NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 1083

STATE OF LOUISIANA

VERSUS

RHONDA JORDAN

Judgment Rendered: MAR 06 2015

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court Number 11-09-0111

Honorable Michael R. Erwin, Judge Presiding

* * * * * * * * * *

Hillar C. Moore, III **Dylan C. Alge** **Baton Rouge, LA**	**Counsel for Appellee,** **State of Louisiana**
Frederick Kroenke **Baton Rouge, LA**	**Counsel for Defendant/Appellant,** **Rhonda Jordan**
Rhonda Jordan **St. Gabriel, LA**	**In Proper Person**

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

McClendon, J. concurs.

WHIPPLE, C.J.

The defendant, Rhonda Jordan, was charged by bill of information with the manslaughter of Isaac Shelmire, Jr., a violation of LSA-R.S. 14:31. Following a jury trial, the defendant was found guilty as charged. The defendant was sentenced to imprisonment at hard labor for twenty years, with credit for time served. One counseled, and two pro se motions to reconsider sentence were timely filed, which were denied by the trial court. The defendant now appeals, asserting two counseled, and four pro se assignments of error. For the following reasons, we affirm the defendant's conviction and sentence.

STATEMENT OF FACTS

The events resulting in these proceedings against the defendant occurred on October 17, 2009, when the defendant and Isaac Shelmire, Jr., the victim herein, were involved in an argument at the defendant's residence in Baton Rouge, Louisiana. C. J.,[1] the defendant's son, who was eleven-years-old at the time of the incident, testified that on October 17, 2009, he heard "loud" and "thunderous" beating on the door of his home, but was unaware of who was making the noise. After the defendant opened the door, C. J. returned to his room, but he later heard the back door open, so he followed his sister, Miranda Jordan, and the defendant down the back stairs of the apartment. C. J. stated that he was standing on the side of the apartment building, and noticed the defendant "back-pedaling" down the front stairs at a moderate pace. C. J. testified that the man, later identified as the victim, came down the stairs swinging at the defendant. C. J. noticed Miranda in between the victim and the defendant, trying to break up the ensuing fight. However, the victim had a bag of food in his hand, swung it, and struck Miranda on her head. C. J. testified that at this point, the fight had spilled into the street,

[1]The initials of C.J., who is a minor, will be used in order to protect his identity. See generally, Uniform Rules – Courts of Appeal, Rule 5-1 and Rule 5-2.

and that the victim went to a nearby truck where he retrieved a sledgehammer. C. J. testified that he then returned to, and remained inside of, the apartment. C. J. did not observe the defendant stab the victim.

Miranda Jordan, the defendant's daughter who was seventeen-years-old at the time of the murder, also provided testimony for the defense. She testified that on the day in question, the victim knocked on the apartment door, she answered, and she allowed him to sit in the living room. Miranda returned to her bedroom, and eventually heard yelling and arguing between the defendant and the victim coming from inside the apartment. Miranda stated that she heard the victim leave, but about ten minutes later, the victim began "banging on the door." Miranda approached the door as if to open it, but the defendant instructed her not to do so. Miranda testified that the victim's actions grew louder, that he began to kick the door, and that "wood chips and stuff" were "coming off the door."

Miranda testified that the defendant then ran out of the back of the apartment and approached the front, standing at the bottom of the steps. Miranda testified that the defendant instructed the victim to leave, but at that point, the victim began traveling down the front steps, and began swinging at the defendant with a "bag." The fight continued, and eventually, after the victim took a swing at the defendant, she stabbed him with a knife. Miranda testified that after the victim was stabbed, she stepped in between the two in an attempt to end the ongoing fight. She indicated the victim fell backwards, but then stood up, walked down the remainder of the front steps, walked towards a truck parked on the street, and retrieved a sledgehammer. Miranda testified that the victim began chasing her with the hammer, but after a few seconds, stopped, and passed out.

The defendant testified that on October 17, 2009, the victim stopped by her apartment earlier in the day, was advised that the defendant had company and left.

