NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 0045

STATE OF LOUISIANA

VERSUS

LEROY WOODS

DATE OF JUDGMENT: JUN 05 2015

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 05-12-0113, SECTION I, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE ANTHONY MARABELLA, JR., JUDGE

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: **CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**

Welch J. concurs and assigns reasons.

CHUTZ, J.

The defendant, Leroy James Woods, was charged by bill of information with manslaughter, a violation of La. R.S. 14:31, and pled not guilty. Following a trial by jury, he was found guilty as charged. The trial court denied the defendant's motion for new trial. The State filed a habitual offender bill of information, and the defendant was subsequently adjudicated a second-felony habitual offender.[1] The trial court sentenced the defendant to forty years imprisonment at hard labor without the benefit of probation or suspension of sentence. The defendant now appeals, challenging the trial court's denial of his motion for a mistrial and the sufficiency of the evidence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

On March 2, 2012, an ambulance and officers of the Baton Rouge City Police Department (BRPD) were dispatched to the scene of a homicide at a residence located on the corner of Gus Young Avenue and North Acadian Thruway. The body (later identified as Joseph Beathley) was located at the rear of the residence underneath the carport. The police interviewed witnesses at the scene and determined that the victim had been in a physical altercation with the defendant. The police further determined that the victim died after being struck, possibly with a glass bottle. The defendant was located near the scene, taken into custody, read his **Miranda**[2] rights, and transported to the detective's office.

The defendant was reread his **Miranda** rights and interviewed by detectives at the violent crimes unit (VCU).[3] According to the police, the defendant told them he and the victim had had an altercation a few days earlier when the victim

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[1] The State filed a habitual offender bill of information listing a 1991 conviction of manslaughter and a 1984 conviction of attempted manslaughter. The defendant stipulated to his status as a second-felony habitual offender and the trial court adjudicated him as such.

[2] **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[3] The police attempted to record the interview, but the equipment malfunctioned and failed to produce a retrievable recording.

disrespected the defendant by making advances toward his girlfriend at a nightclub. On the day in question, the defendant, the victim, and others were drinking alcohol and "hanging out" together. The victim, who was described by the defendant as very intoxicated at that point, approached the defendant and "got all up in [the defendant's] face" and began cursing at him. The defendant then struck the victim with a combination of punches, and the victim fell to the ground and started snoring. The defendant denied hitting the victim with a bottle, specifically indicating that he used his fists.

SUFFICIENCY OF THE EVIDENCE

In his second assignment of error,[4] the defendant argues that the evidence is insufficient because it suggests that the fatal blow to the back of the victim's head was caused by a fall due to the victim's intoxication. Thus, the defendant argues that the State's evidence failed to carry the burden on the element of causation. The defendant specifically notes that Dr. Bruce Wainer testified at trial that the victim's level of impairment may have been a contributing factor in the fall that produced the fatal injury to the back of his head. The defendant argues that the evidence on the issue of the cause of death in relation to the scuffle with the defendant is equivocal and fails to support the verdict of guilt beyond a reasonable doubt.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The **Jackson** standard of review is an objective standard for testing the overall evidence, both

[4] When issues are raised on appeal, both as to the sufficiency of the evidence and one or more trial errors, the reviewing court should first determine the sufficiency of the evidence. The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal under **Hudson v. Louisiana**, 450 U.S. 40, 43, 101 S.Ct. 970, 972, 67 L.Ed.2d 30 (1981), if a rational trier-of-fact, viewing the evidence in accordance with **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the elements of the offense have been proven beyond a reasonable doubt. See La. C.Cr.P. art. 821(B); **State v. Hearold**, 603 So.2d 731, 734 (La. 1992); **State v. Deluzain**, 09-1893 (La. App. 1st Cir. 5/7/10), 38 So.3d 1054, 1056.

direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 01-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. 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. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

As previously noted, the defendant was convicted of manslaughter, a violation of La. R.S. 14:31 which provides, in pertinent part:

> A. Manslaughter is:
>
> (1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (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; or
>
> (2) A homicide committed, without any intent to cause death or great bodily harm.
>
> (a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Articles 30 or 30.1, or of any intentional misdemeanor directly affecting the person; ...

According to the version of events the defendant gave to the police, the victim approached, cursed, and threatened the defendant just before the tussle or fight ensued. In his account, the defendant also referred to an earlier incident during which he felt the victim had disrespected him when he was with his girlfriend. Noting that the victim was very intoxicated, the defendant contends that the dispute from a few days earlier reignited.

