robertson walking his dog. The defendant claimed that as he began to turn into the trailer park, the victim stood in front of the car, preventing the defendant from passing. Further, the defendant claimed the victim raised his shirt up to reveal a gun. The defendant drove around the victim, dropped Johnson off, then left the trailer again to retrieve some of the children.

When he approached the intersection with Homestead Drive, Robertson and the victim were on the defendant's left-hand side. At this point, the defendant claimed the victim accused him of sending police to his house regarding some weapons, but the defendant countered, asserting that the victim sent the police to his house for other reasons. The defendant claims the victim then "come up with a gun," and at that point, the defendant "laid back in the car," stuck the gun out of the vehicle's window, and "the gun went to firing." The defendant testified he

obtained the AK-74 rifle from his "little partner," but was unaware it was fully automatic as he had never fired it before. The defendant admitted he is a drug dealer and that he carries a weapon for self-defense. At the time of the shooting, the defendant stated he only pulled the trigger once, but six or seven rounds were fired. The defendant testified that once the shooting was over, he exited his vehicle, but the victim was still alive and reached for his gun, at which time, he re-entered his vehicle and left the scene.

The defendant testified that he left the scene because "if I'd stood there the whole thing would've been the grim reaper stood over the people while they died and kept anybody from getting hurt." He drove from the trailer park to the Plaquemine ferry, where he crossed the river to Baton Rouge. Along the way across, the defendant threw the murder weapon into the river. While in prison for the instant crimes, the defendant escaped while unattended, but was later captured and returned.

SUFFICIENCY OF THE EVIDENCE; SELF-DEFENSE

In his first assignment of error, the defendant claims that "the State failed to meet the burden of proof for rebutting the claim of self-defense." In his brief, the defendant does not provide specific reasons supporting this contention, but simply argues that "[t]here were a multitude of inconsistencies in the testimony given by the State's witnesses, a fact acknowledged by the prosecution." As such, the defendant avers that "[w]ith such substantial questions as to the facts of the situation still outstanding, the State has not 'negated the defense beyond a reasonable doubt.'" He does not identify these "inconsistencies," nor does he specify which questions of fact remain outstanding. On appeal, the defendant does not challenge that the shooting took place, or that he was the shooter.

The standard of review for sufficiency of the evidence to support a conviction is whether or not, viewing the evidence in the light most favorable to

the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime, and defendant's identity as the perpetrator of that crime, beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); **State v. Patton**, 2010-1841 (La. App. 1st Cir. 6/10/11), 68 So.3d 1209, 1224. In conducting this review, we must also be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La. R.S. 15:438; **State v. Millien**, 2002-1006 (La. App. 1st Cir. 2/14/03), 845 So.2d 506, 508-09.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 487, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732.

Manslaughter is a homicide which would be either first 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." La. R.S. 14:31(A)(1). "Sudden passion" and "heat of blood" are not elements of the offense of manslaughter; rather, they are mitigating factors in the nature of a defense which exhibit a degree of culpability less than that present

when the homicide is committed without them. **State v. Rodriguez**, 2001-2182 (La. App. 1st Cir. 6/21/02), 822 So.2d 121, 134, writ denied, 2002-2049 (La. 2/14/03), 836 So.2d 131. The State does not bear the burden of proving the absence of these mitigating factors. A defendant who establishes by a preponderance of the evidence that he acted in a "sudden passion" or "heat of blood" is entitled to a manslaughter verdict. In reviewing the claim, this Court must determine if a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the mitigating factors were not established by a preponderance of the evidence. **State v. Huls**, 95-0541 (La. App. 1st Cir. 5/29/96), 676 So.2d 160, 177, writ denied, 96-1734 (La. 1/6/97), 685 So.2d 126.

When a defendant charged with a homicide claims self-defense, the State has the burden of establishing beyond a reasonable doubt that he did not act in self-defense. **State v. Rosiere**, 488 So.2d 965, 968 (La. 1986).

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

A homicide is justifiable:

A. (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.

(2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

* * * *

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.

> D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.
>
> However, La. R.S. 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 relevant inquiry on appeal is whether or not, after viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found beyond a reasonable doubt that the defendant did not act in self-defense. **Rosiere**, 488 So.2d at 968-69; see also **State v. Wilson**, 613 So.2d 234, 238 (La. App. 1st Cir. 1992), writ denied, 635 So.2d 238 (La. 1994).

A thorough review of the record indicates that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find the evidence presented by the prosecution established that the defendant was the aggressor in the conflict and, thus, was not entitled to claim self-defense. Moreover, even if it could be found that the defendant was not the aggressor, any rational trier of fact could find, beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant did not act in self-defense.