The victim later returned, Miranda let him in, and he said he "wanted to talk [to the defendant]." The defendant testified she could tell he was drunk, and she thought that he wanted to do drugs. When the defendant told the victim that he had to leave, an argument ensued. The defendant was eventually able to push the victim out of the apartment, but the victim began forcefully kicking the front door. Miranda told the defendant, "Mom, I got it," but the defendant replied, "I'll get it." According to the defendant, she then exited the apartment through the back door, thinking "maybe I [can] get him to stop."

The defendant admitted that her house was locked, and that she voluntarily exited the apartment through the back door, but testified that when she reached the bottom of the steps, "[the victim] was coming at me with rage." She claimed that the victim swung at her with a bag, grazing her face. The defendant further testified, "[the victim] had the bag in his hand and he swung. And I think at that time is when I pulled the knife[2] out and that's when I stabbed him."[3] She testified that after she stabbed the victim, he continued to pursue her. The defendant described the victim as "persistent," and stated that eventually, Miranda stepped in between the two in an attempt to stop the fight. The defendant testified that she then turned around and noticed that the victim had retrieved a sledgehammer, and "was going behind my daughter." The defendant gave the knife to another of her daughters, an eleven-year-old, to take to "Ms. Lakeisha" in order to remove it from the crime scene. Dr. William Clark testified that the size of the knife's blade was "about four inches."

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[2]The State and defense counsel stipulated that, according to the DNA analysis, the probability of finding the same DNA on the knife handle if the DNA was obtained from an individual other than the defendant was approximately 1 in 189 trillion.

[3]The autopsy report revealed the victim died as a result of a singular 3 ⅝" stab wound to the left chest. Dr. William Clark, the East Baton Rouge Parish Coroner, was qualified as an expert at trial, and testified that because of the heavy jacket the victim was wearing at the time of the murder, "significant force" would be required to create such a wound.

SUFFICIENCY OF THE EVIDENCE; SELF-DEFENSE

In her first pro se assignment of error, the defendant contends that the evidence introduced at trial was insufficient to support her conviction of manslaughter. She claims that at the time of the murder, "the victim went [to the defendant's home], where she was not engaged in unlawful activity and had [a] right to be, and in a hostile manner[,] the victim made an attempt to make an 'unlawful entry' in [her home]." As such, the defendant avers that she had "the right to protect her home as well as her children even with the use of '**deadly force**.'" Therefore, she contends that "the State failed to prove beyond a reasonable doubt that the defendant did not act in self-defense and that the defendant was not the aggressor."

The proper procedure for raising this issue is by a motion for post-verdict judgment of acquittal. LSA-C.Cr.P. art. 821. No such motion was filed in this case. Despite the fact that the defendant failed to employ the proper procedure, insufficiency of the evidence will be considered since the matter was raised by formal assignment of error. See State v. Bindon, 96-0200 (La. App. 1st Cir. 12/6/96), 687 So. 2d 103, 106.

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, any 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." LSA-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, and 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[.]" LSA-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. Id. 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).

The applicable version of LSA-R.S. 14:20 provides, in pertinent part, as follows:

> 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.
>
> * * *
>
> (4)(a) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32.1(40), against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises or motor vehicle.
>
> * * *
>
> B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful

intruder to leave the premises or motor vehicle, if both of the following occur:

(1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

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, LSA-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 defendant was present inside her locked apartment, and voluntarily exited to "stop" the unarmed victim. Further, despite the defendant's characterization of the weapon as a "pocket knife," Dr. William Clark, the East Baton Rouge Parish Coroner, noted that "significant force" would be required to create the 3⅝ inch stab wound to the victim's left chest, especially considering the heavy jacket the victim was wearing at the time of the murder. Dr. Clark also noted that the knife's blade measured "about four inches." Notably, after the defendant stabbed the victim, she instructed her eleven-year-old daughter to take the knife to a neighbor so that it would be removed from the crime scene. Evidence of flight, concealment, and attempt to avoid apprehension indicates consciousness of guilt and, therefore, is one of the circumstances from which the jury may infer guilt. See State v. Davies, 350 So. 2d 586, 588 (La. 1977); State v. Thompson, 33,058 (La. App. 2nd Cir. 4/7/00), 758 So. 2d 972, 979. Moreover, during her testimony at trial, the defendant admitted she stabbed the victim.