Arguably, the defendant's version of events suggests that he was provoked. See La. R.S. 14:31(A)(1). However, the verdict returned indicates the jury found that the defendant started the fight and struck the blows. This version of events is sufficient to establish manslaughter, even if the defendant lacked the specific intent to kill or inflict great bodily harm upon the victim because the defendant at the time was engaged in the perpetration of an intentional misdemeanor directly affecting the person (second degree battery or simple battery). See La. R.S. 14:31(A)(2)(a); see also La. R.S. 14:33, 34.1, and 35.[5] In his brief to this Court, the defendant does not argue that the facts of this case are inappropriate for a manslaughter conviction. He contends instead that the State failed to prove, beyond a reasonable doubt, that his conduct caused the victim's death.

In a prosecution for murder, the criminal agency of the defendant as the cause of the victim's death must be established beyond a reasonable doubt. It is not essential, however, that the act of the defendant should have been the sole cause of the death; if it hastened the termination of life, or contributed, mediately or immediately, to the death, in a degree sufficient to be a clearly contributing cause, that is sufficient. **State v. Matthews**, 450 So.2d 644, 646 (La. 1984). The State can establish causation by showing that the defendant's conduct was a substantial factor in bringing about the forbidden result. **State v. Small**, 11-2796 (La. 10/16/12), 100 So.3d 797, 812; **Matthews**, 450 So.2d at 646; **State v. Durio**, 371 So.2d 1158, 1163-64 (La. 1979); **State v. Jones**, 598 So.2d 511, 514 (La. App. 1st Cir. 1992).

When the police arrived at the scene, the victim's body was sitting upright and slouched over, leaned against a bench. Detectives Belford Johnson and James

[5] Battery is defined, in pertinent part, as the intentional use of force or violence upon the person of another. La. R.S. 14:33. Second degree battery is a battery when the offender intentionally inflicts serious bodily injury. La. R.S. 14:34.1(A). Simple battery is a battery committed without the consent of the victim. La. R.S. 14:35(A).

Weber of the BRPD were among the officers who arrived at the scene. They observed blood on the concrete near the victim's body and blood splattered on the victim's shirt collar. The detectives noted that the victim's face was swollen, there were lacerations under his left eye and on the left side of his forehead near his ear, and his mouth was injured. The detectives collected pieces of glass located under the victim's shoe and located a broken gin bottle in the garbage can. Two witnesses were transported to VCU, where recorded interviews were conducted, and one of them, William Curtis, identified the defendant in a photographic lineup.

Detective Johnson testified that after the defendant was transported to VCU and reread his rights, he refused to sign a waiver of rights form.[6] Just as the detectives were about to leave the interview room, the defendant stated that he would tell them what happened. In relaying the prior episode with the victim at the nightclub, the defendant stated that he asked the victim to come outside to fight, but the victim refused. In describing the physical altercation that preceded the victim's death, the defendant stood up and demonstrated for the detectives the series of blows he inflicted upon the victim. The defendant admitted that he had been drinking, and Detective Johnson smelled alcohol on him. According to the defendant, when the victim fell to the ground, he went to sleep and began snoring.

Although there was no recording of the interview, the notes taken by Detective Johnson at the time of the interview were consistent with his testimony regarding the defendant's statement. Further, Detective Weber's recollection of the defendant's statement was consistent with the account provided by Detective Johnson. Detective Weber reiterated that he was told at the scene that the

[6] Detective Belford admitted that he was mistaken when he testified previously at the preliminary examination hearing, that the defendant signed the waiver of rights form. Detective Belford later realized that the defendant never signed the form, but the defendant did not ask for an attorney and abruptly decided to make a statement to detectives.

defendant hit the victim with a gin bottle and had written that information in his report.

Mr. William Curtis, who lived near the residence where the homicide occurred and went there daily to meet a group of individuals who hung out playing dominos and drinking alcohol, testified as follows at trial. On the day in question, a group of about nine individuals, including the victim and the defendant, were at the residence and had stopped playing dominoes, but continued to drink. After Mr. Curtis poured himself "a shot" of alcohol, he walked away from the group. When he heard a noise, he looked back around and saw the victim lying on the concrete by a bench, "knocked out." Someone picked the victim up and sat him up against the bench. Mr. Curtis then saw the defendant, using his left hand, hit the victim "aside" his head. The victim was unresponsive. Mr. Curtis denied seeing the defendant hit the victim with a bottle or hearing any argument.