Testimony at trial revealed that the only two individuals who claim the victim had a weapon were the defendant, and his sister-in-law, Crystal Johnson. All of the responding police officers, and the residents of the trailer park who assisted following the shooting, testified saying neither the victim nor Robertson were armed. Further, the firearms expert, Fazio, indicated that based on his analysis of the recovered bullets and cartridges, he found no evidence to indicate that the AK-74 rifle was modified from semi-automatic to fully automatic. Thus,

in order for the defendant to fire six or seven shots as he testified, it would have required him to pull the trigger six or seven times, negating his theory of simply firing a warning shot at the victim. Additionally, testimony at trial revealed that four to five seconds passed from the time the victim revealed he was not carrying a weapon to when the defendant began shooting. Moreover, testimony at trial indicated that after the defendant entered the trailer park, he told the victim and Robertson to "stay right there," because "one of [them] 'bout to die."

The trier of fact may accept or reject, in whole or in part, the testimony of any witness. **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. When a case involves circumstantial evidence and the trier of fact 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 that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). 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. **State v. Lofton**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 662. 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 jury. **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

For the foregoing reasons, this assignment of error lacks merit.

PREJUDICIAL REMARKS MADE TO JURY

In his second assignment of error, the defendant contends that the prosecution made a series of remarks against him and the defense witnesses that biased the jury. As such, he claims that the jury "received the evidence with a preset perspective on the veracity of the witness testimony, which in turn led to an unreliable verdict."

The first two remarks the defendant complains of concern statements made during the State's opening statement. Specifically, he claims that the prosecution's characterization of him as "a cold-blooded murderer," "predispose[d] the jury toward returning a guilty verdict." Further, the defendant avers that impropriety occurred when the prosecutor referenced Constance Veal as "lying," and having "[n]o credibility." He also argues that the prosecutor erred by making reference to purported prior inconsistent statements made by Veal to an assistant district attorney. The third complaint the defendant raises is that during the State's closing argument, the prosecutor commented on Veal's failure to testify. He claims Veal's failure to testify was based on an illness beyond her control, but avers the prosecutor "impl[ied] that the defense was deliberately keeping Ms. Veal from testifying."

Louisiana Code of Criminal Procedure Article 841 states than an irregularity cannot be availed of after verdict unless it was objected to at the time of its occurrence. One of the purposes of the contemporaneous objection rule is to allow a trial judge to immediately have notice of an alleged irregularity so that he may cure the problem and thus avoid a mistrial or reversal. The defendant had ample opportunity during the course of the State's opening statement and closing argument to timely object to arguments he deemed improper and seek relief from the trial judge. Herein, defense counsel neither objected to the prosecutor's remarks during the opening statement nor the closing argument on behalf of the

State, nor did he request an admonition or a mistrial based on those statements. In fact, in the defense counsel's opening statement, he referenced and attempted to discredit the prosecutor's opening statement, stating:

> You know, we could jump and shout and point, call Mr. Lee a murderer, cold blood in his veins, I guess it's okay, but again [the prosecutor] will not testify in this case.

Where a defendant does not object to remarks by the prosecutor, ask for an admonition, or move for a mistrial, he cannot raise such issues on appeal. See La. Code Crim. P. art. 771; **State v. Gomez**, 433 So.2d 230, 240 (La. App. 1st Cir.), writs denied, 440 So.2d 730 (La. 1983) & 441 So.2d 747 (La. 1983); **State v. Dilosa**, 2001-0024 (La. App. 1st Cir. 5/9/03), 849 So.2d 657, 673, writ denied, 2003-1601 (La. 12/12/03), 860 So.2d 1153. Therefore, this argument constitutes a new ground for objection which cannot be raised for the first time on appeal. Accordingly, this assignment of error lacks merit.

EXCESSIVE SENTENCES

In his third assignment of error, the defendant argues the sentences imposed on counts I and III are unconstitutionally excessive. He does not challenge the sentence imposed on count II. Specifically, he claims that because he "never formulated, even for an instant, an intent to kill or harm either victim," and because "[h]e acted rashly, in a moment of desperation, fully believing his own life was in danger," the maximum sentences imposed are excessive. Additionally, he argues that the trial court did not consider the sentencing guidelines set forth in La. Code Crim. P. art. 894.1, and that no explanation was given for the court's order of consecutive, rather than concurrent, sentences. As such, the defendant avers his sentences on counts I and III are improper and should be vacated.