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. Furthermore, 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 all of the foregoing reasons, this assignment of error lacks merit.

INEFFECTIVE ASSISTANCE OF COUNSEL

In her second counseled assignment of error, the defendant argues that her trial counsel was ineffective in failing to timely file a motion to reconsider sentence. Further, the defendant argues that "[t]he failure of trial counsel to orally, or in writing timely file a motion for re-consideration of sentence constitutes ineffective assistance of counsel where the defendant can show a reasonable probability that, but for counsel's error, [her] sentence would have been different."

The defendant's contention is completely unfounded in the record. On March 24, 2014, the defendant was sentenced to imprisonment for twenty years at hard labor with credit for time served. Thereafter, on April 9, 2014, within the thirty-day window provided by LSA-C.Cr.P. art. 881.1(A)(1)[4], a motion to reconsider sentence was filed by the defendant's trial counsel, arguing, generally, that the sentence imposed was unconstitutionally excessive and should be reduced. Thereafter, on April 17, 2014 and April 24, 2014, the defendant timely filed two, albeit identical, pro se motions to reconsider sentence. Moreover, on May 7, 2014,

[4]Louisiana Code of Criminal Procedure art. 881.1(A)(1) provides that "[i]n felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence."

the district court issued a ruling denying the motion to reconsider sentence.[5] Therefore, this assignment of error is without merit.

EXCESSIVE SENTENCE

In her first counseled assignment of error, the defendant argues the sentence imposed is unconstitutionally excessive because "the trial court has not taken into consideration either the factors for consideration when imposing a sentence, or the factors surrounding both the offense and the offender." Specifically, she argues that at the time of the murder, she was living at a church residence, working for a church, had "a relatively clean criminal history and the pre-sentence investigation showed that she did indeed have mental health and physical health issues, all of which contribute to the excessive nature of the twenty year sentence imposed herein."

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.

[5]Although the district court did not specify which motion to reconsider it was denying, since all three motions were timely filed before the order was issued, we find the order applies to all three, as they each essentially raise the same arguments.

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. However, the goal of Article 894.1 is the articulation of the factual basis for a sentence, not rigid or mechanical compliance with its provisions. 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. State v. Knight, 2011-0366 (La. App. 1st Cir. 9/14/11), 77 So. 3d 302, 304, writ denied, 2011-2240 (La. 2/17/12), 82 So. 3d 283. 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 case, a pre-sentence investigation ("PSI") report was ordered and reviewed by the trial court. The PSI revealed that the defendant had an extensive criminal history dating back to 1989, including several misdemeanor charges, both as a juvenile and as an adult, as well as two convictions of felony theft as an adult. Additionally, when the PSI was prepared, the defendant had a pending felony charge for possession of cocaine. Further, the PSI noted that the defendant was unemployed and suffered both physical and mental health issues. The PSI did not recommend probation, but rather a home incarceration sentence.

Prior to imposition of the defendant's sentence, the trial court stated:

> The court notes that since her manslaughter arrest she was also picked up for - - she was charged with possession of cocaine. She had a prior felony offense for theft. She gave the murder weapon to her daughter, and her sweatshirt, and told her to give it to somebody else, trying to cover up the fact that she was there. And she heard what her daughter said through the walls while she was being interviewed. She began to lie to the police, and she heard what her daughter said so she had to come back and tell them the truth. And the court finds that although she does have some health problems, mental and physical, that she - - her record and her - - the way the stabbing took place, that she is in need of some serious jail time.

Louisiana Revised Statute Article 14:31(B) provides, in pertinent part, that "[w]hoever commits manslaughter shall be imprisoned at hard labor for not more than forty years." In the instant case, the defendant was sentenced to imprisonment at hard labor, with credit for time served, for twenty years. A thorough review of the record reveals the trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentence herein. See LSA-C.Cr.P. art. 894.1(A)(2), (B)(1), (B)(2), (B)(6), (B)(9), (B)(10), (B)(19), & (B)(21). Further, the sentence imposed was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive. Therefore, this assignment of error is without merit.