Dr. Bruce Wainer, an expert in forensic pathology, performed the autopsy in this case four days after the victim's death. Dr. Wainer testified that the major finding was evidence of external blunt force injury, mostly to the face. He further noted that there were also superficial injuries to the extremities and closed-head injuries to the brain that he felt were lethal. He noted that the victim did not have any skull fractures, but experienced shock from the blunt force trauma and certain changes in his brain function led to his demise. Several photographs were taken and discussed, including depictions of the medium-depth laceration (tearing of skin surface) under the victim's left eye, the cut behind the victim's ear, and the small abrasion and laceration on the inner and lower surface of the victim's left lip region. Dr. Wainer noted that the laceration was considered medium-depth since the doctor was able to palpate the bone under the skin with his fingers. Dr. Wainer further noted that the blood surrounded the victim's tooth and the injury to the inside surface of his lip was consistent with the impact of striking the surface of

one of his teeth, producing the abrasion and laceration. The victim further appeared to have suffered hemorrhage involving the left temporalis muscle, of the lining of his skull, and soft tissue hemorrhage on the surface of his front scalp. Dr. Wainer confirmed that the victim's injuries were consistent with the description of the physical altercation reported by the police.

Dr. Wainer noted that while there was a hemorrhage to the inner surface of the victim's scalp, there was no corresponding hemorrhage on the surface of the skull, which would be consistent with the impact involved in producing that hemorrhage being less than the impact involved in producing the hemorrhage on the back of his skull. The victim suffered a contusion of the brain and an acute, subarachnoid hemorrhage on the surface of the brain at the bottom of the frontal pull. When asked the cause of the victim's death, Dr. Wainer replied that the victim died as a result of blunt force trauma and specifically testified, in part, as follows:

> [H]e died as a ... result of a fatal head injury and there were two head injuries that he experienced. One was -- uh -- the bruising was impact injury on the front of the head or surface of the face, uh, that produced the laceration under the eye. Um, uh, the soft tissue scalp hemorrhage that we saw in the frontal part without the -- uh -- uh -- without the hemorrhage on the other -- uh -- on the surface of the skull, on the bone itself, those injuries are nonlethal. They're impact injuries, but they were nonlethal. The second injury that -- and let me make a point of this -- is that that type of injury is -- occurs when the head is relatively stationary and some object strikes it. It may be a fist. You know, it may be a blunt object, but the head's still and the object strikes. The second injury was the decedent fell back and landed on the back of his head. And, in that type of injury, the head is moving and it lands on a stationary object, the ground or whatever, so, uh that is a different type of injury and it's very serious ... the whiplash injury damages the internal structures of the brain ... [I]t produces a type of injury in which the brain swells very rapidly, which leads to, you know, swelling and coma and death ... It's my opinion that, uh, the falling back, however that -- however that was triggered, you know, whether it was triggered by blunt force injury to the front, I don't know, or some other part of the struggle, it was the falling backward and striking the ba [sic] -- the ground with the back of his head that produced the fatal injury.

Dr. Wainer further testified that the toxicology performed was positive for ethanol at a blood level of .246 grams percent, sufficient to have resulted in impairment of function of the decedent. On cross-examination, Dr. Wainer confirmed that the victim also had abrasions on his knee regions and on the dorsal (back) surface of his left hand and right forearm, all consistent with a physical altercation. When asked if the injury to the front of the victim's head related to the lethal blunt force trauma, Dr. Wainer stated, "Well, strictly speaking it is a contributing factor ... in my opinion, again, the initial impact injuries created, you know, a circumstance that led to the second type of injury, you know, where the moving head was striking, uh, which was a lethal injury. So certainly they were contributing factors." Dr. Wainer responded affirmatively when asked if the victim's level of intoxication was a contributing factor to a possible fall. Dr. Wainer confirmed on redirect examination that the victim's blood alcohol level was not lethal, but added that, "it can cause impairment. People can fall, you know."

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. **State v. Williams**, 01-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, writ denied, 02-0399 (La. 2/14/03), 836 So.2d 135. On appeal, this Court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination of guilt. **State v. Glynn**, 94-0332 (La. App. 1st Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464.

In **Jones**, the defendant was convicted of manslaughter, as in this case. The defendant therein suddenly struck the victim a single time, causing the victim to

fall to the concrete floor. Either the fall to the floor or the initial blow by the defendant rendered the victim unconscious. The defendant then kicked or stomped the victim one or more times. The victim was unconscious for five to ten minutes. When the victim regained consciousness, he got up and was able to speak, walk, and smoke a cigarette. The victim was also able to get into the ambulance by himself. The victim was transferred to a neurosurgeon at Charity Hospital in New Orleans and died two days after the offense. Dr. Alfred Suarez, the coroner who performed the autopsy, testified that the victim died as a result of a blunt trauma or injury to the head that produced a subdural hematoma (continued bleeding inside the victim's head produced pressure on the brain, which caused the brain to cease functioning). Although Dr. Suarez testified that the usual treatment for the condition was to drill a hole in the skull and drain the blood to release pressure on the brain, no such procedure was performed. The defendant argued that the State failed to prove beyond a reasonable doubt that the victim would have died even if he had received proper medical treatment. Noting in part that it is not essential that the act of the defendant should have been the sole cause of death, this Court held that the evidence supported the finding that the defendant's striking the victim was a clearly contributing cause (i.e. the "legal cause") of the victim's death. **Jones**, 598 So.2d at 512, 514-15.