The Eighth Amendment to the United States Constitution and Article I, Section 20 of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence may be within statutory limits, it may

violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. 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. **State v. Hurst**, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Louisiana Code of Criminal Procedure Article 894.1 sets forth criteria which must be considered by the trial court before imposing a sentence. While the trial court need not recite the entire checklist of Article 894.1, the record must reflect that it adequately considered the factors. **State v. Brown**, 2002-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569. The goal of Article 894.1 is the articulation of the factual basis for a sentence, 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 Article 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). Even when a trial court assigns no reasons, the sentence will be set aside on appeal and remanded for sentencing only if the record is either inadequate or clearly indicates that the sentence is excessive. 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).

Further, Article 883 of the Louisiana Code of Criminal Procedure provides in pertinent part, that if a defendant is convicted of two or more offenses based on the same act or transaction, the terms of the imprisonment shall be served concurrently unless the court expressly directs otherwise. It is within the sentencing court's discretion to order that sentences run consecutively, rather than concurrently. **State v. Berry**, 95-1610 (La. App. 1st Cir. 11/8/96), 684 So.2d 439, 460, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603. However, even if convictions arise out of a single course of conduct, consecutive sentences are not necessarily excessive; other factors must be taken into consideration in making this determination. For instance, consecutive sentences are justified where an offender poses an unusual risk to public safety. **State v. Breland**, 97-2880 (La. App. 1st Cir. 11/6/98), 722 So.2d 51, 53.

Additionally, this Court has stated that maximum sentences may be imposed only for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. **State v. Hilton**, 99-1239 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 2000-0958 (La. 3/9/01), 786 So.2d 113; **State v. Miller**, 96-2040 (La. App. 1st Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459.

Louisiana Revised Statute 14:31(B) states, in pertinent part, that whoever commits manslaughter "shall be imprisoned at hard labor for not more than forty years." In accordance with La. R.S. 14:95.1(B), "[w]hoever is found guilty of violating the provisions of this Section [possession of a firearm or carrying a concealed weapon by a person convicted of certain felonies] shall be imprisoned at hard labor for not less than ten nor more than fifteen years without the benefit of probation, parole, or suspension of sentence and be fined not less than one thousand dollars nor more than five thousand dollars." (prior to amendment by

2010 La. Acts. No. 815, §1). In the instant case, the defendant was sentenced to forty years at hard labor on count I and fifteen years at hard labor, without benefit of probation, parole, or suspension of sentence, in addition to a one-thousand dollar fine, on count III. The trial court ordered the sentence on count I to run concurrently with the sentence imposed on count III.

In sentencing the defendant, the trial court noted:

> Well, I sat through the entire trial, I listened to your testimony, I know what your record is. You picked a life of drugs and violence and this is the end of that road you decided to take in your life.
>
> One, you didn't even need to have a weapon that day. Second, to drive around in a vehicle with your own children with basically a machine gun on the seat seems a little uncomprehensible. Listen to me, I'm talking. And your excuse for that is, by your own words is that you always have guns because you're a drug dealer. And I'm suppose to show sympathy because of that. You're a danger to this community, you're a danger to your own children, you're a danger to your family.

Moreover, Carashia Snearl, the designated family representative and mother of one of the victim's daughters, informed the lower court that at the time of the murder, the victim had two daughters, a two-month-old, and a five-year-old, and that they, along with the victim's mother and grandmother, continue to feel grief and pain over the murder.

A thorough review of the record reveals that the trial court adequately considered the criteria of Article 894.1, and did not manifestly abuse its discretion in imposing the sentences on counts I and III. See La. Code Crim. P. art. 894.1(B)(5), (B)(6), & (B)(10). Further, the defendant's guilt having been established, the trial court is not required to reweigh the sufficiency of the evidence as a sentencing factor. **State v. Harris**, 518 So.2d 590, 595 (La. App. 1st Cir. 1987), writ denied, 521 So.2d 1184 (La. 1988).

Maximum, consecutive sentences were warranted in this matter. As noted hereinabove, the jury rejected the defendant's claim that the victim was the aggressor and that the defendant acted in self-defense. Further, this was one of the most serious offenses, because not only did the defendant kill one individual and wound another, but he also fled the scene, refused to turn himself in for four days, and threw the murder weapon into the Mississippi River. Additionally, the defendant acknowledged he carried the AK-74 in his car for his personal protection because of his drug-related activities. These circumstances, along with the defendant's repeated history of criminal drug activity, cause him to pose a risk to public safety. As such, maximum, consecutive sentences are warranted, and the trial judge did not abuse its discretion in this case.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.