QUESTIONING REGARDING DEFENDANT'S STATE OF MIND

In her second pro se assignment of error, the defendant claims "the trial court's ruling to sustain evidence to the accused['s] state of mind from [trial] gave the prosecution an unfair advantage and constituted an unfair trial." Further, she argues that "[t]he judge['s] rejection of the evidence without a proper determination of its relevance was prejudicial to the defendant's substantial rights, and the defendant is entitled to a new trial."

During the defendant's direct examination, defense counsel attempted to elicit testimony regarding details of prior incidents, which allegedly prompted her

to begin carrying a knife for protection. These prior incidents did not involve the victim. The trial court sustained the State's objection, noting the details of the previous incidents were not relevant. The trial court did, however, allow defense counsel to ask the defendant generally whether she carried a knife for protection. Subsequently, on direct examination, the defendant testified as follows:

Defense Atty. Sterling:	Ms. Jordan, let me ask you. Did you carry a knife for protection at all times?
Defendant:	Yes, I did.

* * *

Defense Atty. Sterling:	You carried a knife for protection?
Defendant:	Yes, sir.
Defense Atty. Sterling:	And you had your reasons for carrying this knife, correct?
Defendant:	Yes, sir.
Defense Atty. Sterling:	Okay. Specifically, on October 17, 2009, you brandished a knife? You carried this same knife?
Defendant:	Yes, sir.
Defense Atty. Sterling:	Okay. Now, this knife was given to you by whom?
Defendant:	My brother.
Defense Atty. Sterling:	And he gave it to you - - the neighborhood was rough and you wanted to protect yourself?
Defendant:	Yes, sir.

Louisiana Code of Evidence Article 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence." Further, Article 402 states, in pertinent part, that "[a]ll relevant evidence is admissible," and "[e]vidence which is not relevant is not admissible." In questions of relevancy, much discretion is vested in the trial court. Such rulings will not be disturbed on appeal in the absence of a showing of manifest abuse of discretion. Ultimately, questions of relevancy and admissibility are discretion calls for the trial court, and its determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. State v. Duncan, 98-1730 (La. App. 1st Cir. 6/25/99), 738 So. 2d 706, 712-13.

The trial court did not abuse its discretion in sustaining the State's objection. Defense counsel was able to elicit from the defendant that she carried the knife for protection, and details regarding previous incidents were not relevant to the instant trial. Moreover, no substantial rights of the defendant were affected, and therefore, this assignment of error lacks merit. See LSA-C.Cr.P. art. 921.

PROSECUTORIAL MISCONDUCT

In her third pro se assignment of error, the defendant alleges she was "deprived of a fair trial as guaranteed by the United States Constitution based on the prosecution's misconduct." Specifically, the defendant argues the State prejudiced her by failing to introduce Exhibit 53, a photograph taken at the Baton Rouge Police Department homicide office, which she claims depicted "the defendant's face showing that it was red and possibly swollen on the left side." She further contends that "[t]he State's failure to admit this evidence was prejudic[ial] [to] the defendant and [she] is entitled to a new trial."

This argument is completely unfounded in the record. During the State's direct examination of Corporal Mindy Stewart, the Baton Rouge Police Department crime scene officer who responded to the murder, Exhibit 53 was

introduced by the State without objection from the defense. Further, Corporal Stewart, during her cross-examination, was specifically questioned regarding Exhibit 53, and was asked whether the defendant's face appeared red and swollen, to which Corporal Stewart responded, "[s]he appears to have been crying for a long time." The defendant incorrectly asserts the exclusion of the photograph constituted prosecutorial misconduct. The picture was introduced by the State, the photographer was questioned regarding its contents, and the exhibit was published to the jury for their review and consideration.

Therefore, this assignment of error lacks merit.