Similar to **Jones**, the evidence in this case supports the finding that the defendant's actions were a clearly contributing cause of the victim's death. While Dr. Wainer noted that the victim's level of intoxication could have possibly contributed to his fall, the doctor specifically testified that the trauma directly inflicted by the defendant created the circumstances that led to the lethal injury. In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to it. See **State v. Ordodi**, 06-0207 (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 factfinder 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**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*).

We have conducted a thorough review of the record. We are convinced that any rational trier-of-fact, viewing the evidence in the light most favorable to the prosecution, could have concluded that the State proved beyond a reasonable doubt that the defendant's infliction of injuries upon the victim hastened the termination of the victim's life, or contributed directly or indirectly to the victim's death, in a degree sufficient to be a clearly contributing (i.e. legal) cause of the victim's death.

This assignment of error lacks merit.

OTHER CRIMES EVIDENCE

In assignment of error number one, the defendant contends that the trial court erred and abused its discretion in denying his motion for mistrial based upon repeated references to inadmissible, egregious other crimes evidence. The defendant contends that an admonition would not have cured the damage done to his presumption of innocence. The defendant further argues that the error was not harmless in this case, noting in part that the defense did not present witnesses or evidence and instead relied upon the presumption of innocence. The defendant argues that the comments were calculated attempts to unfairly prejudice the jury against the defendant.

The defendant further argues that the testimony given by an experienced detective that the defendant had previously done time for manslaughter was devastating in a trial for the same offense, manslaughter, and warranted a mistrial. According to defendant, in denying the initial motion for mistrial, the trial court erred in assuming the detective's testimony was foreseeable based on the line of questioning by defense counsel. Noting that the testimony was given when

defense counsel asked the detective if the defendant requested an attorney, the defendant notes that the trial court incorrectly believed that when asked the same question, the detective previously testified at the preliminary examination hearing that the defendant told him the defendant did time at Angola. In this regard, the defendant points out that the transcript of the pretrial hearing actually shows that witnesses at the scene, rather than the defendant, told the detective that the defendant had done time in Angola.

The defendant also argues that the detective made the other crimes reference as retaliation for being reminded of his inconsistent statements regarding whether or not the defendant signed a written waiver and for being embarrassed by the fact that there was no recording of the defendant's statement despite his claims to the contrary. The defendant contends that a reversal and new trial is mandated.

While Detective Johnson was being questioned on cross-examination concerning whether the defendant requested an attorney at the time of his interview, the following colloquy occurred between Detective Johnson and defense counsel:

> Q. And you're sure, as we sit here today, that he never asked for an attorney?
>
> A. I'm positive he didn't ask for an attorney -- he--
>
> Q. Okay.
>
> A. -- Because he kept saying how --
>
> Q. And you remember that?
>
> A. -- He was from Angola and -- I remember this now -- said - - he said I'm -- you -- he spoke out. He -- he did time at Angola and he know [sic] how --

At this point, defense counsel asked to approach the bench and requested a mistrial. The trial court noted that the witness was under questioning by defense counsel, to which defense counsel responded that she never asked the detective if the defendant had a criminal record. Defense counsel requested a playback of the

questioning. The trial court replied that it knew what was said and denied the motion for mistrial. Defense counsel argued that the trial court could not summarily deny the motion. The trial court stated that defense counsel was already aware of the defendant's criminal record, noting that the information was in the police report and had previously been testified to by the same witness during the preliminary examination. The trial court reiterated its denial of the motion for mistrial.

After noting her objection, defense counsel resumed questioning the detective. When defense counsel asked the detective if the defendant made any statements on the way to prison, Detective Johnson responded, "He asked what he was being charged with, and he [was told] manslaughter. He said something to the effect that, again, or he'd already been charged with that before ... did time for that." Defense counsel continued her cross-examination, without making any objection at that time. At the conclusion of the cross-examination, however, defense counsel again moved for mistrial on the basis of Detective Johnson's statement that the defendant told him he was being charged with manslaughter *again.* The trial court denied the motion for mistrial on the grounds that the detective's testimony was a reasonable response to the question asked by defense counsel.