PRIEUR VIOLATION

In her fourth and final last pro se assignment of error, the defendant contends that the trial court erred in allowing the State to introduce other crimes evidence in violation of the procedural requirements set forth in State v. Prieur, 277 So. 2d 126 (La. 1973). Specifically, the defendant argues that the State violated the Prieur requirements by cross-examining her regarding her previous theft convictions. Further, the defendant argues that a "[m]otion in [l]imine should also have been filed prior to trial by defense counsel in this matter regarding the permissibility of the defendant's prior convictions." As such, she avers these actions violated her constitutional rights and due process of the law, and constituted an abuse of the trial court's discretion, which therefore warrants a mistrial.

During the defendant's cross-examination by the State, the following exchange took place:

Asst. District Atty. Fontenot:	As a matter of fact, you were convicted of theft; weren't you?
Defendant:	In my past, yes.

Defense Atty. Sterling:	Judge, I want to object, relevance. It has no relevance to this particular case at all.
Asst. District Atty. Fontenot:	It's always relevant if - -
Trial Court:	Every -
Defense Atty. Sterling:	I'll withdraw it. I'm going to let him go on with - - go ahead, proceed.
Trial Court:	Every defendant that takes the stand who has prior convictions, the State is allowed to ask about it.
Defense Atty. Sterling:	Proceed.

Prieur formerly controlled the procedure to be used when the State intended to offer evidence of other criminal offenses against a defendant. See Millien, 845 So. 2d at 514. The Prieur requirements are not applicable to this case, however, because the "other crimes" evidence was not introduced by the State in its case in chief by extrinsic evidence, but was elicited from the defendant herself on cross-examination. The State had not planned in advance to introduce such evidence, and thus could not have possibly requested the holding of a Prieur hearing prior to trial. See State v. Williams, 575 So. 2d 452, 454 (La. App. 4th Cir.), writ denied, 578 So. 2d 130 (La. 1991).

Louisiana Code of Evidence Article 609.1 provides, in pertinent part, that:

> **A. General criminal rule.** In a criminal case, every witness by testifying subjects himself to examination relative to his criminal convictions, subject to limitations set forth below.
>
> **B. Convictions.** Generally, only offenses for which the witness has been convicted are admissible upon the issue of his credibility, and no inquiry is permitted into matters for which there has only been an arrest,

the issuance of an arrest warrant, an indictment, a prosecution, or an acquittal.

C. Details of convictions. Ordinarily, only the fact of a conviction, the name of the offense, the date thereof, and the sentence imposed is admissible. However, details of the offense may become admissible to show the true nature of the offense:

(1) When the witness has denied the conviction or denied recollection thereof;

(2) When the witness has testified to exculpatory facts or circumstances surrounding the conviction; or

(3) When the probative value thereof outweighs the danger of unfair prejudice, confusion of the issues, or misleading the jury.

* * *

Irrespective of its relevance to the present prosecution, a conviction *per se* historically is a relevant factor for the trier of fact's evaluation of a witness' credibility. State v. Marshall, 2004-3139 (La. 11/29/06), 943 So. 2d 362, 369, cert denied, 552 U.S. 905, 128 S. Ct. 239, 169 L. Ed. 2d 179 (2007) (quoting State v. Sweeney, 443 So. 2d 522, 529 (La. 1983)). This Court has held that a defendant who testifies subjects himself to being questioned about previous convictions. See State v. Selvage, 93-1435 (La. App. 1st Cir. 10/7/94), 644 So. 2d 745, 750, writ denied, 94-2744 (La. 3/10/95), 650 So. 2d 1174. In the instant case, nearly two and a half years prior to trial, the State provided to defense counsel the defendant's rap sheet and information regarding previous convictions. During trial, the State only elicited information regarding the names and dates of the defendant's previous theft convictions. Upon review of the record and the defendant's pro se arguments, we find no Prieur violation. Moreover, we note that defense counsel withdrew his objection to the State's specific line of questioning. The State properly questioned the defendant regarding her previous convictions in

accordance with Louisiana Code of Evidence Article 609.1, and therefore, we find this assignment of error lacks merit.

DECREE

For the above reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.