After the conclusion of testimony for the day, defense counsel advised the trial court that she would file a formal motion for mistrial. The next day, the trial court noted the formal motion for the record and stated that a mistrial was not mandatory by statute and that the denial was within the court's discretion. The court further noted its consideration of the witness' prior testimony at the preliminary examination hearing, the context of the statements that were made at the trial, specifically noting that the testimony was elicited on cross-examination

and was somewhat responsive to defense counsel's questions.[7] The court concluded that the comments did not rise to the level of prejudice to the defendant that would prevent him from receiving a fair trial. The trial court's offer to admonish the jury was declined by defense counsel.

Louisiana Code of Evidence article 404(B) provides that evidence of other crimes, acts or wrongs is generally not admissible. Louisiana Code of Criminal Procedure article 770(2) provides that a mistrial shall be granted upon motion of the defendant when a remark or comment is made within the hearing of the jury by the judge, district attorney, or a court official during trial or in argument and that remark refers to another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible. For purposes of Article 770, a law enforcement officer is not considered a "court official," and an unsolicited, unresponsive reference to other crimes evidence made by a law enforcement officer is not grounds for a mandatory mistrial under La. C.Cr.P. art. 770. See **State v. Johnson**, 06-1235 (La. App. 1st Cir. 12/28/06), 951 So.2d 294, 301.

Louisiana Code of Criminal Procedure article 771 sets forth permissive grounds for requesting an admonition or a mistrial when a prejudicial remark is made on grounds that do not require automatic mistrial under Article 770. Louisiana Code of Criminal Procedure article 775 also sets forth additional permissive grounds for mistrial. Under these articles, mistrial is at the discretion of the trial court and should be granted only where the prejudicial remarks of the witness make it impossible for the defendant to obtain a fair trial. **Johnson**, 951 So.2d at 300. Moreover, mistrial is a drastic remedy that is only authorized where substantial prejudice will otherwise result to the accused. A trial court ruling denying mistrial will not be disturbed absent an abuse of discretion. **State v.**

[7] Although it was not the sole basis for the ruling, the trial court was correct in stating that the witness previously noted the defendant's criminal history while being questioned at the preliminary examination hearing.

Smith, 418 So.2d 515, 522-23 (La. 1982); **Johnson**, 951 So.2d at 300. Further, La. C.Cr.P. art. 771 provides that the court shall promptly admonish the jury to disregard a remark or comment, on motion of the defendant or the State.

The Louisiana Supreme Court has generally recognized that a police officer's unsolicited, unresponsive reference to another crime by the defendant is not the comment of a court official under Article 770. See **State v. Watson**, 449 So.2d 1321, 1328 (La. 1984), cert. denied, 469 U.S. 1181, 105 S.Ct. 939, 83 L.Ed.2d 952 (1985). Absent a showing of a pattern of unresponsive answers or improper intent by the police officer, such comments do not fall within the purview of Article 770. **Johnson**, 951 So.2d at 301. Detective Johnson's remarks were not so prejudicial to the defendant that he could not thereafter obtain a fair trial. There is nothing to indicate that the brief remarks were deliberate. In fact, the witness made the comments during cross-examination by defense counsel in response to defense counsel's questions regarding the circumstances surrounding defendant's statement. The testimony was not part of a pattern designed to unfairly prejudice the defendant with inadmissible evidence. Moreover, defense counsel declined the trial court's offer of an admonition. In light of the record as a whole, the trial court acted within its discretion to deny a mistrial.

This assignment of error is without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

STATE OF LOUISIANA

VERSUS

LEROY WOODS

NO. 2015 KA 0045

COURT OF APPEAL

FIRST CIRCUIT

STATE OF LOUISIANA

WELCH, J., concurs with reasons.

JCW I respectfully concur with the majority opinion in this matter. There was no dispute that the defendant struck the victim without justification and thus, the jury could have reasonably concluded that the actions of the defendant caused the fall that resulted in the victim's death. However, both the majority and the trial court erred in concluding that Detective Johnson's response to the questioning of defense counsel was "somewhat" responsive. Defense counsel's questioning was whether defendant had asked for an attorney, and Detective Johnson answered that the "[defendant] did time in Angola." This answer was by no means responsive to the line of questioning and was a deliberate attempt to interject other crimes evidence before the jury to prejudice the defendant. Nonetheless, because the evidence in the record was substantial as to the defendant's guilt, the error was harmless.

Thus, I respectfully concur.